

PROTECT ACT

APRIL 9, 2003.—Ordered to be printed

Mr. SENSENBRENNER, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 151]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 151), to amend title 18, United States Code, with respect to the sexual exploitation of children, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) *SHORT TITLE.*—*This Act may be cited as the “Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003” or “PROTECT Act”.*

(b) *TABLE OF CONTENTS.*—*The table of contents for this Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Severability.

TITLE I—SANCTIONS AND OFFENSES

Sec. 101. Supervised release term for sex offenders.

Sec. 102. First degree murder for child abuse and child torture murders.

Sec. 103. Sexual abuse penalties.

Sec. 104. Stronger penalties against kidnapping.

Sec. 105. Penalties against sex tourism.

Sec. 106. Two strikes you’re out.

Sec. 107. Attempt liability for international parental kidnapping.

Sec. 108. Pilot program for national criminal history background checks and feasibility study.

TITLE II—INVESTIGATIONS AND PROSECUTIONS

Sec. 201. Interceptions of communications in investigations of sex offenses.

- Sec. 202. *No statute of limitations for child abduction and sex crimes.*
 Sec. 203. *No pretrial release for those who rape or kidnap children.*
 Sec. 204. *Suzanne's law.*

TITLE III—PUBLIC OUTREACH

Subtitle A—AMBER Alert

- Sec. 301. *National coordination of AMBER alert communications network.*
 Sec. 302. *Minimum standards for issuance and dissemination of alerts through AMBER alert communications network.*
 Sec. 303. *Grant program for notification and communications systems along highways for recovery of abducted children.*
 Sec. 304. *Grant program for support of AMBER alert communications plans.*
 Sec. 305. *Limitation on liability.*

Subtitle B—National Center for Missing and Exploited Children

- Sec. 321. *Increased support.*
 Sec. 322. *Forensic and investigative support of missing and exploited children.*
 Sec. 323. *Creation of cyber tipline.*

Subtitle C—Sex Offender Apprehension Program

- Sec. 341. *Authorization.*

Subtitle D—Missing Children Procedures in Public Buildings

- Sec. 361. *Short title.*
 Sec. 362. *Definitions.*
 Sec. 363. *Procedures in public buildings regarding a missing or lost child.*

Subtitle E—Child Advocacy Center Grants

- Sec. 381. *Information and documentation required by Attorney General under Victims of Child Abuse Act of 1990.*

TITLE IV—SENTENCING REFORM

- Sec. 401. *Sentencing reform.*

TITLE V—OBSCENITY AND PORNOGRAPHY

Subtitle A—Child Obscenity and Pornography Prevention

- Sec. 501. *Findings.*
 Sec. 502. *Improvements to prohibition on virtual child pornography.*
 Sec. 503. *Certain activities relating to material constituting or containing child pornography.*
 Sec. 504. *Obscene child pornography.*
 Sec. 505. *Admissibility of evidence.*
 Sec. 506. *Extraterritorial production of child pornography for distribution in the United States.*
 Sec. 507. *Strengthening enhanced penalties for repeat offenders.*
 Sec. 508. *Service provider reporting of child pornography and related information.*
 Sec. 509. *Investigative authority relating to child pornography.*
 Sec. 510. *Civil remedies.*
 Sec. 511. *Recordkeeping requirements.*
 Sec. 512. *Sentencing enhancements for interstate travel to engage in sexual act with a juvenile.*
 Sec. 513. *Miscellaneous provisions.*

Subtitle B—Truth in Domain Names

- Sec. 521. *Misleading domain names on the Internet.*

TITLE VI—MISCELLANEOUS PROVISIONS

- Sec. 601. *Penalties for use of minors in crimes of violence.*
 Sec. 602. *Sense of Congress.*
 Sec. 603. *Communications Decency Act of 1996.*
 Sec. 604. *Internet availability of information concerning registered sex offenders.*
 Sec. 605. *Registration of child pornographers in the national sex offender registry.*
 Sec. 606. *Grants to States for costs of compliance with new sex offender registry requirements.*
 Sec. 607. *Safe ID Act.*

Sec. 608. *Illicit Drug Anti-Proliferation Act.*

Sec. 609. *Definition of vehicle.*

Sec. 610. *Authorization of John Doe DNA indictments.*

Sec. 611. *Transitional housing assistance grants for child victims of domestic violence, stalking, or sexual assault.*

SEC. 2. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected by such invalidation.

TITLE I—SANCTIONS AND OFFENSES

SEC. 101. SUPERVISED RELEASE TERM FOR SEX OFFENDERS.

Section 3583 of title 18, United States Code, is amended—

(1) in subsection (e)(3), by inserting “on any such revocation” after “required to serve”;

(2) in subsection (h), by striking “that is less than the maximum term of imprisonment authorized under subsection (e)(3)”; and

(3) by adding at the end the following:

“(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), 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, 2423, or 2425, is any term of years or life.”

SEC. 102. FIRST DEGREE MURDER FOR CHILD ABUSE AND CHILD TORTURE MURDERS.

Section 1111 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting “child abuse,” after “sexual abuse,”;

and

(B) by inserting “or perpetrated as part of a pattern or practice of assault or torture against a child or children;” after “robbery;”; and

(2) by inserting at the end the following:

“(c) For purposes of this section—

“(1) the term ‘assault’ has the same meaning as given that term in section 113;

“(2) the term ‘child’ means a person who has not attained the age of 18 years and is—

“(A) under the perpetrator’s care or control; or

“(B) at least six years younger than the perpetrator;

“(3) the term ‘child abuse’ means intentionally or knowingly causing death or serious bodily injury to a child;

“(4) the term ‘pattern or practice of assault or torture’ means assault or torture engaged in on at least two occasions;

“(5) the term ‘serious bodily injury’ has the meaning set forth in section 1365; and

“(6) the term ‘torture’ means conduct, whether or not committed under the color of law, that otherwise satisfies the definition set forth in section 2340(1).”

SEC. 103. SEXUAL ABUSE PENALTIES.

(a) **MAXIMUM PENALTY INCREASES.**—(1) Chapter 110 of title 18, United States Code, is amended—

- (A) in section 2251(d)—
 - (i) by striking “20” and inserting “30”; and
 - (ii) by striking “30” the first place it appears and inserting “50”;
 - (B) in section 2252(b)(1)—
 - (i) by striking “15” and inserting “20”; and
 - (ii) by striking “30” and inserting “40”;
 - (C) in section 2252(b)(2)—
 - (i) by striking “5” and inserting “10”; and
 - (ii) by striking “10” and inserting “20”;
 - (D) in section 2252A(b)(1)—
 - (i) by striking “15” and inserting “20”; and
 - (ii) by striking “30” and inserting “40”; and
 - (E) in section 2252A(b)(2)—
 - (i) by striking “5” and inserting “10”; and
 - (ii) by striking “10” and inserting “20”.
- (2) Chapter 117 of title 18, United States Code, is amended—
- (A) in section 2422(a), by striking “10” and inserting “20”;
 - (B) in section 2422(b), by striking “15” and inserting “30”;
- and
- (C) in section 2423(a), by striking “15” and inserting “30”.
- (3) Section 1591(b)(2) of title 18, United States Code, is amended by striking “20” and inserting “40”.

(b) **MINIMUM PENALTY INCREASES.**—(1) Chapter 110 of title 18, United States Code, is amended—

- (A) in section 2251(d)—
 - (i) by striking “or imprisoned not less than 10” and inserting “and imprisoned not less than 15”;
 - (ii) by striking “and both,”;
 - (iii) by striking “15” and inserting “25”; and
 - (iv) by striking “30” the second place it appears and inserting “35”;
 - (B) in section 2251A(a) and (b), by striking “20” and inserting “30”;
 - (C) in section 2252(b)(1)—
 - (i) by striking “or imprisoned” and inserting “and imprisoned not less than 5 years and”;
 - (ii) by striking “or both,”; and
 - (iii) by striking “5” and inserting “15”;
 - (D) in section 2252(b)(2), by striking “2” and inserting “10”;
 - (E) in section 2252A(b)(1)—
 - (i) by striking “or imprisoned” and inserting “and imprisoned not less than 5 years and”;
 - (ii) by striking “or both,”; and
 - (iii) by striking “5” and inserting “15”; and
 - (F) in section 2252A(b)(2), by striking “2” and inserting “10”.
- (2) Chapter 117 of title 18, United States Code, is amended—
- (A) in section 2422(b)—
 - (i) by striking “, imprisoned” and inserting “and imprisoned not less than 5 years and”;
 - (ii) by striking “, or both”; and

(B) in section 2423(a)—

- (i) by striking “, imprisoned” and inserting “and imprisoned not less than 5 years and”; and
- (ii) by striking “, or both”.

SEC. 104. STRONGER PENALTIES AGAINST KIDNAPPING.

(a) **SENTENCING GUIDELINES.**—Notwithstanding any other provision of law regarding the amendment of Sentencing Guidelines, the United States Sentencing Commission is directed to amend the Sentencing Guidelines, to take effect on the date that is 30 days after the date of the enactment of this Act—

- (1) so that the base offense level for kidnapping in section 2A4.1(a) is increased from level 24 to level 32;
- (2) so as to delete section 2A4.1(b)(4)(C); and
- (3) so that the increase provided by section 2A4.1(b)(5) is 6 levels instead of 3.

(b) **MINIMUM MANDATORY SENTENCE.**—Section 1201(g) of title 18, United States Code, is amended by striking “shall be subject to paragraph (2)” in paragraph (1) and all that follows through paragraph (2) and inserting “shall include imprisonment for not less than 20 years.”.

SEC. 105. PENALTIES AGAINST SEX TOURISM.

(a) **IN GENERAL.**—Section 2423 of title 18, United States Code, is amended by striking subsection (b) and inserting the following:

“(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.

“(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.

“(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.

“(e) **ATTEMPT AND CONSPIRACY.**—Whoever attempts or conspires to violate subsection (a), (b), (c), or (d) shall be punishable in the same manner as a completed violation of that subsection.

“(f) **DEFINITION.**—As used in this section, the term ‘illicit sexual conduct’ means (1) a sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States; or (2) any commercial sex act (as defined in section 1591) with a person under 18 years of age.

“(g) **DEFENSE.**—In a prosecution under this section based on illicit sexual conduct as defined in subsection (f)(2), it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the person with

whom the defendant engaged in the commercial sex act had attained the age of 18 years.”.

(b) *CONFORMING AMENDMENT.*—Section 2423(a) of title 18, United States Code, is amended by striking “or attempts to do so,”.

SEC. 106. TWO STRIKES YOU'RE OUT.

(a) *IN GENERAL.*—Section 3559 of title 18, United States Code, is amended by adding at the end the following new subsection:

“(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 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’ means an offense under State law 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 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.”

(b) **CONFORMING AMENDMENT.**—Sections 2247(a) and 2426(a) of title 18, United States Code, are each amended by inserting “, unless section 3559(e) applies” before the final period.

SEC. 107. ATTEMPT LIABILITY FOR INTERNATIONAL PARENTAL KIDNAPPING.

Section 1204 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting “, or attempts to do so,” before “or retains”; and

(2) in subsection (c)—

(A) in paragraph (1), by inserting “or the Uniform Child Custody Jurisdiction and Enforcement Act” before “and was”; and

(B) in paragraph (2), by inserting “or” after the semicolon.

SEC. 108. PILOT PROGRAM FOR NATIONAL CRIMINAL HISTORY BACKGROUND CHECKS AND FEASIBILITY STUDY.

(a) **ESTABLISHMENT OF PILOT PROGRAM.**—

(1) **IN GENERAL.**—Not later than 90 days after the date of the enactment of this Act, the Attorney General shall establish a pilot program for volunteer groups to obtain national and State criminal history background checks through a 10-fingerprint check to be conducted utilizing State criminal records and the Integrated Automated Fingerprint Identification system of the Federal Bureau of Investigation.

(2) **STATE PILOT PROGRAM.**—

(A) **IN GENERAL.**—The Attorney General shall designate 3 States as participants in an 18-month State pilot program.

(B) **VOLUNTEER ORGANIZATION REQUESTS.**—A volunteer organization in one of the 3 States participating in the State pilot program under this paragraph that is part of the Boys and Girls Clubs of America, the National Mentoring Partnerships, or the National Council of Youth Sports may submit a request for a 10-fingerprint check from the participating State. A volunteer organization in a participating State may not submit background check requests under paragraph (3).

(C) **STATE CHECK.**—The participating State under this paragraph after receiving a request under subparagraph (B) shall conduct a State background check and submit a request that a Federal check be performed through the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation, to the Attorney General, in a manner to be determined by the Attorney General.

(D) **INFORMATION PROVIDED.**—Under procedures established by the Attorney General, any criminal history record information resulting from the State and Federal check under subparagraph (C) shall be provided to the State or National Center for Missing and Exploited Children consistent with the National Child Protection Act.

(E) COSTS.—A State may collect a fee to perform a criminal background check under this paragraph which may not exceed the actual costs to the State to perform such a check.

(F) TIMING.—For any background check performed under this paragraph, the State shall provide the State criminal record information to the Attorney General within 7 days after receiving the request from the organization, unless the Attorney General determines during the feasibility study that such a check cannot reasonably be performed within that time period. The Attorney General shall provide the criminal history records information to the National Center for Missing and Exploited Children within 7 business days after receiving the request from the State.

(3) CHILD SAFETY PILOT PROGRAM.—

(A) IN GENERAL.—The Attorney General shall establish an 18-month Child Safety Pilot Program that shall provide for the processing of 100,000 10-fingerprint check requests from organizations described in subparagraph (B) conducted through the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation.

(B) ELIGIBLE ORGANIZATIONS.—An organization described in this subparagraph is an organization in a State not designated under paragraph (2) that has received a request allotment pursuant to subparagraph (C).

(C) REQUEST ALLOTMENTS.—The following organizations may allot requests as follows:

- (i) 33,334 for the Boys and Girls Clubs of America.
- (ii) 33,333 for the National Mentoring Partnership.
- (iii) 33,333 for the National Council of Youth Sports.

(D) PROCEDURES.—The Attorney General shall notify the organizations described in subparagraph (C) of a process by which the organizations may provide fingerprint cards to the Attorney General.

(E) VOLUNTEER INFORMATION REQUIRED.—An organization authorized to request a background check under this paragraph shall—

- (i) forward to the Attorney General the volunteer's fingerprints; and
- (ii) obtain a statement completed and signed by the volunteer that—

(I) sets out the provider or volunteer's name, address, date of birth appearing on a valid identification document as defined in section 1028 of title 18, United States Code, and a photocopy of the valid identifying document;

(II) states whether the volunteer has a criminal record, and, if so, sets out the particulars of such record;

(III) notifies the volunteer that the Attorney General may perform a criminal history background check and that the volunteer's signature to the statement constitutes an acknowledgment that such a check may be conducted;

(IV) notifies the volunteer that prior to and after the completion of the background check, the organization may choose to deny the provider access to children; and

(V) notifies the volunteer of his right to correct an erroneous record held by the Attorney General.

(F) *TIMING.*—For any background checks performed under this paragraph, the Attorney General shall provide the criminal history records information to the National Center for Missing and Exploited Children within 14 business days after receiving the request from the organization.

(G) *DETERMINATIONS OF FITNESS.*—

(i) *IN GENERAL.*—Consistent with the privacy protections delineated in the National Child Protection Act (42 U.S.C. 5119), the National Center for Missing and Exploited Children may make a determination whether the criminal history record information received in response to the criminal history background checks conducted under this paragraph indicates that the provider or volunteer has a criminal history record that renders the provider or volunteer unfit to provide care to children based upon criteria established jointly, the National Center for Missing and Exploited Children, the Boys and Girls Clubs of America, the National Mentoring Partnership, and the National Council of Youth Sports.

(ii) *CHILD SAFETY PILOT PROGRAM.*—The National Center for Missing and Exploited Children shall convey that determination to the organizations making requests under this paragraph.

(4) *FEES COLLECTED BY ATTORNEY GENERAL.* The Attorney General may collect a fee which may not exceed \$18 to cover the cost to the Federal Bureau of Investigation to conduct the background check under paragraph (2) or (3).

(b) *RIGHTS OF VOLUNTEERS.*—Each volunteer who is the subject of a criminal history background check under this section is entitled to contact the Attorney General to initiate procedures to—

(1) obtain a copy of their criminal history record report; and

(2) challenge the accuracy and completeness of the criminal history record information in the report.

(c) *AUTHORIZATION OF APPROPRIATIONS.*—

(1) *IN GENERAL.*—There is authorized to be appropriated such sums as may be necessary to the National Center for Missing and Exploited Children for fiscal years 2004 and 2005 to carry out the requirements of this section.

(2) *STATE PROGRAM.*—There is authorized to be appropriated such sums as may be necessary to the Attorney General for the States designated in subsection (a)(1) for fiscal years 2004 and 2005 to establish and enhance finger print technology infrastructure of the participating State.

(d) *FEASIBILITY STUDY FOR A SYSTEM OF BACKGROUND CHECKS FOR EMPLOYEES AND VOLUNTEERS.*—

(1) *STUDY REQUIRED.*—The Attorney General shall conduct a feasibility study within 180 days after the date of the enact-

ment of this Act. The study shall examine, to the extent discernible, the following:

(A) *The current state of fingerprint capture and processing at the State and local level, including the current available infrastructure, State system capacities, and the time for each State to process a civil or volunteer print from the time of capture to submission to the Federal Bureau of Investigation (FBI).*

(B) *The intent of the States concerning participation in a nationwide system of criminal background checks to provide information to qualified entities.*

(C) *The number of volunteers, employees, and other individuals that would require a fingerprint-based criminal background check.*

(D) *The impact on the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation in terms of capacity and impact on other users of the system, including the effect on Federal Bureau of Investigation work practices and staffing levels.*

(E) *The current fees charged by the Federal Bureau of Investigation, States and local agencies, and private companies to process fingerprints and conduct background checks.*

(F) *The existence of “model” or best practice programs which could easily be expanded and duplicated in other States.*

(G) *The extent to which private companies are currently performing background checks and the possibility of using private companies in the future to perform any of the background check process, including, but not limited to, the capture and transmission of fingerprints and fitness determinations.*

(H) *The cost of development and operation of the technology and the infrastructure necessary to establish a nationwide fingerprint-based and other criminal background check system.*

(I) *The extent of State participation in the procedures for background checks authorized in the National Child Protection Act (Public Law 103–209), as amended by the Volunteers for Children Act (sections 221 and 222 of Public Law 105–251).*

(J) *The extent to which States currently provide access to nationwide criminal history background checks to organizations that serve children.*

(K) *The extent to which States currently permit volunteers to appeal adverse fitness determinations, and whether similar procedures are required at the Federal level.*

(L) *The implementation of the 2 pilot programs created in subsection (a).*

(M) *Any privacy concerns that may arise from nationwide criminal background checks.*

(N) *Any other information deemed relevant by the Department of Justice.*

(2) *INTERIM REPORT.—Based on the findings of the feasibility study under paragraph (1), the Attorney General shall,*

not later than 180 days after the date of the enactment of this Act, submit to Congress an interim report, which may include recommendations for a pilot project to develop or improve programs to collect fingerprints and perform background checks on individuals that seek to volunteer with organizations that work with children, the elderly, or the disabled.

(3) FINAL REPORT.—Based on the findings of the pilot project, the Attorney General shall, not later than 60 days after completion of the pilot project under this section, submit to Congress a final report, including recommendations, which may include a proposal for grants to the States to develop or improve programs to collect fingerprints and perform background checks on individuals that seek to volunteer with organizations that work with children, the elderly, or the disabled, and which may include recommendations for amendments to the National Child Protection Act and the Volunteers for Children Act so that qualified entities can promptly and affordably conduct nationwide criminal history background checks on their employees and volunteers.

TITLE II—INVESTIGATIONS AND PROSECUTIONS

SEC. 201. INTERCEPTIONS OF COMMUNICATIONS IN INVESTIGATIONS OF SEX OFFENSES.

Section 2516(1) of title 18, United States Code, is amended—

(1) in paragraph (a), by inserting after “chapter 37 (relating to espionage),” the following: “chapter 55 (relating to kidnapping),”; and

(2) in paragraph (c)—

(A) by inserting “section 1591 (sex trafficking of children by force, fraud, or coercion),” after “section 1511 (obstruction of State or local law enforcement),”; and

(B) by inserting “section 2251A (selling or buying of children), section 2252A (relating to material constituting or containing child pornography), section 1466A (relating to child obscenity), section 2260 (production of sexually explicit depictions of a minor for importation into the United States), sections 2421, 2422, 2423, and 2425 (relating to transportation for illegal sexual activity and related crimes),” after “sections 2251 and 2252 (sexual exploitation of children),”.

SEC. 202. NO STATUTE OF LIMITATIONS FOR CHILD ABDUCTION AND SEX CRIMES.

Section 3283 of title 18, United States Code, is amended to read as follows:

“§ 3283. Offenses against children

“No statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnapping, of a child under the age of 18 years shall preclude such prosecution during the life of the child.”.

SEC. 203. NO PRETRIAL RELEASE FOR THOSE WHO RAPE OR KIDNAP CHILDREN.

Section 3142(e) of title 18, United States Code, is amended—

(1) by striking “1901 et seq.), or” and inserting “1901 et seq.),”; and

(2) by striking “of title 18 of the United States Code” and inserting “of this title, or an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title”.

SEC. 204. SUZANNE’S LAW.

Section 3701(a) of the Crime Control Act of 1990 (42 U.S.C. 5779(a)) is amended by striking “age of 18” and inserting “age of 21”.

TITLE III—PUBLIC OUTREACH**Subtitle A—AMBER Alert****SEC. 301. NATIONAL COORDINATION OF AMBER ALERT COMMUNICATIONS NETWORK.**

(a) COORDINATION WITHIN DEPARTMENT OF JUSTICE.—The Attorney General shall assign an officer of the Department of Justice to act as the national coordinator of the AMBER Alert communications network regarding abducted children. The officer so designated shall be known as the AMBER Alert Coordinator of the Department of Justice.

(b) DUTIES.—In acting as the national coordinator of the AMBER Alert communications network, the Coordinator shall—

(1) seek to eliminate gaps in the network, including gaps in areas of interstate travel;

(2) work with States to encourage the development of additional elements (known as local AMBER plans) in the network;

(3) work with States to ensure appropriate regional coordination of various elements of the network; and

(4) act as the nationwide point of contact for—

(A) the development of the network; and

(B) regional coordination of alerts on abducted children through the network.

(c) CONSULTATION WITH FEDERAL BUREAU OF INVESTIGATION.—In carrying out duties under subsection (b), the Coordinator shall notify and consult with the Director of the Federal Bureau of Investigation concerning each child abduction for which an alert is issued through the AMBER Alert communications network.

(d) COOPERATION.—The Coordinator shall cooperate with the Secretary of Transportation and the Federal Communications Commission in carrying out activities under this section.

(e) REPORT.—Not later than March 1, 2005, the Coordinator shall submit to Congress a report on the activities of the Coordinator and the effectiveness and status of the AMBER plans of each State that has implemented such a plan. The Coordinator shall prepare the report in consultation with the Secretary of Transportation.

SEC. 302. MINIMUM STANDARDS FOR ISSUANCE AND DISSEMINATION OF ALERTS THROUGH AMBER ALERT COMMUNICATIONS NETWORK.

(a) *ESTABLISHMENT OF MINIMUM STANDARDS.*—Subject to subsection (b), the AMBER Alert Coordinator of the Department of Justice shall establish minimum standards for—

(1) the issuance of alerts through the AMBER Alert communications network; and

(2) the extent of the dissemination of alerts issued through the network.

(b) *LIMITATIONS.*—(1) The minimum standards established under subsection (a) shall be adoptable on a voluntary basis only.

(2) The minimum standards shall, to the maximum extent practicable (as determined by the Coordinator in consultation with State and local law enforcement agencies), provide that appropriate information relating to the special needs of an abducted child (including health care needs) are disseminated to the appropriate law enforcement, public health, and other public officials.

(3) The minimum standards shall, to the maximum extent practicable (as determined by the Coordinator in consultation with State and local law enforcement agencies), provide that the dissemination of an alert through the AMBER Alert communications network be limited to the geographic areas most likely to facilitate the recovery of the abducted child concerned.

(4) In carrying out activities under subsection (a), the Coordinator may not interfere with the current system of voluntary coordination between local broadcasters and State and local law enforcement agencies for purposes of the AMBER Alert communications network.

(c) *COOPERATION.*—(1) The Coordinator shall cooperate with the Secretary of Transportation and the Federal Communications Commission in carrying out activities under this section.

(2) The Coordinator shall also cooperate with local broadcasters and State and local law enforcement agencies in establishing minimum standards under this section.

SEC. 303. GRANT PROGRAM FOR NOTIFICATION AND COMMUNICATIONS SYSTEMS ALONG HIGHWAYS FOR RECOVERY OF ABDUCTED CHILDREN.

(a) *PROGRAM REQUIRED.*—The Secretary of Transportation shall carry out a program to provide grants to States for the development or enhancement of notification or communications systems along highways for alerts and other information for the recovery of abducted children.

(b) *DEVELOPMENT GRANTS.*—

(1) *IN GENERAL.*—The Secretary may make a grant to a State under this subsection for the development of a State program for the use of changeable message signs or other motorist information systems to notify motorists about abductions of children. The State program shall provide for the planning, coordination, and design of systems, protocols, and message sets that support the coordination and communication necessary to notify motorists about abductions of children.

(2) *ELIGIBLE ACTIVITIES.*—A grant under this subsection may be used by a State for the following purposes:

(A) To develop general policies and procedures to guide the use of changeable message signs or other motorist infor-

mation systems to notify motorists about abductions of children.

(B) To develop guidance or policies on the content and format of alert messages to be conveyed on changeable message signs or other traveler information systems.

(C) To coordinate State, regional, and local plans for the use of changeable message signs or other transportation related issues.

(D) To plan secure and reliable communications systems and protocols among public safety and transportation agencies or modify existing communications systems to support the notification of motorists about abductions of children.

(E) To plan and design improved systems for communicating with motorists, including the capability for issuing wide area alerts to motorists.

(F) To plan systems and protocols to facilitate the efficient issuance of child abduction notification and other key information to motorists during off-hours.

(G) To provide training and guidance to transportation authorities to facilitate appropriate use of changeable message signs and other traveler information systems for the notification of motorists about abductions of children.

(c) IMPLEMENTATION GRANTS.—

(1) IN GENERAL.—The Secretary may make a grant to a State under this subsection for the implementation of a program for the use of changeable message signs or other motorist information systems to notify motorists about abductions of children. A State shall be eligible for a grant under this subsection if the Secretary determines that the State has developed a State program in accordance with subsection (b).

(2) ELIGIBLE ACTIVITIES.—A grant under this subsection may be used by a State to support the implementation of systems that use changeable message signs or other motorist information systems to notify motorists about abductions of children. Such support may include the purchase and installation of changeable message signs or other motorist information systems to notify motorists about abductions of children.

(d) FEDERAL SHARE.—The Federal share of the cost of any activities funded by a grant under this section may not exceed 80 percent.

(e) DISTRIBUTION OF GRANT AMOUNTS.—The Secretary shall, to the maximum extent practicable, distribute grants under this section equally among the States that apply for a grant under this section within the time period prescribed by the Secretary.

(f) ADMINISTRATION.—The Secretary shall prescribe requirements, including application requirements, for the receipt of grants under this section.

(g) DEFINITION.—In this section, the term “State” means any of the 50 States, the District of Columbia, or Puerto Rico.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this section \$20,000,000 for fiscal year 2004. Such amounts shall remain available until expended.

(i) STUDY OF STATE PROGRAMS.—

(1) *STUDY.*—The Secretary shall conduct a study to examine State barriers to the adoption and implementation of State programs for the use of communications systems along highways for alerts and other information for the recovery of abducted children.

(2) *REPORT.*—Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study, together with any recommendations the Secretary determines appropriate.

SEC. 304. GRANT PROGRAM FOR SUPPORT OF AMBER ALERT COMMUNICATIONS PLANS.

(a) *PROGRAM REQUIRED.*—The Attorney General shall carry out a program to provide grants to States for the development or enhancement of programs and activities for the support of AMBER Alert communications plans.

(b) *ACTIVITIES.*—Activities funded by grants under the program under subsection (a) may include—

(1) the development and implementation of education and training programs, and associated materials, relating to AMBER Alert communications plans;

(2) the development and implementation of law enforcement programs, and associated equipment, relating to AMBER Alert communications plans;

(3) the development and implementation of new technologies to improve AMBER Alert communications; and

(4) such other activities as the Attorney General considers appropriate for supporting the AMBER Alert communications program.

(c) *FEDERAL SHARE.*—The Federal share of the cost of any activities funded by a grant under the program under subsection (a) may not exceed 50 percent.

(d) *DISTRIBUTION OF GRANT AMOUNTS ON GEOGRAPHIC BASIS.*—The Attorney General shall, to the maximum extent practicable, ensure the distribution of grants under the program under subsection (a) on an equitable basis throughout the various regions of the United States.

(e) *ADMINISTRATION.*—The Attorney General shall prescribe requirements, including application requirements, for grants under the program under subsection (a).

(f) *AUTHORIZATION OF APPROPRIATIONS.*—(1) There is authorized to be appropriated for the Department of Justice \$5,000,000 for fiscal year 2004 to carry out this section and, in addition, \$5,000,000 for fiscal year 2004 to carry out subsection (b)(3).

(2) Amounts appropriated pursuant to the authorization of appropriations in paragraph (1) shall remain available until expended.

SEC. 305. LIMITATION ON LIABILITY.

(a) Except as provided in subsection (b), the National Center for Missing and Exploited Children, including any of its officers, employees, or agents, shall not be liable for damages in any civil action for defamation, libel, slander, or harm to reputation arising out of any action or communication by the National Center for Missing and Exploited Children, its officers, employees, or agents, in connection with any clearinghouse, hotline or complaint intake or for-

warding program or in connection with activity that is wholly or partially funded by the United States and undertaken in cooperation with, or at the direction of a Federal law enforcement agency.

(b) The limitation in subsection (a) does not apply in any action in which the plaintiff proves that the National Center for Missing and Exploited Children, its officers, employees, or agents acted with actual malice, or provided information or took action for a purpose unrelated to an activity mandated by Federal law. For purposes of this subsection, the prevention, or detection of crime, and the safety, recovery, or protection of missing or exploited children shall be deemed, *per se*, to be an activity mandated by Federal law.

Subtitle B—National Center for Missing and Exploited Children

SEC. 321. INCREASED SUPPORT.

(a) *IN GENERAL.*—Section 408(a) of the Missing Children’s Assistance Act (42 U.S.C. 5777(a)) is amended by striking “fiscal years 2000 through 2003” and inserting “fiscal years 2004 through 2005”.

(b) *ANNUAL GRANT TO NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN.*—Section 404(b)(2) of the Missing Children’s Assistance Act (42 U.S.C. 5773(b)(2)) is amended by striking “\$10,000,000 for each of fiscal years 2000, 2001, 2002, and 2003” and inserting “\$20,000,000 for each of the fiscal years 2004 through 2005”.

SEC. 322. FORENSIC AND INVESTIGATIVE SUPPORT OF MISSING AND EXPLOITED CHILDREN.

Section 3056 of title 18, United States Code, is amended by adding at the end the following:

“(f) Under the direction of the Secretary of Homeland Security, officers and agents of the Secret Service are authorized, at the request of any State or local law enforcement agency, or at the request of the National Center for Missing and Exploited Children, to provide forensic and investigative assistance in support of any investigation involving missing or exploited children.”.

SEC. 323. CREATION OF CYBER TIPLINE.

Section 404(b)(1) of the Missing Children’s Assistance Act (42 U.S.C. 5773(b)(1)) is amended—

- (1) in subparagraph (F), by striking “and” at the end;
- (2) in subparagraph (G), by striking the period at the end and inserting “; and”; and
- (3) by adding at the end the following:

“(H) coordinate the operation of a cyber tipline to provide online users an effective means of reporting Internet-related child sexual exploitation in the areas of—

“(i) distribution of child pornography;

“(ii) online enticement of children for sexual acts;

and

“(iii) child prostitution.”.

Subtitle C—Sex Offender Apprehension Program

SEC. 341. AUTHORIZATION.

Section 1701(d) of part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd(d)) is amended—

(1) by redesignating paragraphs (10) and (11) as (11) and (12), respectively; and

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

“(10) assist a State in enforcing a law throughout the State which requires that a convicted sex offender register his or her address with a State or local law enforcement agency and be subject to criminal prosecution for failure to comply;”.

Subtitle D—Missing Children Procedures in Public Buildings

SEC. 361. SHORT TITLE.

This subtitle may be cited as the “Code Adam Act of 2003”.

SEC. 362. DEFINITIONS.

In this subtitle, the following definitions apply:

(1) **CHILD.**—The term “child” means an individual who is 17 years of age or younger.

(2) **CODE ADAM ALERT.**—The term “Code Adam alert” means a set of procedures used in public buildings to alert employees and other users of the building that a child is missing.

(3) **DESIGNATED AUTHORITY.**—The term “designated authority” means—

(A) with respect to a public building owned or leased for use by an Executive agency—

(i) except as otherwise provided in this paragraph, the Administrator of General Services;

(ii) in the case of the John F. Kennedy Center for the Performing Arts, the Board of Trustees of the John F. Kennedy Center for the Performing Arts;

(iii) in the case of buildings under the jurisdiction, custody, and control of the Smithsonian Institution, the Board of Regents of the Smithsonian Institution; or

(iv) in the case of another public building for which an Executive agency has, by specific or general statutory authority, jurisdiction, custody, and control over the building, the head of that agency;

(B) with respect to the Supreme Court Building, the Marshal of the Supreme Court; with respect to the Thurgood Marshall Federal Judiciary Building, the Director of the Administrative Office of United States Courts; and with respect to all other public buildings owned or leased for use by an establishment in the judicial branch of government, the General Services Administration in consultation with the United States Marshals Service; and

(C) with respect to a public building owned or leased for use by an establishment in the legislative branch of government, the Capitol Police Board.

(4) EXECUTIVE AGENCY.—The term “Executive agency” has the same meaning such term has under section 105 of title 5, United States Code.

(5) FEDERAL AGENCY.—The term “Federal agency” means any Executive agency or any establishment in the legislative or judicial branches of the Government.

(6) PUBLIC BUILDING.—The term “public building” means any building (or portion thereof) owned or leased for use by a Federal agency.

SEC. 363. PROCEDURES IN PUBLIC BUILDINGS REGARDING A MISSING OR LOST CHILD.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the designated authority for a public building shall establish procedures for locating a child that is missing in the building.

(b) NOTIFICATION AND SEARCH PROCEDURES.—Procedures established under this section shall provide, at a minimum, for the following:

- (1) Notifying security personnel that a child is missing.
- (2) Obtaining a detailed description of the child, including name, age, eye and hair color, height, weight, clothing, and shoes.
- (3) Issuing a Code Adam alert and providing a description of the child, using a fast and effective means of communication.
- (4) Establishing a central point of contact.
- (5) Monitoring all points of egress from the building while a Code Adam alert is in effect.
- (6) Conducting a thorough search of the building.
- (7) Contacting local law enforcement.
- (8) Documenting the incident.

Subtitle E—Child Advocacy Center Grants

SEC. 381. INFORMATION AND DOCUMENTATION REQUIRED BY ATTORNEY GENERAL UNDER VICTIMS OF CHILD ABUSE ACT OF 1990.

(a) REGIONAL CHILDREN’S ADVOCACY CENTERS.—Section 213 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13001b) is amended—

- (1) in subsection (c)(4)—
 - (A) by striking “and” at the end of subparagraph (B)(ii);
 - (B) in subparagraph (B)(iii), by striking “Board” and inserting “board”; and
 - (C) by redesignating subparagraphs (C) and (D) as clauses (iv) and (v), respectively, of subparagraph (B), and by realigning such clauses so as to have the same indentation as the preceding clauses of subparagraph (B); and
- (2) in subsection (e), by striking “Board” in each of paragraphs (1)(B)(ii), (2)(A), and (3), and inserting “board”.

(b) AUTHORIZATION OF APPROPRIATIONS.—The text of section 214B of such Act (42 U.S.C. 13004) is amended to read as follows:

“(a) SECTIONS 213 AND 214.—There are authorized to be appropriated to carry out sections 213 and 214, \$15,000,000 for each of fiscal years 2004 and 2005.

“(b) SECTION 214A.—There are authorized to be appropriated to carry out section 214A, \$5,000,000 for each of fiscal years 2004 and 2005.”.

TITLE IV—SENTENCING REFORM

SEC. 401. SENTENCING REFORM.

(a) ENFORCEMENT OF SENTENCING GUIDELINES FOR CHILD ABDUCTION AND SEX OFFENSES.—Section 3553(b) of title 18, United States Code is amended—

(1) by striking “The court” and inserting the following:

“(1) IN GENERAL.—Except as provided in paragraph (2), the court”; and

(2) by adding at the end the following:

“(2) CHILD CRIMES AND SEXUAL OFFENSES.—

“(A) SENTENCING.—In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless—

“(i) the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;

“(ii) the court finds that there exists a mitigating circumstance of a kind or to a degree, that—

“(I) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, taking account of any amendments to such sentencing guidelines or policy statements by Congress;

“(II) has not been taken into consideration by the Sentencing Commission in formulating the guidelines; and

“(III) should result in a sentence different from that described; or

“(iii) the court finds, on motion of the Government, that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense and that this assistance established a mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence lower than that described.

In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guide-

lines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress.”

(b) CONFORMING AMENDMENTS TO GUIDELINES MANUAL.—The Federal Sentencing Guidelines are amended—

(1) in section 5K2.0—

(A) by striking “Under” and inserting the following:

“(a) DOWNWARD DEPARTURES IN CRIMINAL CASES OTHER THAN CHILD CRIMES AND SEXUAL OFFENSES.—Under”; and

(B) by adding at the end the following:

“(b) DOWNWARD DEPARTURES IN CHILD CRIMES AND SEXUAL OFFENSES.—

“Under 18 U.S.C. § 3553(b)(2), the sentencing court may impose a sentence below the range established by the applicable guidelines only if the court finds that there exists a mitigating circumstance of a kind, or to a degree, that—

“(1) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, United States Code, taking account of any amendments to such sentencing guidelines or policy statements by act of Congress;

“(2) has not adequately been taken into consideration by the Sentencing Commission in formulating the guidelines; and

“(3) should result in a sentence different from that described.

The grounds enumerated in this Part K of chapter 5 are the sole grounds that have been affirmatively and specifically identified as a permissible ground of downward departure in these sentencing guidelines and policy statements. Thus, notwithstanding any other reference to authority to depart downward elsewhere in this Sentencing Manual, a ground of downward departure has not been affirmatively and specifically identified as a permissible ground of downward departure within the meaning of section 3553(b)(2) unless it is expressly enumerated in this Part K as a ground upon which a downward departure may be granted.”

(2) At the end of part K of chapter 5, add the following:

“§5K2.22 Specific Offender Characteristics as Grounds for Downward Departure in child crimes and sexual offenses (Policy Statement)

“In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117 of title 18, United States Code, age may be a reason to impose a sentence below the applicable guideline range only if and to the extent permitted by §5H1.1.

“An extraordinary physical impairment may be a reason to impose a sentence below the applicable guideline range only if and to the extent permitted by §5H1.4. Drug, alcohol, or gambling dependence or abuse is not a reason for imposing a sentence below the guidelines.”

(3) Section 5K2.20 is amended by striking “A” and inserting “Except where a defendant is convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117 of title 18, United States Code, a”.

(4) Section 5H1.6 is amended by inserting after the first sentence the following: “In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117 of title 18, United States Code, family ties and responsibilities and community ties are not relevant in determining whether a sentence should be below the applicable guideline range.”.

(5) Section 5K2.13 is amended by—

(A) striking “or” before “(3)”; and

(B) replacing “public” with “public; or (4) the defendant has been convicted of an offense under chapter 71, 109A, 110, or 117 of title 18, United States Code.”.

(c) STATEMENT OF REASONS FOR IMPOSING A SENTENCE.—Section 3553(c) of title 18, United States Code, is amended—

(1) by striking “described.” and inserting “described, which reasons must also be stated with specificity in the written order of judgment and commitment, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.”;

(2) by inserting “, together with the order of judgment and commitment,” after “the court’s statement of reasons”; and

(3) by inserting “and to the Sentencing Commission,” after “to the Probation System”.

(d) REVIEW OF A SENTENCE.—

(1) REVIEW OF DEPARTURES.—Section 3742(e)(3) of title 18, United States Code, is amended to read as follows:

“(3) is outside the applicable guideline range, and

“(A) the district court failed to provide the written statement of reasons required by section 3553(c);

“(B) the sentence departs from the applicable guideline range based on a factor that—

“(i) does not advance the objectives set forth in section 3553(a)(2); or

“(ii) is not authorized under section 3553(b); or

“(iii) is not justified by the facts of the case; or

“(C) the sentence departs to an unreasonable degree from the applicable guidelines range, having regard for the factors to be considered in imposing a sentence, as set forth in section 3553(a) of this title and the reasons for the im-

sition of the particular sentence, as stated by the district court pursuant to the provisions of section 3553(c); or”.

(2) *STANDARD OF REVIEW.*—The last paragraph of section 3742(e) of title 18, United States Code, is amended by striking “shall give due deference to the district court’s application of the guidelines to the facts” and inserting “, except with respect to determinations under subsection (3)(A) or (3)(B), shall give due deference to the district court’s application of the guidelines to the facts. With respect to determinations under subsection (3)(A) or (3)(B), the court of appeals shall review de novo the district court’s application of the guidelines to the facts”.

(3) *DECISION AND DISPOSITION.*—

(A) The first paragraph of section 3742(f) of title 18, United States Code, is amended by striking “the sentence”;

(B) Section 3742(f)(1) of title 18, United States Code, is amended by inserting “the sentence” before “was imposed”;

(C) Section 3742(f)(2) of title 18, United States Code, is amended to read as follows:

“(2) the sentence is outside the applicable guideline range and the district court failed to provide the required statement of reasons in the order of judgment and commitment, or the departure is based on an impermissible factor, or is to an unreasonable degree, or the sentence was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable, it shall state specific reasons for its conclusions and—

“(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

“(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);” and

(D) Section 3742(f)(3) of title 18, United States Code, is amended by inserting “the sentence” before “is not described”.

(e) *IMPOSITION OF SENTENCE UPON REMAND.*—Section 3742 of title 18, United States Code, is amended by redesignating subsections (g) and (h) as subsections (h) and (i) and by inserting the following after subsection (f):

“(g) *SENTENCING UPON REMAND.*—A district court to which a case is remanded pursuant to subsection (f)(1) or (f)(2) shall resentence a defendant in accordance with section 3553 and with such instructions as may have been given by the court of appeals, except that—

“(1) In determining the range referred to in subsection 3553(a)(4), the court shall apply the guidelines issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, and that were in effect on the date of the previous sentencing of the defendant prior to the appeal, together with any amendments thereto by any act of Congress that was in effect on such date; and

“(2) The court shall not impose a sentence outside the applicable guidelines range except upon a ground that—

“(A) was specifically and affirmatively included in the written statement of reasons required by section 3553(c) in connection with the previous sentencing of the defendant prior to the appeal; and

“(B) was held by the court of appeals, in remanding the case, to be a permissible ground of departure.”.

(f) DEFINITIONS.—Section 3742 of title 18, United States Code, as amended by subsection (e), is further amended by adding at the end the following:

“(j) DEFINITIONS.—For purposes of this section—

“(1) a factor is a ‘permissible’ ground of departure if it—

“(A) advances the objectives set forth in section 3553(a)(2); and

“(B) is authorized under section 3553(b); and

“(C) is justified by the facts of the case; and

“(2) a factor is an ‘impermissible’ ground of departure if it is not a permissible factor within the meaning of subsection (j)(1).”.

(g) REFORM OF GUIDELINES GOVERNING ACCEPTANCE OF RESPONSIBILITY.—Subject to subsection (j), the Guidelines Manual promulgated by the Sentencing Commission pursuant to section 994(a) of title 28, United States Code, is amended—

(1) in section 3E1.1(b)—

(A) by inserting “upon motion of the government stating that” immediately before “the defendant has assisted authorities”; and

(B) by striking “taking one or more” and all that follows through and including “additional level” and insert “timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, decrease the offense level by 1 additional level”;

(2) in the Application Notes to the Commentary to section 3E1.1, by amending Application Note 6—

(A) by striking “one or both of”; and

(B) by adding the following new sentence at the end: “Because the Government is in the best position to determine whether the defendant has assisted authorities in a manner that avoids preparing for trial, an adjustment under subsection (b) may only be granted upon a formal motion by the Government at the time of sentencing.”; and

(3) in the Background to section 3E1.1, by striking “one or more of”.

(h) IMPROVED DATA COLLECTION.—Section 994(w) of title 28, United States Code, is amended to read as follows:

“(w)(1) The Chief Judge of each district court shall ensure that, within 30 days following entry of judgment in every criminal case, the sentencing court submits to the Commission a written report of the sentence, the offense for which it is imposed, the age, race, sex of the offender, and information regarding factors made relevant by the guidelines. The report shall also include—

“(A) the judgment and commitment order;

“(B) the statement of reasons for the sentence imposed (which shall include the reason for any departure from the otherwise applicable guideline range);

“(C) any plea agreement;

“(D) the indictment or other charging document;

“(E) the presentence report; and

“(F) any other information as the Commission finds appropriate.

“(2) The Commission shall, upon request, make available to the House and Senate Committees on the Judiciary, the written reports and all underlying records accompanying those reports described in this section, as well as other records received from courts.

“(3) The Commission shall submit to Congress at least annually an analysis of these documents, any recommendations for legislation that the Commission concludes is warranted by that analysis, and an accounting of those districts that the Commission believes have not submitted the appropriate information and documents required by this section.

“(4) The Commission shall make available to the Attorney General, upon request, such data files as the Commission may assemble or maintain in electronic form that include any information submitted under paragraph (1). Such data files shall be made available in electronic form and shall include all data fields requested, including the identity of the sentencing judge.”.

(i) SENTENCING GUIDELINES AMENDMENTS.—(1) Subject to subsection (j), the Guidelines Manual promulgated by the Sentencing Commission pursuant to section 994(a) of title 28, United States Code, is amended as follows:

(A) Application Note 4(b)(i) to section 4B1.5 is amended to read as follows:

“(i) IN GENERAL.—For purposes of subsection (b), the defendant engaged in a pattern of activity involving prohibited sexual conduct if on at least two separate occasions, the defendant engaged in prohibited sexual conduct with a minor.”.

(B) Section 2G2.4(b) is amended by adding at the end the following:

“(4) If the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, increase by 4 levels.

“(5) If the offense involved—

“(A) at least 10 images, but fewer than 150, increase by 2 levels;

“(B) at least 150 images, but fewer than 300, increase by 3 levels;

“(C) at least 300 images, but fewer than 600, increase by 4 levels; and

“(D) 600 or more images, increase by 5 levels.”.

(C) Section 2G2.2(b) is amended by adding at the end the following:

“(6) If the offense involved—

“(A) at least 10 images, but fewer than 150, increase by 2 levels;

“(B) at least 150 images, but fewer than 300, increase by 3 levels;

“(C) at least 300 images, but fewer than 600, increase by 4 levels; and

“(D) 600 or more images, increase by 5 levels.”.

(2) *The Sentencing Commission shall amend the Sentencing Guidelines to ensure that the Guidelines adequately reflect the seriousness of the offenses under sections 2243(b), 2244(a)(4), and 2244(b) of title 18, United States Code.*

(j) *CONFORMING AMENDMENTS.—*

(1) *Upon enactment of this Act, the Sentencing Commission shall forthwith distribute to all courts of the United States and to the United States Probation System the amendments made by subsections (b), (g), and (i) of this section to the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. These amendments shall take effect upon the date of enactment of this Act, in accordance with paragraph (5).*

(2) *On or before May 1, 2005, the Sentencing Commission shall not promulgate any amendment to the sentencing guidelines, policy statements, or official commentary of the Sentencing Commission that is inconsistent with any amendment made by subsection (b) or that adds any new grounds of downward departure to Part K of chapter 5.*

(3) *With respect to cases covered by the amendments made by subsection (i) of this section, the Sentencing Commission may make further amendments to the sentencing guidelines, policy statements, or official commentary of the Sentencing Commission, except that the Commission shall not promulgate any amendments that, with respect to such cases, would result in sentencing ranges that are lower than those that would have applied under such subsection.*

(4) *At no time may the Commission promulgate any amendment that would alter or repeal the amendments made by subsection (g) of this section.*

(5) *Section 3553(a) of title 18, United States Code, is amended—*

(A) *by amending paragraph (4)(A) to read as follows:*

“(A) *the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—*

“(i) *issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and*

“(ii) *that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or”;*

(B) *in paragraph (4)(B), by inserting “, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing*

Commission into amendments issued under section 994(p) of title 28) after “Code”;

(C) by amending paragraph (5) to read as follows:

“(5) any pertinent policy statement—

“(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

“(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.”.

(k) COMPLIANCE WITH STATUTE.—Section 994(a) of title 28, United States Code, is amended by striking “consistent with all pertinent provisions of this title and title 18, United States Code,” and inserting “consistent with all pertinent provisions of any Federal statute”.

(l) REPORT BY ATTORNEY GENERAL.—

(1) DEFINED TERM.—For purposes of this section, the term “report described in paragraph (3)” means a report, submitted by the Attorney General, which states in detail the policies and procedures that the Department of Justice has adopted subsequent to the enactment of this Act—

(A) to ensure that Department of Justice attorneys oppose sentencing adjustments, including downward departures, that are not supported by the facts and the law;

(B) to ensure that Department of Justice attorneys in such cases make a sufficient record so as to permit the possibility of an appeal;

(C) to delineate objective criteria, specified by the Attorney General, as to which such cases may warrant consideration of an appeal, either because of the nature or magnitude of the sentencing error, its prevalence in the district, or its prevalence with respect to a particular judge;

(D) to ensure that Department of Justice attorneys promptly notify the designated Department of Justice component in Washington concerning such adverse sentencing decisions; and

(E) to ensure the vigorous pursuit of appropriate and meritorious appeals of such adverse decisions.

(2) REPORT REQUIRED.—

(A) IN GENERAL.—Not later than 15 days after a district court’s grant of a downward departure in any case, other than a case involving a downward departure for substantial assistance to authorities pursuant to section 5K1.1 of the United States Sentencing Guidelines, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate containing the information described under subparagraph (B).

(B) CONTENTS.—The report submitted pursuant to subparagraph (A) shall set forth—

(i) the case;

(ii) the facts involved;

(iii) the identity of the district court judge;

(iv) the district court's stated reasons, whether or not the court provided the United States with advance notice of its intention to depart; and

(v) the position of the parties with respect to the downward departure, whether or not the United States has filed, or intends to file, a motion for reconsideration.

(C) APPEAL OF THE DEPARTURE.—Not later than 5 days after a decision by the Solicitor General regarding the authorization of an appeal of the departure, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate that describes the decision of the Solicitor General and the basis for such decision.

(3) EFFECTIVE DATE.—Paragraph (2) shall take effect on the day that is 91 days after the date of enactment of this Act, except that such paragraph shall not take effect if not more than 90 days after the date of enactment of this Act the Attorney General has submitted to the Judiciary Committees of the House of Representatives and the Senate the report described in paragraph (3).

(m) REFORM OF EXISTING PERMISSIBLE GROUNDS OF DOWNWARD DEPARTURES.—Not later than 180 days after the enactment of this Act, the United States Sentencing Commission shall—

(1) review the grounds of downward departure that are authorized by the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission; and

(2) promulgate, pursuant to section 994 of title 28, United States Code—

(A) appropriate amendments to the sentencing guidelines, policy statements, and official commentary to ensure that the incidence of downward departures are substantially reduced;

(B) a policy statement authorizing a downward departure of not more than 4 levels if the Government files a motion for such departure pursuant to an early disposition program authorized by the Attorney General and the United States Attorney; and

(C) any other conforming amendments to the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission necessitated by this Act, including a revision of paragraph 4(b) of part A of chapter 1 and a revision of section 5K2.0.

(n) COMPOSITION OF SENTENCING COMMISSION.—

(1) IN GENERAL.—Section 991(a) of title 28, United States Code, is amended by striking “At least three” and inserting “Not more than 3”.

(2) APPLICABILITY.—The amendment made under paragraph (1) shall not apply to any person who is serving, or who has been nominated to serve, as a member of the Sentencing Commission on the date of enactment of this Act.

TITLE V—OBSCENITY AND PORNOGRAPHY

Subtitle A—Child Obscenity and Pornography Prevention

SEC. 501. FINDINGS.

Congress finds the following:

(1) *Obscenity and child pornography are not entitled to protection under the First Amendment under Miller v. California, 413 U.S. 15 (1973) (obscenity), or New York v. Ferber, 458 U.S. 747 (1982) (child pornography) and thus may be prohibited.*

(2) *The Government has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers. "The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance," New York v. Ferber, 458 U.S. 747, 757 (1982), and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain. Osborne v. Ohio, 495 U.S. 103, 110 (1990).*

(3) *The Government thus has a compelling interest in ensuring that the criminal prohibitions against child pornography remain enforceable and effective. "The most expeditious if not the only practical method of law enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product." Ferber, 458 U.S. at 760.*

(4) *In 1982, when the Supreme Court decided Ferber, the technology did not exist to:*

(A) *computer generate depictions of children that are indistinguishable from depictions of real children;*

(B) *use parts of images of real children to create a composite image that is unidentifiable as a particular child and in a way that prevents even an expert from concluding that parts of images of real children were used; or*

(C) *disguise pictures of real children being abused by making the image look computer-generated.*

(5) *Evidence submitted to the Congress, including from the National Center for Missing and Exploited Children, demonstrates that technology already exists to disguise depictions of real children to make them unidentifiable and to make depictions of real children appear computer-generated. The technology will soon exist, if it does not already, to computer generate realistic images of children.*

(6) *The vast majority of child pornography prosecutions today involve images contained on computer hard drives, computer disks, and/or related media.*

(7) *There is no substantial evidence that any of the child pornography images being trafficked today were made other than by the abuse of real children. Nevertheless, technological advances since Ferber have led many criminal defendants to suggest that the images of child pornography they possess are not those of real children, insisting that the government prove*

beyond a reasonable doubt that the images are not computer-generated. Such challenges increased significantly after the decision in *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

(8) Child pornography circulating on the Internet has, by definition, been digitally uploaded or scanned into computers and has been transferred over the Internet, often in different file formats, from trafficker to trafficker. An image seized from a collector of child pornography is rarely a first-generation product, and the retransmission of images can alter the image so as to make it difficult for even an expert conclusively to opine that a particular image depicts a real child. If the original image has been scanned from a paper version into a digital format, this task can be even harder since proper forensic assessment may depend on the quality of the image scanned and the tools used to scan it.

(9) The impact of the *Free Speech Coalition* decision on the Government's ability to prosecute child pornography offenders is already evident. The Ninth Circuit has seen a significant adverse effect on prosecutions since the 1999 Ninth Circuit Court of Appeals decision in *Free Speech Coalition*. After that decision, prosecutions generally have been brought in the Ninth Circuit only in the most clear-cut cases in which the government can specifically identify the child in the depiction or otherwise identify the origin of the image. This is a fraction of meritorious child pornography cases. The National Center for Missing and Exploited Children testified that, in light of the Supreme Court's affirmation of the Ninth Circuit decision, prosecutors in various parts of the country have expressed concern about the continued viability of previously indicted cases as well as declined potentially meritorious prosecutions.

(10) Since the Supreme Court's decision in *Free Speech Coalition*, defendants in child pornography cases have almost universally raised the contention that the images in question could be virtual, thereby requiring the government, in nearly every child pornography prosecution, to find proof that the child is real. Some of these defense efforts have already been successful. In addition, the number of prosecutions being brought has been significantly and adversely affected as the resources required to be dedicated to each child pornography case now are significantly higher than ever before.

(11) Leading experts agree that, to the extent that the technology exists to computer generate realistic images of child pornography, the cost in terms of time, money, and expertise is—and for the foreseeable future will remain—prohibitively expensive. As a result, for the foreseeable future, it will be more cost-effective to produce child pornography using real children. It will not, however, be difficult or expensive to use readily available technology to disguise those depictions of real children to make them unidentifiable or to make them appear computer-generated.

(12) Child pornography results from the abuse of real children by sex offenders; the production of child pornography is a byproduct of, and not the primary reason for, the sexual abuse of children. There is no evidence that the future development of easy and inexpensive means of computer generating realistic

images of children would stop or even reduce the sexual abuse of real children or the practice of visually recording that abuse.

(13) In the absence of congressional action, the difficulties in enforcing the child pornography laws will continue to grow increasingly worse. The mere prospect that the technology exists to create composite or computer-generated depictions that are indistinguishable from depictions of real children will allow defendants who possess images of real children to escape prosecution; for it threatens to create a reasonable doubt in every case of computer images even when a real child was abused. This threatens to render child pornography laws that protect real children unenforceable. Moreover, imposing an additional requirement that the Government prove beyond a reasonable doubt that the defendant knew that the image was in fact a real child—as some courts have done—threatens to result in the de facto legalization of the possession, receipt, and distribution of child pornography for all except the original producers of the material.

(14) To avoid this grave threat to the Government's unquestioned compelling interest in effective enforcement of the child pornography laws that protect real children, a statute must be adopted that prohibits a narrowly-defined subcategory of images.

*(15) The Supreme Court's 1982 *Ferber v. New York* decision holding that child pornography was not protected drove child pornography off the shelves of adult bookstores. Congressional action is necessary now to ensure that open and notorious trafficking in such materials does not reappear, and even increase, on the Internet.*

SEC. 502. IMPROVEMENTS TO PROHIBITION ON VIRTUAL CHILD PORNOGRAPHY.

(a) Section 2256(8) of title 18, United States Code, is amended—

(1) so that subparagraph (B) reads as follows:

“(B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or”:

(2) by striking “; or” at the end of subparagraph (C) and inserting a period; and

(3) by striking subparagraph (D).

(b) Section 2256(2) of title 18, United States Code, is amended to read as follows:

“(2)(A) Except as provided in subparagraph (B), ‘sexually explicit conduct’ means actual or simulated—

“(i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

“(ii) bestiality;

“(iii) masturbation;

“(iv) sadistic or masochistic abuse; or

“(v) lascivious exhibition of the genitals or pubic area of any person;

“(B) For purposes of subsection 8(B) of this section, ‘sexually explicit conduct’ means—

“(i) graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or lascivious simulated sexual intercourse where the genitals, breast, or pubic area of any person is exhibited;

“(ii) graphic or lascivious simulated;

“(I) bestiality;

“(II) masturbation; or

“(III) sadistic or masochistic abuse; or

“(iii) graphic or simulated lascivious exhibition of the genitals or pubic area of any person;”.

(c) Section 2256 is amended by inserting at the end the following new paragraphs:

“(10) ‘graphic’, when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted; and

“(11) the term ‘indistinguishable’ used with respect to a depiction, means virtually indistinguishable, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct. This definition does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting minors or adults.”.

(d) Section 2252A(c) of title 18, United States Code, is amended to read as follows:

“(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 10 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.”.

SEC. 503. CERTAIN ACTIVITIES RELATING TO MATERIAL CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.

Section 2252A of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraph (3) and inserting the following:

“(3) knowingly—

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

“(B) advertises, promotes, presents, distributes, or solicits through the mails, or in 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;”;

(B) in paragraph (4), by striking “or” at the end;

(C) in paragraph (5), by striking the comma at the end and inserting “; or”; and

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

“(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 in interstate or foreign commerce by any means, including by computer;

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

“(C) which distribution, offer, sending, or provision is accomplished using the mails or by transmitting or causing to be transmitted any wire communication in interstate or foreign commerce, including by computer,

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

(2) in subsection (b)(1), by striking “paragraphs (1), (2), (3), or (4)” and inserting “paragraph (1), (2), (3), (4), or (6)”.

SEC. 504. OBSCENE CHILD PORNOGRAPHY.

(a) *IN GENERAL.*—Chapter 71 of title 18, United States Code, is amended by inserting after section 1466 the following:

“§ 1466A. Obscene visual representations of the sexual abuse of children

“(a) *IN GENERAL.*—Any person who, in a circumstance described in subsection (d), knowingly produces, distributes, receives, or possesses with intent to distribute, a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that—

“(1)(A) depicts a minor engaging in sexually explicit conduct; and

“(B) is obscene; or

“(2)(A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

“(B) lacks serious literary, artistic, political, or scientific value;

or attempts or conspires to do so, shall be subject to the penalties provided in section 2252A(b)(1), including the penalties provided for cases involving a prior conviction.

“(b) **ADDITIONAL OFFENSES.**—Any person who, in a circumstance described in subsection (d), knowingly possesses a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that—

“(1)(A) depicts a minor engaging in sexually explicit conduct; and

“(B) is obscene; or

“(2)(A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

“(B) lacks serious literary, artistic, political, or scientific value;

or attempts or conspires to do so, shall be subject to the penalties provided in section 2252A(b)(2), including the penalties provided for cases involving a prior conviction.

“(c) **NONREQUIRED ELEMENT OF OFFENSE.**—It is not a required element of any offense under this section that the minor depicted actually exist.

“(d) **CIRCUMSTANCES.**—The circumstance referred to in subsections (a) and (b) is that—

“(1) any communication involved in or made in furtherance of the offense is communicated or transported by the mail, or in interstate or foreign commerce by any means, including by computer, or any means or instrumentality of interstate or foreign commerce is otherwise used in committing or in furtherance of the commission of the offense;

“(2) any communication involved in or made in furtherance of the offense contemplates the transmission or transportation of a visual depiction by the mail, or in interstate or foreign commerce by any means, including by computer;

“(3) any person travels or is transported in interstate or foreign commerce in the course of the commission or in furtherance of the commission of the offense;

“(4) any visual depiction involved in the offense has been mailed, or has been shipped or transported in interstate or foreign commerce by any means, including by computer, or was produced using materials that have been mailed, or that have been shipped or transported in interstate or foreign commerce by any means, including by computer; or

“(5) the offense is committed in the special maritime and territorial jurisdiction of the United States or in any territory or possession of the United States.

“(e) *AFFIRMATIVE DEFENSE.*—It shall be an affirmative defense to a charge of violating subsection (b) that the defendant—

“(1) possessed less than 3 such visual depictions; and
 “(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any such visual depiction—

“(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.

“(f) *DEFINITIONS.*—For purposes of this section—

“(1) the term ‘visual depiction’ includes undeveloped film and videotape, and data stored on a computer disk or by electronic means which is capable of conversion into a visual image, and also includes any photograph, film, video, picture, digital image or picture, computer image or picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means;

“(2) the term ‘sexually explicit conduct’ has the meaning given the term in section 2256(2)(A) or 2256(2)(B); and

“(3) the term ‘graphic’, when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted.”

(b) *TECHNICAL AND CONFORMING AMENDMENT.*—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1466 the following new item:

“1466A. Obscene visual representations of the sexual abuse of children.”

(c) *SENTENCING GUIDELINES.*—

(1) *CATEGORY.*—Except as provided in paragraph (2), the applicable category of offense to be used in determining the sentencing range referred to in section 3553(a)(4) of title 18, United States Code, with respect to any person convicted under section 1466A of such title, shall be the category of offenses described in section 2G2.2 of the Sentencing Guidelines.

(2) *RANGES.*—The Sentencing Commission may promulgate guidelines specifically governing offenses under section 1466A of title 18, United States Code, if such guidelines do not result in sentencing ranges that are lower than those that would have applied under paragraph (1).

SEC. 505. ADMISSIBILITY OF EVIDENCE.

Section 2252A of title 18, United States Code, is amended by adding at the end the following:

“(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.”.

SEC. 506. EXTRATERRITORIAL PRODUCTION OF CHILD PORNOGRAPHY FOR DISTRIBUTION IN THE UNITED STATES.

Section 2251 of title 18, United States Code, is amended—

(1) by striking “subsection (d)” each place that term appears and inserting “subsection (e)”;

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following:

“(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 computer or mail; or

“(B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by computer or mail.”.

SEC. 507. STRENGTHENING ENHANCED PENALTIES FOR REPEAT OFFENDERS.

Sections 2251(e) (as redesignated by section 506(2)), 2252(b), and 2252A(b) of title 18, United States Code, are each amended—

(1) by inserting “chapter 71,” immediately before each occurrence of “chapter 109A,”; and

(2) by inserting “or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice),” immediately before each occurrence of “or under the laws”.

SEC. 508. SERVICE PROVIDER REPORTING OF CHILD PORNOGRAPHY AND RELATED INFORMATION.

(a) Section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032) is amended—

(1) in subsection (b)(1)—

(A) by inserting “2252B,” after “2252A,”; and

(B) by inserting “or a violation of section 1466A of that title,” after “of that title,”;

(2) in subsection (c), by inserting “or pursuant to” after “to comply with”;

(3) by amending subsection (f)(1)(D) to read as follows:

“(D) where the report discloses a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law.”;

(4) by redesignating paragraph (3) of subsection (b) as paragraph (4); and

(5) by inserting after paragraph (2) of subsection (b) the following new paragraph:

“(3) In addition to forwarding such reports to those agencies designated in subsection (b)(2), the National Center for

Missing and Exploited Children is authorized to forward any such report to an appropriate official of a state or subdivision of a state for the purpose of enforcing state criminal law.”

(b) Section 2702 of title 18, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (6), by striking subparagraph (B);

(B) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8) respectively;

(C) by striking “or” at the end of paragraph (5); and

(D) by inserting after paragraph (5) the following new paragraph:

“(6) to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032);” and

(2) in subsection (c)—

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

(B) by redesignating paragraph (5) as paragraph (6);

and

(C) by adding after paragraph (4) the following new paragraph:

“(5) to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or”.

SEC. 509. INVESTIGATIVE AUTHORITY RELATING TO CHILD PORNOGRAPHY.

Section 3486(a)(1)(C)(i) of title 18, United States Code, is amended by striking “the name, address” and all that follows through “subscriber or customer utilized” and inserting “the information specified in section 2703(c)(2)”.

SEC. 510. CIVIL REMEDIES.

Section 2252A of title 18, United States Code, as amended by this Act, is amended by adding at the end the following:

“(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.”.

SEC. 511. RECORDKEEPING REQUIREMENTS.

(a) IN GENERAL.—Section 2257 of title 18, United States Code, is amended—

(1) in subsection (d)(2), by striking “of this section” and inserting “of this chapter or chapter 71,”;

(2) in subsection (h)(3), by inserting “, computer generated image, digital image, or picture,” after “video tape”; and

(3) in subsection (i)—

(A) by striking “not more than 2 years” and inserting “not more than 5 years”; and

(B) by striking “5 years” and inserting “10 years”.

(b) **REPORT.**—Not later than 1 year after enactment of this Act, the Attorney General shall submit to Congress a report detailing the number of times since January 1993 that the Department of Justice has inspected the records of any producer of materials regulated pursuant to section 2257 of title 18, United States Code, and section 75 of title 28 of the Code of Federal Regulations. The Attorney General shall indicate the number of violations prosecuted as a result of those inspections.

SEC. 512. SENTENCING ENHANCEMENTS FOR INTERSTATE TRAVEL TO ENGAGE IN SEXUAL ACT WITH A JUVENILE.

Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that guideline penalties are adequate in cases that involve interstate travel with the intent to engage in a sexual act with a juvenile in violation of section 2423 of title 18, United States Code, to deter and punish such conduct.

SEC. 513. MISCELLANEOUS PROVISIONS.

(a) **APPOINTMENT OF TRIAL ATTORNEYS.**—

(1) **IN GENERAL.**—Not later than 6 months after the date of enactment of this Act, the Attorney General shall appoint 25 additional trial attorneys to the Child Exploitation and Obscenity Section of the Criminal Division of the Department of Justice or to appropriate U.S. Attorney’s Offices, and those trial attorneys shall have as their primary focus, the investigation and prosecution of Federal child pornography and obscenity laws.

(2) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Department of Justice such sums as may be necessary to carry out this subsection.

(b) **REPORT TO CONGRESSIONAL COMMITTEES.**—

(1) **IN GENERAL.**—Not later than 9 months after the date of enactment of this Act, and every 2 years thereafter, the Attorney General shall report to the Chairpersons and Ranking Members of the Committees on the Judiciary of the Senate and the House of Representatives on the Federal enforcement actions under chapter 110 or section 1466A of title 18, United States Code.

(2) **CONTENTS.**—The report required under paragraph (1) shall include—

(A) an evaluation of the prosecutions brought under chapter 110 or section 1466A of title 18, United States Code;

(B) an outcome-based measurement of performance; and

(C) an analysis of the technology being used by the child pornography industry.

(c) **SENTENCING GUIDELINES.**—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guide-

lines and policy statements to ensure that the guidelines are adequate to deter and punish conduct that involves a violation of paragraph (3)(B) or (6) of section 2252A(a) of title 18, United States Code, as created by this Act. With respect to the guidelines for section 2252A(a)(3)(B), the Commission shall consider the relative culpability of promoting, presenting, describing, or distributing material in violation of that section as compared with solicitation of such material.

Subtitle B—Truth in Domain Names

SEC. 521. MISLEADING DOMAIN NAMES ON THE INTERNET.

(a) *IN GENERAL.*—Chapter 110 of title 18, United States Code, is amended by inserting after section 2252A the following:

“§ 2252B. Misleading domain names on the Internet

“(a) Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a person into viewing material constituting obscenity shall be fined under this title or imprisoned not more than 2 years, or both.

“(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.

“(c) For the purposes of this section, a domain name that includes a word or words to indicate the sexual content of the site, such as ‘sex’ or ‘porn’, is not misleading.

“(d) For the purposes of this section, the term ‘material that is harmful to minors’ means any communication, consisting of nudity, sex, or excretion, that, taken as a whole and with reference to its context—

“(1) predominantly appeals to a prurient interest of minors;

“(2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

“(3) lacks serious literary, artistic, political, or scientific value for minors.

“(e) For the purposes of subsection (d), the term ‘sex’ means acts of masturbation, sexual intercourse, or physical contact with a person’s genitals, or the condition of human male or female genitals when in a state of sexual stimulation or arousal.”.

(b) *CLERICAL AMENDMENT.*—The table of sections at the beginning of chapter 110 of title 18, United States Code, is amended by inserting after the item relating to section 2252A the following new item:

“2252B. Misleading domain names on the Internet.”.

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. PENALTIES FOR USE OF MINORS IN CRIMES OF VIOLENCE.

Chapter 1 of title 18, United States Code, is amended by adding at the end the following:

“§ 25. Use of minors in crimes of violence

“(a) *DEFINITIONS.*—In this section, the following definitions shall apply:

“(1) *CRIME OF VIOLENCE.*—The term ‘crime of violence’ has the meaning set forth in section 16.

“(2) *MINOR.*—The term ‘minor’ means a person who has not reached 18 years of age.

“(3) *USES.*—The term ‘uses’ means employs, hires, persuades, induces, entices, or coerces.

“(b) *PENALTIES.*—Any person who is 18 years of age or older, who intentionally uses a minor to commit a crime of violence for which such person may be prosecuted in a court of the United States, or to assist in avoiding detection or apprehension for such an offense, shall—

“(1) for the first conviction, be subject to twice the maximum term of imprisonment and twice the maximum fine that would otherwise be authorized for the offense; and

“(2) for each subsequent conviction, be subject to 3 times the maximum term of imprisonment and 3 times the maximum fine that would otherwise be authorized for the offense.”.

(b) *CLERICAL AMENDMENT.*—The table of sections at the beginning of chapter 1 of title 18, United States Code, is amended by adding at the end the following:

“25. Use of minors in crimes of violence.”.

SEC. 602. SENSE OF CONGRESS.

(a) *FOCUS OF INVESTIGATION AND PROSECUTION.*—It is the sense of Congress that the Child Exploitation and Obscenity Section of the Criminal Division of the Department of Justice should focus its investigative and prosecutorial efforts on major producers, distributors, and sellers of obscene material and child pornography that use misleading methods to market their material to children.

(b) *VOLUNTARY LIMITATION ON WEBSITE FRONT PAGES.*—It is the sense of Congress that the online commercial adult entertainment industry should voluntarily refrain from placing obscenity, child pornography, or material that is harmful to minors on the front pages of their websites to protect juveniles from material that may negatively impact their social, moral, and psychological development.

SEC. 603. COMMUNICATIONS DECENCY ACT OF 1996.

Section 223 of the Communications Act of 1934 (47 U.S.C. 223) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (A), by striking “, lewd, lascivious, filthy, or indecent” and inserting “or child pornography”; and

(B) in subparagraph (B), by striking “indecent” and inserting “child pornography”; and

(2) in subsection (d)(1), by striking “, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs” and inserting “is obscene or child pornography”.

SEC. 604. INTERNET AVAILABILITY OF INFORMATION CONCERNING REGISTERED SEX OFFENDERS.

(a) *IN GENERAL.*—Section 170101(e)(2) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(e)(2)) is amended by adding at the end the following: “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.”

(b) *COMPLIANCE DATE.*—Each State shall implement the amendment made by this section within 3 years after the date of enactment of this Act, except that the Attorney General may grant an additional 2 years to a State that is making a good faith effort to implement the amendment made by this section.

(c) *NATIONAL INTERNET SITE.*—The Crimes Against Children Section of the Criminal Division of the Department of Justice shall create a national Internet site that links all State Internet sites established pursuant to this section.

SEC. 605. REGISTRATION OF CHILD PORNOGRAPHERS IN THE NATIONAL SEX OFFENDER REGISTRY.

(a) *JACOB WETTERLING CRIMES AGAINST CHILDREN AND SEXUALLY VIOLENT OFFENDER REGISTRATION PROGRAM.*—Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071) is amended—

(1) by striking the section heading and inserting the following:

“**SEC. 170101. JACOB WETTERLING CRIMES AGAINST CHILDREN AND SEXUALLY VIOLENT OFFENDER REGISTRATION PROGRAM.**”;

and

(2) in subsection (a)(3)—

(A) in clause (vii), by striking “or” at the end;

(B) by redesignating clause (viii) as clause (ix); and

(C) by inserting after clause (vii) the following:

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

(b) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to the Department of Justice, for each of fiscal years 2004 through 2007, such sums as may be necessary to carry out the amendments made by this section.

SEC. 606. GRANTS TO STATES FOR COSTS OF COMPLIANCE WITH NEW SEX OFFENDER REGISTRY REQUIREMENTS.

Section 170101(i)(3) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(i)(3)) is amended to read as follows:

“(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.”

SEC. 607. SAFE ID ACT.

(a) *SHORT TITLE.*—This section may be cited as the “Secure Authentication Feature and Enhanced Identification Defense Act of 2003” or “SAFE ID Act”.

(b) *FRAUD AND FALSE STATEMENTS.*—

(1) *OFFENSES.*—Section 1028(a) of title 18, United States Code, is amended—

(A) in paragraph (1), by inserting “, authentication feature,” after “an identification document”;

(B) in paragraph (2)—

(i) by inserting “, authentication feature,” after “an identification document”; and

(ii) by inserting “or feature” after “such document”;

(C) in paragraph (3), by inserting “, authentication features,” after “possessor”;

(D) in paragraph (4)—

(i) by inserting “, authentication feature,” after “possessor”; and

(ii) by inserting “or feature” after “such document”;

(E) in paragraph (5), by inserting “or authentication feature” after “implement” each place that term appears;

(F) in paragraph (6)—

(i) by inserting “or authentication feature” before “that is or appears”;

(ii) by inserting “or authentication feature” before “of the United States”;

(iii) by inserting “or feature” after “such document”; and

(iv) by striking “or” at the end;

(G) in paragraph (7), by inserting “or” after the semicolon; and

(H) by inserting after paragraph (7) the following:

“(8) knowingly traffics in false authentication features for use in false identification documents, document-making implements, or means of identification.”

(2) *PENALTIES.*—Section 1028(b) of title 18, United States Code, is amended—

(A) in paragraph (1)—

(i) in subparagraph (A)—

(I) by inserting “, authentication feature,” before “or false”; and

(II) in clause (i), by inserting “or authentication feature” after “document”; and

(ii) in subparagraph (B), by inserting “, authentication features,” before “or false”; and

(B) in paragraph (2)(A), by inserting “, authentication feature,” before “or a false”.

(3) *CIRCUMSTANCES.*—Section 1028(c)(1) of title 18, United States Code, is amended by inserting “, authentication feature,” before “or false” each place that term appears.

(4) *DEFINITIONS.*—Section 1028(d) of title 18, United States Code, is amended—

(A) by redesignating paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) as paragraphs (2), (3), (4), (7), (8), (9), (10), and (11), respectively;

(B) by inserting before paragraph (2), as redesignated, the following:

“(1) the term ‘authentication feature’ means any hologram, watermark, certification, symbol, code, image, sequence of numbers or letters, or other feature that either individually or in combination with another feature is used by the issuing authority on an identification document, document-making implement, or means of identification to determine if the document is counterfeit, altered, or otherwise falsified;”;

(C) in paragraph (4)(A), as redesignated, by inserting “or was issued under the authority of a governmental entity but was subsequently altered for purposes of deceit” after “entity”;

(D) by inserting after paragraph (4), as redesignated, the following:

“(5) the term ‘false authentication feature’ means an authentication feature that—

“(A) is genuine in origin, but, without the authorization of the issuing authority, has been tampered with or altered for purposes of deceit;

“(B) is genuine, but has been distributed, or is intended for distribution, without the authorization of the issuing authority and not in connection with a lawfully made identification document, document-making implement, or means of identification to which such authentication feature is intended to be affixed or embedded by the respective issuing authority; or

“(C) appears to be genuine, but is not;

“(6) the term ‘issuing authority’—

“(A) means any governmental entity or agency that is authorized to issue identification documents, means of identification, or authentication features; and

“(B) includes the United States Government, a State, a political subdivision of a State, a foreign government, a political subdivision of a foreign government, or an international government or quasi-governmental organization;”;

(E) in paragraph (10), as redesignated, by striking “and” at the end;

(F) in paragraph (11), as redesignated, by striking the period at the end and inserting “; and”; and

(G) by adding at the end the following:

“(12) the term ‘traffic’ means—

“(A) to transport, transfer, or otherwise dispose of, to another, as consideration for anything of value; or

“(B) to make or obtain control of with intent to so transport, transfer, or otherwise dispose of.”.

(5) **ADDITIONAL PENALTIES.**—Section 1028 of title 18, United States Code, is amended—

(A) by redesignating subsection (h) as subsection (i); and

(B) by inserting after subsection (g) the following:

“(h) **FORFEITURE; DISPOSITION.**—In the circumstance in which any person is convicted of a violation of subsection (a), the court shall order, in addition to the penalty prescribed, the forfeiture and destruction or other disposition of all illicit authentication features,

identification documents, document-making implements, or means of identification.”.

(6) **TECHNICAL AND CONFORMING AMENDMENT.**—Section 1028 of title 18, United States Code, is amended in the heading by inserting “, **AUTHENTICATION FEATURES,**” after “**DOCUMENTS**”.

SEC. 608. ILLICIT DRUG ANTI-PROLIFERATION ACT.

(a) **SHORT TITLE.**—This section may be cited as the “Illicit Drug Anti-Proliferation Act of 2003”.

(b) **OFFENSES.**—

(1) **IN GENERAL.**—Section 416(a) of the Controlled Substances Act (21 U.S.C. 856(a)) is amended—

(A) in paragraph (1), by striking “open or maintain any place” and inserting “open, lease, rent, use, or maintain any place, whether permanently or temporarily,”; and

(B) by striking paragraph (2) and inserting the following:

“(2) manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.”.

(2) **TECHNICAL AMENDMENT.**—The heading to section 416 of the Controlled Substances Act (21 U.S.C. 856) is amended to read as follows:

“SEC. 416. MAINTAINING DRUG-INVOLVED PREMISES.”.

(3) **CONFORMING AMENDMENT.**—The table of contents to title II of the Comprehensive Drug Abuse and Prevention Act of 1970 is amended by striking the item relating to section 416 and inserting the following:

“Sec. 416. Maintaining drug-involved premises.”.

(c) **CIVIL PENALTY AND EQUITABLE RELIEF FOR MAINTAINING DRUG-INVOLVED PREMISES.**—Section 416 of the Controlled Substances Act (21 U.S.C. 856) is amended by adding at the end the following:

“(d)(1) Any person who violates subsection (a) shall be subject to a civil penalty of not more than the greater of—

“(A) \$250,000; or

“(B) 2 times the gross receipts, either known or estimated, that were derived from each violation that is attributable to the person.

“(2) If a civil penalty is calculated under paragraph (1)(B), and there is more than 1 defendant, the court may apportion the penalty between multiple violators, but each violator shall be jointly and severally liable for the civil penalty under this subsection.

“(e) Any person who violates subsection (a) shall be subject to declaratory and injunctive remedies as set forth in section 403(f).”.

(d) **DECLARATORY AND INJUNCTIVE REMEDIES.**—Section 403(f)(1) of the Controlled Substances Act (21 U.S.C. 843(f)(1)) is amended by striking “this section or section 402” and inserting “this section, section 402, or 416”.

(e) **SENTENCING COMMISSION GUIDELINES.**—The United States Sentencing Commission shall—

(1) review the Federal sentencing guidelines with respect to offenses involving gamma hydroxybutyric acid (GHB);

(2) consider amending the Federal sentencing guidelines to provide for increased penalties such that those penalties reflect the seriousness of offenses involving GHB and the need to deter them; and

(3) take any other action the Commission considers necessary to carry out this section.

(f) **AUTHORIZATION OF APPROPRIATIONS FOR A DEMAND REDUCTION COORDINATOR.**—There is authorized to be appropriated \$5,900,000 to the Drug Enforcement Administration of the Department of Justice for the hiring of a special agent in each State to serve as a Demand Reduction Coordinator.

(g) **AUTHORIZATION OF APPROPRIATIONS FOR DRUG EDUCATION.**—There is authorized to be appropriated such sums as necessary to the Drug Enforcement Administration of the Department of Justice to educate youth, parents, and other interested adults about club drugs.

SEC. 609. DEFINITION OF VEHICLE.

Section 1993(c) of title 18, United States Code, is amended—

(1) in paragraph (7), by striking “and” at the end;

(2) in paragraph (8), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(9) the term ‘vehicle’ means any carriage or other contrivance used, or capable of being used, as a means of transportation on land, water, or through the air.”.

SEC. 610. AUTHORIZATION OF JOHN DOE DNA INDICTMENTS.

(a) **LIMITATION.**—Section 3282 of title 18, United States Code, is amended—

(1) by striking “Except” and inserting the following:

“(a) **IN GENERAL.**—Except”; and

(2) by adding at the end the following:

“(b) **DNA PROFILE INDICTMENT.**—

“(1) **IN GENERAL.**—In any indictment for an offense under chapter 109A for which the identity of the accused is unknown, it shall be sufficient to describe the accused as an individual whose name is unknown, but who has a particular DNA profile.

“(2) **EXCEPTION.**—Any indictment described under paragraph (1), which is found not later than 5 years after the offense under chapter 109A is committed, shall not be subject to—

“(A) the limitations period described under subsection (a); and

“(B) the provisions of chapter 208 until the individual is arrested or served with a summons in connection with the charges contained in the indictment.

“(3) **DEFINED TERM.**—For purposes of this subsection, the term ‘DNA profile’ means a set of DNA identification characteristics.”.

(b) **RULES OF CRIMINAL PROCEDURE.**—Rule 7(c)(1) of the Federal Rules of Criminal Procedure is amended by adding at the end the following: “For purposes of an indictment referred to in section 3282 of title 18, United States Code, for which the identity of the defendant is unknown, it shall be sufficient for the indictment to de-

scribe the defendant as an individual whose name is unknown, but who has a particular DNA profile, as that term is defined in that section 3282.”

SEC. 611. TRANSITIONAL HOUSING ASSISTANCE GRANTS FOR CHILD VICTIMS OF DOMESTIC VIOLENCE, STALKING, OR SEXUAL ASSAULT.

Subtitle B of the Violence Against Women Act of 1994 (42 U.S.C. 13701 note; 108 Stat. 1925) is amended by adding at the end the following:

“CHAPTER 11—TRANSITIONAL HOUSING ASSISTANCE GRANTS FOR CHILD VICTIMS OF DOMESTIC VIOLENCE, STALKING, OR SEXUAL ASSAULT

“SEC. 40299. TRANSITIONAL HOUSING ASSISTANCE GRANTS FOR CHILD VICTIMS OF DOMESTIC VIOLENCE, STALKING, OR SEXUAL ASSAULT.

“(a) *IN GENERAL.*—The Attorney General, acting in consultation with the Director of the Violence Against Women Office of the Department of Justice, shall award grants under this section to States, units of local government, Indian tribes, and other organizations (referred to in this section as the ‘recipient’) to carry out programs to provide assistance to minors, adults, and their dependents—

“(1) who are homeless, or in need of transitional housing or other housing assistance, as a result of fleeing a situation of domestic violence; and

“(2) for whom emergency shelter services or other crisis intervention services are unavailable or insufficient.

“(b) *GRANTS.*—Grants awarded under this section may be used for programs that provide—

“(1) short-term housing assistance, including rental or utilities payments assistance and assistance with related expenses such as payment of security deposits and other costs incidental to relocation to transitional housing for persons described in subsection (a); and

“(2) support services designed to enable a minor, an adult, or a dependent of such minor or adult, who is fleeing a situation of domestic violence to—

“(A) locate and secure permanent housing; and

“(B) integrate into a community by providing that minor, adult, or dependent with services, such as transportation, counseling, child care services, case management, employment counseling, and other assistance.

“(c) *DURATION.*—

“(1) *IN GENERAL.*—Except as provided in paragraph (2), a minor, an adult, or a dependent, who receives assistance under this section shall receive that assistance for not more than 18 months.

“(2) *WAIVER.*—The recipient of a grant under this section may waive the restriction under paragraph (1) for not more than an additional 6 month period with respect to any minor, adult, or dependent, who—

“(A) has made a good-faith effort to acquire permanent housing; and

“(B) has been unable to acquire permanent housing.

“(d) *APPLICATION.*—

“(1) *IN GENERAL.*—Each eligible entity desiring a grant under this section shall submit an application to the Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may reasonably require.

“(2) *CONTENTS.*—Each application submitted pursuant to paragraph (1) shall—

“(A) describe the activities for which assistance under this section is sought; and

“(B) provide such additional assurances as the Attorney General determines to be essential to ensure compliance with the requirements of this section.

“(3) *APPLICATION.*—Nothing in this subsection shall be construed to require—

“(A) victims to participate in the criminal justice system in order to receive services; or

“(B) domestic violence advocates to breach client confidentiality.

“(e) *REPORT TO THE ATTORNEY GENERAL.*—

“(1) *IN GENERAL.*—A recipient of a grant under this section shall annually prepare and submit to the Attorney General a report describing—

“(A) the number of minors, adults, and dependents assisted under this section; and

“(B) the types of housing assistance and support services provided under this section.

“(2) *CONTENTS.*—Each report prepared and submitted pursuant to paragraph (1) shall include information regarding—

“(A) the amount of housing assistance provided to each minor, adult, or dependent, assisted under this section and the reason for that assistance;

“(B) the number of months each minor, adult, or dependent, received assistance under this section;

“(C) the number of minors, adults, and dependents who—

“(i) were eligible to receive assistance under this section; and

“(ii) were not provided with assistance under this section solely due to a lack of available housing; and

“(D) the type of support services provided to each minor, adult, or dependent, assisted under this section.

“(f) *REPORT TO CONGRESS.*—

“(1) *REPORTING REQUIREMENT.*—The Attorney General, with the Director of the Violence Against Women Office, shall annually prepare and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report that contains a compilation of the information contained in the report submitted under subsection (e).

“(2) *AVAILABILITY OF REPORT.*—In order to coordinate efforts to assist the victims of domestic violence, the Attorney General, in coordination with the Director of the Violence Against Women Office, shall transmit a copy of the report submitted under paragraph (1) to—

“(A) the Office of Community Planning and Development at the United States Department of Housing and Urban Development; and

“(B) the Office of Women’s Health at the United States Department of Health and Human Services.

“(g) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There are authorized to be appropriated to carry out this section \$30,000,000 for each of the fiscal years 2004 through 2008.

“(2) LIMITATIONS.—Of the amount made available to carry out this section in any fiscal year, not more than 3 percent may be used by the Attorney General for salaries and administrative expenses.

“(3) MINIMUM AMOUNT.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), unless all eligible applications submitted by any States, units of local government, Indian tribes, or organizations within a State for a grant under this section have been funded, that State, together with the grantees within the State (other than Indian tribes), shall be allocated in each fiscal year, not less than 0.75 percent of the total amount appropriated in the fiscal year for grants pursuant to this section.

“(B) EXCEPTION.—The United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands shall each be allocated not less than 0.25 percent of the total amount appropriated in the fiscal year for grants pursuant to this section.”.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same.

From the Committee on the Judiciary, for consideration of the Senate bill and the House amendments, and modifications committed to conference:

F. JAMES SENSENBRENNER,
HOWARD COBLE,
LAMAR SMITH,
MARK GREEN,
MELISSA A. HART.

For consideration of the Senate bill and House amendments, and modifications committed to conference:

MARTIN FROST.

From the Committee on Education and the Workforce, for consideration of sec. 8 of the Senate bill and secs. 222, 305, and 508 of the House amendments, and modifications committed to conference:

PETE HOEKSTRA,
PHIL GINGREY,
RUBÉN HINOJOSA.

From the Committee on Transportation and Infrastructure, for consideration of sec. 303 and title IV of the House amendments, and modifications committed to conference:

DON YOUNG,
TOM PETRI,

JIM MATHESON,
Managers on the Part of the House.

ORRIN HATCH,
CHUCK GRASSLEY,
JEFF SESSIONS,
LINDSEY GRAHAM,
JOE BIDEN,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF
CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 151), to amend title 18, United States Code, with respect to the sexual exploitation of children, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment that is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Section 1. Short title; table of contents

The short title is the “Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003” or “PROTECT Act.” This section is similar to the Senate bill.

Section 2. Severability

Section 2 of the conference report is identical to section 17 of the Senate bill and section 509 of the House amendment. This section states that if any provision of this Act is held to be invalid, the remainder shall not be affected by such invalidation.

TITLE I—SANCTIONS AND OFFENSES

Sec. 101. Supervised release term for sex offenders

Section 101 of the conference report is substantively identical to section 101 of the House amendment. There is no equivalent provision in the Senate bill. This section amends 18 U.S.C. § 3583 to provide a judge with the discretion to extend the term of post-release supervision of sex offenders up to a maximum of life. The House amendment required the supervised release term to be no less than five years and up to life. Under current law, the maximum period of post-release supervision in Federal cases is generally five years even for the most serious crimes, and the maximum period for most offenses is three years or less.

This section responds to the long-standing concerns of Federal judges and prosecutors regarding the inadequacy of the existing supervision periods for sex offenders, particularly for the perpetrators

of child sexual abuse crimes, whose criminal conduct may reflect deep-seated aberrant sexual disorders that are not likely to disappear within a few years of release from prison. The current length of the authorized supervision periods is not consistent with the need presented by many of these offenders for long-term—and in some cases, life-long—monitoring and oversight. This section is similar to H.R. 4679, the “Lifetime Consequences for Sex Offenders Act of 2002,” which passed the House 409–3 on June 25, 2002.

Sec. 102. First degree murder for child abuse and child torture murders

Section 102 of the conference report is substantively identical to section 102 of the House amendment. There is no equivalent provision in the Senate bill. This section amends 18 U.S.C. § 1111, by inserting “child abuse” and “the pattern or practice of assault or torture against a child or children” that results in murder as a predicate for first degree murder. Section 1111 is the Federal murder statute. Under current law, first degree murder includes murder committed in the perpetration of, or attempt to perpetrate, certain crimes including arson, escape, kidnapping, sexual abuse, and several other crimes. “Child abuse” and “torture” would be added to the list for first degree murder. Acts of child abuse with lethal consequences are as deserving of such treatment as killings occurring in the course of such offenses as burglary or robbery. Since first degree murder is punishable by death or life imprisonment, these changes will help to ensure that child abusers who kill their victims will receive penalties that reflect the heinousness of their crimes. However, with regard to the definition of child abuse, it is the intent of the conferees that this section is not intended to impair the free exercise of one’s religious beliefs with regard to a parent’s decision about the provision of medical care for their children.

Sec. 103. Sexual abuse penalties

Section 103 of the conference report is substantively identical to section 103 of the House amendment. There is no equivalent provision in the Senate bill. This section increases the maximum and minimum penalties of section 1591 and chapters 110 and 117 of title 18, United States Code, relating to the sexual exploitation of children and the sex trafficking of children. This section increases the mandatory minimum penalties for only the most serious crimes of sexual abuse and sexual exploitation of children at the request of the Senate.

Statutory maximum penalties provide only an upper limit on punishment, and accordingly should be coordinated to the type of penalty which would be appropriate for the most aggravated forms of the offenses in question, as committed by offenders with the most serious criminal histories. Where the statutory maximum penalty is too low, it may be impossible to impose a proportionate penalty in cases involving highly aggravated offense conduct. Likewise, in cases involving incorrigible offenders, low statutory maximum penalties may force the court to impose a sentence that is less than what is warranted in light of the offender’s criminal history.

The increased mandatory minimum sentences are responsive to real problems of excessive leniency in sentencing under existing law. For example, the offenses under chapter 117 of title 18, United States Code, apply in sexual abuse cases involving interstate movement of persons or use of interstate instrumentalities, such as luring of child victims through the Internet. Courts all too frequently impose sentences more lenient than those prescribed by the sentencing guidelines in cases under chapter 117, particularly in situations where an undercover agent rather than a child was the object of the enticement. Yet the offender's conduct in such a case reflects a real attempt to engage in sexual abuse of a child, and the fact that the target of the effort turned out to be an undercover officer has no bearing on the culpability of the offender, or on the danger he presents to children if not adequately restrained and deterred by criminal punishment. Likewise, courts have been disposed to grant downward departures from the guidelines for child pornography possession offenses under chapter 110, based on the misconception that these crimes are not serious.

Sec. 104. Stronger penalties against kidnapping

Section 104 of the conference report is identical to section 104 of the House amendment. There is no equivalent provision in the Senate bill. This section directs the United States Sentencing Commission to increase the base offense level for kidnapping from level 24 (51–63 months) to a base offense level of 32 by amending §2A4.1(a) of the United States Sentencing Guidelines. It further deletes §2A4.1(b)(4)(C) of the United States Sentencing Guidelines, which rewards kidnapers for releasing the victim within 24 hours by reducing the base offense level by one point. Under the current Guidelines, if a defendant sexually exploits the kidnapping victim, then the defendant's base offense level is increased by 3 levels. This is amended to a 6 level increase by amending §2A4.1(b)(5) of the United States Sentencing Guidelines.

This section also amends 18 U.S.C. §1201 to provide for a mandatory minimum sentence of 20 years if the victim of the non-family kidnapping is under the age of 18.

Sec. 105. Penalties against sex tourism

Section 105 of the conference report is substantively identical to section 105 of the House amendment. There is no equivalent provision in the Senate bill. This section addresses a number of problems related to persons who travel to foreign countries and engage in illicit sexual relations with minors. Current law requires the government to prove that the defendant traveled with the intent to engage in the illegal activity. Under this section, the government would only have to prove that the defendant engaged in illicit sexual conduct with a minor while in a foreign country. This section also criminalizes the actions of sex tour operators who arrange, induce, procure, or facilitate the travel of a person for commercial advantage or private financial gain, knowing that such a person is traveling in interstate or foreign commerce for the purpose of engaging in illicit sexual conduct. The maximum penalty a defendant could receive is up to thirty years imprisonment. This section is similar to H.R. 4477, the "Sex Tourism Prohibition Improvement

Act of 2002,” which passed the House by 418 yeas to 8 nays on June 26, 2002.

Sec. 106. Two strikes you’re out

Section 106 of the conference report is similar to section 106 of the House amendment. There is no equivalent provision in the Senate bill. This section would establish a mandatory sentence of life imprisonment for twice-convicted child sex offenders. This section amends 18 U.S.C. § 3559 to provide for a mandatory minimum sentence of life imprisonment for any person convicted of a “Federal sex offense” if they had previously been convicted of a similar offense under either Federal or state law. The legislation defines Federal sex offense to include offenses committed against a person under the age of 17 and involving the crimes of sexual abuse, aggravated sexual abuse, sexual exploitation of children, abusive sexual contact, and the interstate transportation of minors for sexual purposes. This section is similar to H.R. 2146, the “Two Strikes and You’re Out Child Protection Act,” which passed the House by 382 to 34 on March 14, 2002.

Sec. 107. Attempt liability for international parental kidnapping

Section 107 of the conference report is identical to section 107 of the House amendment. There is no equivalent provision in the Senate bill. This section amends 18 U.S.C. § 1204, which generally prohibits removing a child from the United States or retaining a child outside the United States with intent to obstruct the lawful exercise of parental rights. As amended, the statute would prohibit attempts to commit this offense, as well as completed offenses.

This change is needed to facilitate effective intervention and prevention of parental kidnappings of children before they are removed from the United States. The current absence of attempt liability has created difficulties in cases in progress where the abducting parent is on the way out of the country, but is still transiting in the United States. In those cases, the FBI now has very limited ability to become involved and prevent the abduction from becoming an international occurrence. Local and state law enforcement must be looked to prevent the removal of the child from the country in such cases, but state and local authorities have been very reluctant to become involved. The addition of attempt liability will resolve these problems by enabling the FBI to deal with these cases directly. In addition, it will make penalties and means of restraint available through criminal prosecution and conviction in cases where persons attempt international child abductions in violation of 18 U.S.C. § 1204, but are apprehended before they succeed in getting the child out of the country.

Sec. 108. Pilot program for National Criminal History Background Checks and Feasibility Study

Section 108 of the conference report is similar to section 307 of the House amendment. There is no equivalent provision in the Senate bill. The National Child Protection Act was enacted in 1993 to provide a process for background checks for volunteers, but according to the groups that depend on volunteers to work with children, the disabled, and the elderly, the process was not working as

intended. Additional legislation to improve this process was enacted through the Volunteers for Children Act of 1998. Concerns remain about the background check process.

This section responds to those concerns and establishes criminal history records check pilot programs and requires the Attorney General to study the current state of fingerprinting technology and the Federal and state governments capacity to perform these checks. The first pilot program permits certain volunteer organizations designated in three states selected by the Attorney General to request state criminal background checks and Federal 10-fingerprint criminal background checks on their volunteers. The second pilot program authorizes three designated volunteer organizations to receive 100,000 Federal 10-fingerprint criminal background checks, equally allocated, to determine whether potential volunteers are fit to work with children. Each pilot program will last for eighteen months. The Attorney General will report to Congress on the implementation of the pilot programs at their conclusion.

TITLE II—INVESTIGATIONS AND PROSECUTIONS

Sec. 201. Interceptions of communications in investigations of sex offenses

Section 201 of the conference report is substantively identical to section 15 of the Senate bill. Current Federal law allows the interception of oral and electronic communications (“wiretapping”) if authorized by a court order. A number of requirements must be satisfied to issue such an order, including probable cause to believe that an offense specifically enumerated in 18 U.S.C. § 2516 has been or will be committed and that particular communications concerning the offense will be obtained through the proposed interception.

Current law provides inadequate investigative tools to combat child sexual exploitation, Internet luring of children for purposes of sexual abuse, and sex trafficking. For example, the list of wiretap predicates now includes a variety of offenses such as theft, fraud, and trafficking in stolen property. The current wiretap predicates, however, do not include the crime of buying or selling a child to be used in the production of child pornography,¹ or the offense of sex trafficking in persons,² or the crimes under chapter 117 of title 18 of the United States Code prohibiting interstate transportation or travel or use of interstate instrumentalities to promote prostitution. Section 201 enhances investigative authority for these heinous crimes by adding as wiretap predicates for several offenses under the sex offense chapters of the criminal code which are not currently covered—specifically, 18 U.S.C. §§ 2251A, 2252A, 2260, 2421, 2422, 2423, and 2425, as well as the sex trafficking statute, 18 U.S.C. § 1591. This section is similar to H.R. 1877, the “Child Sex Crimes Wiretapping Act of 2002,” which passed the House by 396 yeas—11 nays on May 21, 2002.

¹ 18 U.S.C. § 2251A.

² 18 U.S.C. § 1591.

Sec. 202. No statute of limitations for child abduction and sex crimes

Section 202 of the conference report contains similar language to section 202 of the House amendment. The Senate bill did not have comparable language. The House amendment created a new section in the criminal code that provided that child abductions and felony sex offenses are not subject to a statute of limitations. The conference report amends the current law that covers the statute of limitations for offenses involving the sexual or physical abuse of a child. This section adds crimes of kidnapping and extends the statute of limitations to the life of the child victim. Under current law, the limitation period applicable to most Federal crimes is five years.³ There are some exceptions to this limitation.⁴ Under current law, the standard limitation rules do not bar prosecution “for an offense involving the sexual or physical abuse of a child under the age of eighteen years . . . before the child reaches the age of 25 years.”⁵ While this is better than a flat five-year rule, it remains inadequate in many cases. For example, a person who abducted and raped a child could not be prosecuted beyond this extended limit—even if DNA matching conclusively identified him as the perpetrator one day after the victim turned 25.

Sec. 203. No pretrial release for those who rape or kidnap children

Section 203 of the conference report is substantively identical to section 221 of the House amendment. There is no equivalent provision in the Senate bill. This section provides a rebuttable presumption that child rapists and kidnappers should not get pre-trial release. Under current law, a defendant may be detained before trial if the government establishes by clear and convincing evidence that no release conditions will reasonably assure the appearance of the person and the safety of others. Current law also provides rebuttable presumptions that the standard for pretrial detention is satisfied in certain circumstances. For example, such a presumption exists if the court finds probable cause to believe that the defendant committed a drug offense punishable by imprisonment for 10 years or more, or that the person committed a crime of violence or drug trafficking crime while armed with a firearm, in violation of 18 U.S.C. § 924(c).⁶ Thus, existing law creates a presumption that, for example, an armed robber charged under 18 U.S.C. § 924(c) cannot safely be released before trial. This section will provide the same presumption for crimes such as child abduction and child rape.

Sec. 204. Suzanne’s law

Section 204 of the conference report is identical to section 241 of the House amendment. There is no equivalent provision in the Senate bill. This section amends section 3701 (a) of the Crime Control Act of 1990 (42 U.S.C. § 5779(a)) to require law enforcement

³ See 18 U.S.C. § 3282.

⁴ See, e.g., 18 U.S.C. § 3281 (no limitation period for capital crimes); 18 U.S.C. § 3293 (ten-year limitation period for certain financial institution offenses); 18 U.S.C. § 3294 (twenty-year limitation period for certain thefts of artwork).

⁵ 18 U.S.C. § 3283.

⁶ See 18 U.S.C. § 3142(e).

agencies to report missing persons less than 21 years of age to the National Crime Information Center. Current law only requires reporting for children under the age of 18.

TITLE III—PUBLIC OUTREACH

SUBTITLE A—AMBER ALERT

Sec. 301. National coordination of AMBER Alert communications network

Section 301 of the conference report is identical to section 301 of the House amendment. There is no equivalent provision in the Senate bill. This section codifies the establishment of an AMBER Alert Coordinator within the Department of Justice to assist states with their AMBER Alert plans. This coordinator will eliminate gaps in the network, including gaps in interstate travel, work with states to encourage development of additional AMBER plans, work with states to ensure regional coordination among plans, and serve as a nationwide point of contact. On October 2, 2002, President Bush directed the Attorney General to designate a Justice Department officer to serve as AMBER Alert Coordinator to help expand the AMBER Alert system nationwide. Assistant Attorney General Deborah J. Daniels was designated as that coordinator and has been working to assist state and local officials with developing and enhancing AMBER plans, and to promote statewide and regional coordination among plans ever since. This section requires that not later than March 1, 2005, the Coordinator submit a report to Congress on the effectiveness and status of the AMBER plans of each state.

The AMBER program is a voluntary partnership between law-enforcement agencies and broadcasters to activate an urgent alert bulletin in serious child-abduction cases. The goal of the AMBER Alert is to instantly galvanize the entire community to assist in the search for and safe return of the child.

Sec. 302. Minimum standards for issuance and dissemination of alerts through AMBER Alert communications network

Section 302 of the conference report is identical to section 302 of the House amendment. There is no equivalent provision in the Senate bill. Section 302 requires the Department of Justice Coordinator to establish nationwide minimum standards for the issuance of an AMBER alert and the extent of dissemination of the alert. The legislation allows for voluntary adoption of these standards. The Conference Committee intends that the establishment of minimum standards will limit the use of the system to those rare instances of serious child abductions. Limiting the use of AMBER Alerts is critical to the long-term success of the program because overuse or misuse of AMBER Alerts could lead to public fatigue or apathy to the alerts.

Sec. 303. Grant program for notification and communications systems along highways for recovery of abducted children

Section 303 of the conference report is identical to section 303 of the House amendment. There is no equivalent provision in the Senate bill. This section authorizes \$20,000,000 for fiscal year 2004

for the Secretary of Transportation to make grants to states for the development or enhancement of notification or communications systems along highways for alerts and other information for the recovery of abducted children. The guidelines for these grants are intended to mirror what the AMBER Alert grant program that the Department of Transportation has been developing since October, 2002, and currently has in place.

Sec. 304. Grant program for support of AMBER Alert communications plans

Section 304 of the conference report is identical to section 304 of the House amendment. There is no equivalent provision in the Senate bill. This section authorizes \$5,000,000 for fiscal year 2004 for the Attorney General to administer a grant program for the development and enhancement of programs and activities for the support of AMBER Alert communication plans. This section also authorizes an additional \$5,000,000 for fiscal year 2004 for grants to develop and implement new technologies to improve AMBER Alert communications.

Sec. 305. Limitation on liability

Section 305 of the conference report is a new section that is related to the purpose of this title. This section provides the National Center for Missing and Exploited Children (NCMEC) with civil immunity arising out of any action by NCMEC in connection with activity that is undertaken with, or at the direction of, a Federal law enforcement agency.

SUBTITLE B—NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN

Sec. 321. Increased support

Section 321 of the conference report is identical to section 305 of the House amendment. There is no equivalent provision in the Senate bill. The National Center for Missing and Exploited Children (NCMEC) is the nation's resource center for child protection. The Center provides assistance to parents, children, law enforcement, schools, and the community in recovering missing children and raising public awareness about ways to help prevent child abduction, molestation and sexual exploitation. To date, NCMEC has worked on more than 73,000 cases of missing and exploited children and helped recover more than 48,000 children. This section amends the Missing, Exploited, and Runaway Children Protection Act by reauthorizing NCMEC, and reauthorizing and doubling the annual grant to NCMEC from \$10,000,000 to \$20,000,000 through fiscal year 2005.

Sec. 322. Forensic and investigative support of missing and exploited children

Section 322 of the conference report is substantively identical to section 308 of the House amendment. There is no equivalent provision in the Senate bill. This section amends section 3056 of title 18, United States Code, to allow the U.S. Secret Service to provide forensic and investigative support to the National Center for Miss-

ing and Exploited Children to assist in efforts to find missing children. Nearly a decade ago, Congress authorized the U.S. Secret Service to participate in a multi-agency task force with the purpose of providing resources, expertise and other assistance to local law enforcement agencies and the National Center for Missing and Exploited Children (NCMEC) in cases involving missing and exploited children. This began a strong partnership between the Secret Service and NCMEC, and resulted in the Secret Service providing critical forensic support—including polygraph examinations, handwriting examinations, fingerprint research and identification, age progressions/regressions and audio and video enhancements—to NCMEC and local law enforcement in numerous missing children cases. This section will provide explicit statutory authorization permitting the Secret Service to continue this forensic and investigative support upon request from local law enforcement or NCMEC.

Sec. 323. Creation of a cyber tipline

Section 323 of the conference report is a new section that is related to the purpose of this title. This section amends the Missing Children’s Assistance Act to coordinate the operation of a cyber tipline to provide online users an effective means of reporting Internet related child sexual exploitation.

SUBTITLE C—SEX OFFENDER APPREHENSION PROGRAM

Sec. 341. Authorization

Section 341 of the conference report is identical to section 306 of the House amendment. There is no equivalent provision in the Senate bill. This section would authorize Community Oriented Policing Services (COPS) funding for Sex Offender Apprehension Programs in states that have a sex offender registry and have laws that make it a crime for failure to notify authorities of any change in address information, among other things. The money could be used by local law enforcement agencies to fund officers who would check up on sex offenders and arrest them for noncompliance. Keeping up to date records will help law enforcement in future investigations of missing children.

SUBTITLE D—MISSING CHILDREN PROCEDURES IN PUBLIC BUILDINGS

Sec. 361. Short title

Section 361 of the conference report is substantively identical to section 401 of the House amendment. There is no equivalent provision in the Senate bill. This section states that this subtitle may be cited as the “Code Adam Act of 2003.”

Sec. 362. Definitions

Section 362 of the conference report is identical to section 402 of the House amendment. There is no equivalent provision in the Senate bill. This section defines the following terms: child, code adam alert, designated authority, executive agency, Federal agency, and public building.

Sec. 363. Procedures in public buildings regarding a missing or lost child

Section 363 of the conference report is substantively identical to section 403 of the House amendment. There is no equivalent provision in the Senate bill. This section requires that, not later than 180 days after the date of enactment of this Act, the designated authority for a public building shall establish procedures for locating a child that is missing in the building. The procedures shall provide, at a minimum, the notification of security personnel, obtaining a detailed description of the child, monitoring all points of egress from the building, conducting a thorough search of the building, and notifying local law enforcement.

The original Code Adam is one of the country's largest child-safety programs, and it is supported by the National Center for Missing and Exploited Children. The Wal-Mart retail stores created it in 1994, and it is used in more than 36,000 stores across the United States.

SUBTITLE E—CHILD ADVOCACY CENTER GRANTS

Sec. 381. Information and documentation required by the Attorney General under Victims of Child Abuse Act of 1990

Section 381 of the conference report is substantively identical to section 222 of the House amendment. There is no equivalent provision in the Senate bill. This section reauthorizes grant programs within the Victims of Child Abuse Act of 1990, 42 U.S.C. § 13001 et seq., that provide funding to child advocacy centers and training and technical assistance to programs to improve the prosecution of child abuse cases. This funding trains law enforcement agencies, prosecutors and local jurisdictions to help them establish comprehensive, interdisciplinary approaches to the investigation and prosecution of child abuse. The goal of these programs is to minimize the trauma of the justice system for children who are victims of abuse as well as to ensure that the mental, emotional and physical needs of these children are not forgotten. The authorization for this funding expired in fiscal year 2000, however, the Department of Justice has continued to receive funds for these programs and continues to administer them.

TITLE IV—SENTENCING REFORM

Sec. 401. Sentencing reform

Section 401 of the conference report is a modification of section 109 of the House amendment. There is no equivalent provision in the Senate bill. This section addresses the longstanding problem of downward departures from the Federal Sentencing Guidelines. According to the Sentencing Commission's 2001 Sourcebook of Federal Sentencing Statistics, trial courts reduced the sentence of those convicted of all non-immigration offenses in 12.2 percent of the cases while those convicted of sexual abuse received a downward departure over 16 percent of the cases, and granted reductions below the guideline range of those convicted of sexual abuse by an astonishing 63 percent from the guideline range. For those convicted of pornography and/or prostitution related offenses, trial

courts departed from the recommended guidelines over 18 percent of the time, reducing these defendants' sentences by a staggering 66 percent.

The provisions of this section would restrict departures in cases under section 1201 involving a minor victim, section 1591, or under chapters 109A, 110 or 117 of title 18, United States Code. Specifically, in those cases, a court could only sentence a defendant outside the guideline range upon grounds specifically enumerated in the guidelines as proper for departure. This would eliminate ad hoc departures based on vague grounds, such as "general mitigating circumstances."

In addition, this section would for all cases require courts to give specific written reasons for any departure from the guidelines; change the standard of review for appellate courts to a de novo review to allow appellate courts more effectively to review illegal and inappropriate downward departures; prevent sentencing courts, upon remand, from imposing the same illegal departure on a different theory; and only allow courts to grant an additional third point reduction for "acceptance of responsibility" upon motion of the government.

Also, the definition of "pattern of activity involving prohibited sexual conduct" in the Sentencing Guidelines is broadened. Currently, the guidelines provides that such a pattern exists only where the defendant engaged in prohibited sexual conduct on at least two separate occasions with at least two different minor victims. This definition does not adequately take account of the frequent occurrence of repeated sexual abuse against a single child victim, and the severity of the harm to such victims from the repeated abuse. This section would broaden the definition to include repeated abuse of the same victim on separate occasions.

For cases other than those involving offenses in section 1201 involving a minor victim, section 1591, or chapters 109A, 110 or 117 of title 18 of the United States Code, this section directs the Sentencing Commission to review grounds for downward departures and promulgate amendments to ensure that the incident of downward departure are substantially reduced.

The Sentencing Guidelines are also amended with regard to the penalties for possession of child pornography in two ways. First, penalties are increased if the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence and, second, penalties are increased based on the amount of child pornography involved in the offense.

TITLE V—OBSCENITY AND PORNOGRAPHY

SUBTITLE A—CHILD OBSCENITY AND PORNOGRAPHY PREVENTION

This subtitle is a compromise that incorporates parts of the House and Senate anti-child pornography bills. Both these bills address the April 16, 2002 Supreme Court decision in *Ashcroft v. the Free Speech Coalition*.⁷ That decision struck down parts of a 1996 law written to combat computer-generated pornography as too broad.

⁷ 535 U.S. 234 (2002).

Sec. 501. Findings

Section 501 of the conference report is identical to section 501 of the House amendment and similar to section 2 of the Senate bill. This section provides detailed congressional findings.

Sec. 502. Improvements to prohibition on virtual child pornography

Section 502 addresses the Supreme Court's holding that the definition of child pornography under 18 U.S.C. § 2256(8)(B), relating to virtual child pornography, was over broad and unconstitutional. Section 502 incorporates the House definition for computer-generated child pornography and the Senate affirmative defense language, with a technical amendment.

Section 502(a) of the conference report is substantively identical to section 502(a) of the House amendment and similar to section 5 of the Senate bill. This section narrows the definition of child pornography under 18 U.S.C. § 2256(8)(B) to depictions that are "digital images" (e.g., picture or video taken with a digital camera), "computer images" (e.g., pictures scanned into a computer), or "computer-generated images" (e.g., images created or altered with the use of a computer). The Supreme Court was concerned in *Free Speech Coalition* that the breadth of the language would prohibit legitimate movies like "Traffic" or plays like "Romeo and Juliet." Limiting the definition to digital, computer, or computer-generated images will help to exclude ordinary motion pictures from the coverage of "virtual child pornography." Section 502(a) further narrows the definition by replacing the phrase "appears to be" with the phrase "is indistinguishable from." That new phrase addresses the Court's concern that cartoon-sketches would be banned under the statute. "The substitution of 'is indistinguishable from' in lieu of 'appears to be' more precisely reflects what Congress intended to cover in the first instance, and eliminates an ambiguity that infected the current version of the definition and that enabled those challenging the statute to argue that it 'capture[d] even cartoon-sketches and statues of children that were sexually suggestive.'" ⁸

Section 502(b) also narrows the definition of child pornography by amending 18 U.S.C. § 2256(2) to require a simulated image to be lascivious to constitute child pornography under the new definition in 18 U.S.C. § 2256(8)(B). Thus, child pornography that simulates sexually explicit conduct must be lascivious as well as meet the other requirement of the definition. This language is identical to the House Amendment.

Section 502(c) of the conference report is similar to section 502(c) of the House amendment and defines the terms "graphic" and "indistinguishable."

Section 502(d) of the conference report amends the existing statutory provision in the Federal criminal code to conform with the Supreme Court's holding by replacing 18 U.S.C. § 2252A(c), the affirmative defense for violations of 18 U.S.C. § 2252A. The section contains a modified affirmative defense provided in section 3(c) of the Senate bill.

⁸Department of Justice Transmittal Letter with draft legislation to the Speaker of the House, at 3 (May 2002) (citing *Free Speech Coalition*, 535 U.S. at 264 (O'Connor, J., concurring in part and dissenting in part)).

The current affirmative defense in 18 U.S.C. § 2252A(c) provides a defense for violations of subsections 2252A(a)(1)–(4) of title 18, United States Code, where the person producing the material used adults and did not distribute the material so as to convey the impression that the material was child pornography. The Supreme Court in *Free Speech Coalition* did not rule on the existing affirmative defense in 18 U.S.C. § 2252A(c). The Court left open the possibility that the 1996 statute might have survived the constitutional challenge as overbroad if the affirmative defense had been more complete. Specifically, the Court stated, “We need not decide, however, whether the Government could impose this burden [of an affirmative defense] on a speaker. Even if an affirmative defense can save a statute from First Amendment challenge, here the defense is incomplete and insufficient, even on its own terms.”⁹ Justice Thomas, in his concurring opinion, stated that the “Court does leave open the possibility that a more complete affirmative defense could save a statute’s constitutionality.”¹⁰ Thus, the Court appears to have implicitly accepted that some regulation of virtual child pornography might be constitutional and this provision strengthens the affirmative defense as suggested by the Court.

Like the House Amendment, the Senate language creates a new and comprehensive affirmative defense for anyone charged with distributing or possessing child pornography. With this new affirmative defense an accused can completely escape liability by showing that the sexually explicit depictions in question were produced without using any actual minors. The provision also makes clear that the defendant must provide timely and specific notice of his intent to raise either the youthful-looking adult or virtual porn defense. The Senate language was modified to ensure the defense does not apply to the pandering provisions or the morphing provisions. This defense does not apply to any old or new obscenity provisions.

Sec. 503. Certain activities relating to material constituting or containing child pornography

Section 503 of the conference report is identical to section 3(a) and (b) of the Senate bill and substantively identical to sections 503 and 505 of the House Amendment. Section 503 includes a new pandering provision (to be codified at 18 U.S.C. § 2252A(a)(3)(B)) that prohibits “advertis[ing], promot[ing], present[ing], distribut[ing], or solicit[ing]” real or purported materials that the actor believes, or intends to cause another to believe, contain depictions of actual or obscene child pornography. This provision bans the offer to transact in unprotected material, coupled with proof of the offender’s specific intent. Thus, for example, this provision prohibits an individual from offering to distribute anything that he specifically intends to cause a recipient to believe would be actual or obscene child pornography. It likewise prohibits an individual from soliciting what he believes to be actual or obscene child pornography. The provision makes clear that no actual materials need exist; the government establishes a violation with proof of the com-

⁹*Free Speech Coalition*, 535 U.S. at 256.

¹⁰*Free Speech Coalition*, 535 U.S. at 259 (Thomas, J., concurring).

munication and requisite specific intent. Indeed, even fraudulent offers to buy or sell unprotected child pornography help to sustain the illegal market for this material.

Section 503 (to be codified at 18 U.S.C. § 2252A(a)(6)) creates a new offense that criminalizes the act of using any type of real or apparent child pornography to induce a child to commit a crime.

Sec. 504. Obscene child pornography

Section 504 of the conference report is substantively identical to section 6 of the Senate bill and similar to section 504 of the House amendment. Section 504 of the conference report creates new obscenity offenses under Chapter 71 of title 18, United States Code, (to be codified at 18 U.S.C. § 1466A) that criminalizes obscene sexually explicit depictions of minors. This section prohibits any obscene depictions of minors engaged in any form of sexually explicit conduct and prohibits a narrow category of “hardcore” pornography involving real or apparent minors, where such depictions lack literary, artistic, political, or scientific value. These new offenses are subject to the penalties applicable to child pornography, not the lower penalties that apply to obscenity, and it also contains a directive to the U.S. Sentencing Commission requiring the Commission to ensure that the U.S. Sentencing Guidelines are consistent with this fact.

Sec. 505. Admissibility of evidence

Section 505 of the conference report is identical to section 4 of the Senate bill. There is no comparable provision in the House amendment. This section (to be codified at 18 U.S.C. § 2252A(e)) protects the privacy of minors depicted in obscenity and child pornography by permitting the government to seek an order that shields non-physical identifying information from public scrutiny. Of course, such information may be a critical component of the government’s proof at trial. There may be evidence, for example, that the defendant stored the sexually explicit depiction in a folder labeled “Jennifer—Age 12.” For this reason, this provision does not require the government to seek the exclusion of such information in every instance. When the government moves to do so, however, this provision creates a strong presumption that the privacy of the minor shall be protected. In that event, the government also is entitled to obtain a jury instruction that the absence of this information shall not be used to infer that the depictions are not, in fact, actual minors.

Sec. 506. Extraterritorial production of child pornography for distribution in the United States

Section 506 of the conference report is identical to section 10 of the Senate bill and substantively identical to section 506 of the House amendment. This section amends current law by providing the Government with the authority to prosecute foreign producers of child pornography if that material is transported, or intended to be transported, to the United States. Persons and entities who target, exploit, profit from, or help to perpetuate the market for child pornography in the United States are fairly subject to our system of laws and penalties. The purpose of this section is to stop efforts

by producers of child pornography to avoid criminal liability based on the fact that the child pornography was produced outside of the United States, but intended for use inside the United States.¹¹

Sec. 507. Strengthening enhanced penalties for repeat offenders

Section 507 of the conference report is identical to section 507 of the House amendment and similar to section 12 of the Senate bill. This section amends chapter 110, the child pornography chapter of title 18, United States Code, which provides enhanced penalties for recidivists in that chapter, chapter 109A (relating to sexual abuse), and chapter 117 (relating transportation for illegal sexual activity and related crimes). The new language includes the offenses under the obscenity chapter, chapter 71 and the sexual assault crimes under military law in article 120 of the Uniform Code of Military Justice. Recidivism is a huge problem in sexual exploitation cases. This section addresses the problem by enhancing the penalties for repeat offenders.

Sec. 508. Service provider reporting of child pornography and related information

Section 508 of the conference report is substantively identical to section 508 of the House Amendment and substantively identical to sections 8 and 9 of the Senate bill. The conference report amends section 227 of the Victims of Child Abuse Act of 1990, which requires providers of electronic communications and remote computing services to report apparent offenses that involve child pornography.¹² Section 508 of the conference report strengthens this reporting system by adding the new offenses under §§2252B and 1466A.

Section 508(b) amends 18 U.S.C. §2702 to be consistent with section 227 of the Victims of Child Abuse Act, which provides that, in addition to the required information that is reported to NCMEC, the reports may include “additional information.” This should make it clear, for example, that an Internet service provider can disclose the identity of a subscriber who sent a message containing child pornography, in addition to the contents of such a communication already required to be reported under current law. Section 2702(b)(6)(B) of title 18, United States Code, only authorizes disclosure of content information required by the Victims of Child Abuse Act, and contains no language that appears to cover relevant non-content information, such as the identity of the sender of the child pornography in the example described above. This section corrects that inconsistency.

This section also includes a provision to change the current law that prevents the Federally funded Internet Crimes Against Children Task Forces to receive reports from the Cyber Tipline. These Task Forces are state and local police agencies that have been

¹¹See, e.g., *United States v. Thomas*, 893 F. 2d 1066 (9th Cir. 1990).

¹²Under the current law, communications providers must report to the National Center for Missing and Exploited Children (NCMEC) when the provider obtains knowledge of facts or circumstances from which a violation of sexual exploitation crimes against children occurs. 42 U.S.C. §13032(b)(1). A provider of electronic communication services may be fined for knowingly and willfully failing to make a report. 42 U.S.C. §13032(b)(3). Federal criminal law provides that “[n]o provider or user of an electronic communication service or a remote computing service to the public shall be held liable on account of any action taken in good faith to comply with this section.” 42 U.S.C. §13032(c).

identified by the NCMEC as competent to investigate and prosecute computer facilitated crimes against children. The new language authorizes Internet Crimes Against Children Task Forces access to the Cyber Tipline Reports as the vast majority of cases in this area are investigated and prosecuted by state and local law enforcement.

Sec. 509. Investigative authority relating to child pornography

Section 509 of the conference report is identical to section 510 of the House amendment and section 16 of the Senate bill. This section is technical in nature. This section updates the current law regarding the use of administrative subpoenas. Section 3486 of title 18, United States Code, covers administrative subpoenas. Recent changes to the law updated the transactional information that may be obtained under 18 U.S.C. § 2703(c)(2) through an administrative subpoena. To update 18 U.S.C. § 3486, which covers subpoenas issued involving the sexual exploitation or abuse of children, this provision inserts the information specified in 18 U.S.C. § 2703(c)(2) for the list of transactional information in 18 U.S.C. § 3486. Transactional information includes billing records and other similar records.

Sec. 510. Civil remedies

Section 510 of the conference report is identical to section 11 of the Senate bill. There is no equivalent provision in the House amendment. This section creates a new civil cause of action against producers, distributors, and possessors of obscenity relating to children and child pornography. Persons aggrieved by such conduct may bring suit seeking appropriate relief, including punitive damages and reasonable attorneys' fees.

Sec. 511. Recordkeeping requirements

Section 511 of the conference report reflects a merger of two related, but not identical, reporting requirements. The conference report merges section 7 of the Senate bill and section 512 of the House amendment. Section 7 of the Senate bill expands the scope of materials subject to the record keeping requirements of 18 U.S.C. § 2257. Specifically, "computer generated image[s], digital image[s], or picture[s]" are added to the existing categories of sexually explicit materials for which records must be created and maintained. In making these changes, 18 U.S.C. § 2257 is designed to include the most common medium for distributing, exchanging or obtaining child pornography over the internet. This section further increases the existing penalties for violations of 18 U.S.C. § 2257, and incorporates the requirement in section 512 of the House amendment that the Department of Justice detail its record of enforcing such violations.

Sec. 512. Sentencing enhancements for interstate travel to engage in sexual act with a juvenile

Section 512 of the conference report is identical to section 12 of the Senate bill. There is no equivalent House provision. This section directs the United States Sentencing Commission to review the existing penalties for persons who travel across state lines to

engage in sexual activity with a minor in violation of 18 U.S.C. § 2423. The current penalty structure for this offense in the United States Sentencing Guidelines appears too lenient, as such offenders are punished less harshly than offenders who simply possess child pornography.

Section 513. Miscellaneous provisions

Section 513 of the conference report is identical to section 14 of the Senate bill. The House amendment has no equivalent provision. This section directs the Department of Justice to appoint twenty-five more attorneys who are dedicated to the enforcement of child pornography laws, and authorizes the appropriations of funds necessary to fulfill this mission. It also directs the Department of Justice to prepare periodic reports to Congress on the enforcement of the Federal child pornography laws and obscenity laws related to children, as well as the technology being employed by the producers and distributors of child pornography. Finally, the section requires the United States Sentencing Commission to carefully review and consider the penalties needed to deter and punish the new offenses created in 18 U.S.C. § 2252A.

SUBTITLE B—TRUTH IN DOMAIN NAMES

Sec. 521. Misleading domain names on the internet

Section 521 of the conference report is similar to section 108 of the House amendment. The Senate bill has no equivalent provision. Section 521 makes it a crime to knowingly use a misleading domain name with the intent to deceive a person into viewing obscenity on the Internet and a crime to knowingly use a misleading domain name with the intent to deceive a minor into viewing “material that is harmful to minors” on the Internet.

The term “material that is harmful to minors” means any communication, consisting of nudity, sex, or excretion, that, taken as a whole and with reference to its context—(1) predominantly appeals to the prurient interest of minors; (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and (3) lacks serious literary, artistic, political, or scientific value for minors. Section 2252B(e) defines “sex.”

A domain name that includes a word or words to indicate the sexual content of the site, such as “sex” or “porn”, is not misleading.

Neither obscenity¹³ nor material deemed “harmful to minors” is protected by the First Amendment as to minors.¹⁴ Congress, therefore, may ban such material outright. While Congress, may not ban material harmful to minors on the Internet in a manner that results in “an unnecessarily broad suppression of speech addressed to adults,”¹⁵ prohibiting misleading domain names on Web sites containing material “harmful to minors” would only limit unintentional access by adults to such Web sites, and is not an unnecessarily broad restriction on adults.

¹³ *Miller v. California*, 413 U.S. 15 (1973).

¹⁴ *Ginsberg v. New York*, 390 U.S. 629, 631 (1968).

¹⁵ *Reno v. American Civil Liberties Union*, 521 U.S. 844, 875 (1997).

Furthermore, under the Central Hudson¹⁶ test, speech that concerns an unlawful activity or misleading is not protected by the First Amendment. The domain names that the amendment would prohibit would be misleading, and therefore would not be protected by the First Amendment if the Web sites that they name propose a commercial transaction.

This provision is constitutional and necessary. There is a growing trend for those attempting to sell pornography to use aggressive and misleading tactics to deceive unsuspecting and unwilling individuals, both adults and minors, into viewing the pornography—often obscene or harmful to minors.

TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Penalties for use of minors in crimes of violence

Section 601 of the conference report is a new section that is related to the purpose of this Act. Section 601 adds a new section 25 of title 18 to the United States Code to provide that any person who is 18 years of age or older who intentionally uses a minor to commit a crime of violence shall be imprisoned up to twice the maximum term of imprisonment and twice the maximum fine authorized for the offense for a first offense. New section 25 provides that for each subsequent conviction, a defendant shall be subject to imprisonment to three times the maximum term of imprisonment and three times the maximum fine authorized for the offense.

Sec. 602. Sense of Congress

Section 602 of the conference report is a new section that is related to the purpose of this Act. Section 602(a) states that it is the sense of the Congress that the Department of Justice should focus its investigative and prosecutorial efforts on major producers, distributors, and sellers of obscene material and child pornography that use misleading methods to market their material to children. Section 602(b) states that it is the sense of the Congress that the online commercial adult entertainment industry should voluntarily refrain from placing obscenity, child pornography, or material that is harmful to minors on the front pages of their websites to protect juveniles from material that may negatively impact their social, moral, and psychological development.

Sec. 603. Communications Decency Act of 1996

Section 603 of the conference report is a new section that is related to the purpose of this Act. Section 603(1)(A) and (B) amends the Communication Decency Act by making it unlawful to use a telephone device to make or solicit transmission of child pornography to adults and minors. Section 603(2) also making it a crime to send or display child pornography by computer to persons under 18.

¹⁶*Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980).

Sec. 604. Internet availability of information concerning registered sex offenders

Section 604 of the conference report is a new section that is related to the purpose of this Act. To protect children, current law requires a state, or any agency authorized by the state, to release information to the public regarding persons required to register as sex offenders. Section 604 amends the Violent Crime Control and Law Enforcement Act of 1994 to authorize states to create an Internet site containing the names of sex offenders within three years.

Sec. 605. Registration of child pornographers in the National Sex Offender Registry

Section 605 of the conference report is a new section that is related to the purpose of this Act. Current law requires a person convicted of certain criminal offenses against a minor or certain sexually violent offenses to register with the sex offender registry. Section 605 amends Violent Crime Control and Law Enforcement Act of 1994 by including in the crimes against children and sexually violent offender registration program persons convicted of crimes relating to the production and distribution of child pornography and appropriates sufficient funds to make such change to the Department of Justice.

Sec. 606. Grants to states for costs of compliance with new sex offender registry requirements

Section 606 of the conference report is a new section that is related to the purpose of this Act. The Violent Crime Control and Law Enforcement Act of 1994 authorized \$25 million for fiscal years 1999 and 2000 to establish a grant program, the Sex Offender Management Assistance program, to the states to offset the costs associated with establishing and maintaining a sex offender registry. Section 606 amends the Violent Crime Control and Law Enforcement Act of 1994 by authorizing sufficient funds to the states for fiscal years 2004 through 2007 to continue to carry out Sex Offender Management Assistance Programs.

Sec. 607. SAFE ID Act

Section 607 of the conference report is a new section that is related to the purpose of this Act. Under current law, it is not illegal to possess, traffic in, or use false or misleading authentication features whose purpose is to create fraudulent IDs. Section 607 would correct this oversight by making it a crime to counterfeit or alter "authentication features," as well as to traffic such features in false identification documents or without the authorization of the appropriate authority. Authentication features are the holograms, symbols, codes, etc., used by the issuing authority to verify that an ID is authentic. In addition, this section requires forfeiture of equipment used in creating or trafficking in illicit authentication features. This section will help the fight against child abduction, terrorism, identity theft, and underage drinking, among other things, by addressing the growing trade in illicit authentication feature for IDs.

Sec. 608. Illicit Drug Anti-Proliferation Act

Section 608 of the conference report is a new section that is related to the purpose of this Act. This section, known as the Illicit Drug Anti-Proliferation Act, helps to protect children by amending the Controlled Substances Act to expand the “crack house” statute.¹⁷ This expansion makes it clear that anyone who knowingly and intentionally uses their property, or allows another person to use their property, for the purpose of distributing or manufacturing or using illegal drugs will be held accountable. This section raises the penalties for people who traffic in a substance often marketed to children at clubs; and authorizing funds for drug prevention activities. It also creates a civil penalty for violating 21 U.S.C. § 856.

In addition, the language directs the Sentencing Commission to consider increasing the sentencing guidelines for offenses involving gamma hydroxybutyric acid (GHB), a Schedule I substance often used to facilitate sexual assault. Under current law, an offender would have to have 13 gallons (equivalent to 100,000 doses) of GHB to qualify for a five year penalty. Because large-scale GHB dealers generally distribute gallon quantities of the drug, they generally are not prosecuted at the federal level because the penalties are too low. In order to prevent the abuse of club drugs and other illicit substances, the bill also authorizes \$5.9 million for the Drug Enforcement Administration to hire a Demand Reduction Coordinator in each state and authorizes such sums as may be necessary for the Drug Enforcement Administration to educate youth, parents and other interested adults about the dangers associated with club drugs.

Sec. 609. Definition of vehicle

Section 609 of the conference report is a new section that is related to the purpose of this Act. This section amends 18 U.S.C. § 1993(c) prohibiting terrorist attacks and other acts of violence against mass transportation systems to add a new section (a)(9) to define “vehicle” as itany carriage or other contrivance used, or capable of being used, as a means of transportation on land, water, or through the air.”

Sec. 610. John Doe/DNA indictments

Section 610 of the conference report is a new section that is related to the purpose of this Act. Section 610 would change current law to encourage Federal prosecutors to bring “John Doe/DNA indictments” in Federal sex crimes. Specifically, the provision amends 18 U.S.C. § 3282 to authorize Federal prosecutors to issue an indictment identifying an unknown defendant by a DNA profile within the five-year statute of limitations. If the indictment is issued within the five-year statute of limitations, the statute is then tolled until the perpetrator is identified through the DNA profile at a later date. The John Doe/DNA indictment would permit prosecution at anytime once there was a DNA “cold hit” through the national DNA database system. John Doe/DNA indictments strike the right balance between encouraging swift and efficient investigations, recognizing the durability and credibility of DNA evi-

¹⁷ 21 U.S.C. § 856.

dence, and preventing an injustice if a “cold hit” occurs years after the crime and law enforcement did not promptly process forensic evidence. Providing incentives for law enforcement to test crime scene DNA from sexual assaults will also help identify sex offenders (who are often recidivists) to permit their speedy apprehension and prosecution.

Sec. 611. Transitional housing assistance grants for child victims of domestic violence, stalking, or sexual assault

Section 611 of the conference report is a new section that is related to the purpose of this Act. This section amends Subtitle B of the Violence Against Women Act of 1994 (42 U.S.C. 13701 note; 108 Stat. 1925) to authorize \$30 million for the Attorney General to award grants to organizations, States, units of local government, and Indian tribes to carry out programs to provide assistance to individuals who are in need of transitional housing or related assistance as a result of fleeing, a situation of domestic violence, and for whom emergency shelter services or other crisis intervention services are unavailable or insufficient.

The grants may be used for programs that provide short-term housing assistance, including rental or utilities payments assistance and assistance with related expenses. Grants will also be available for support services designed to help individuals locate and secure permanent housing, as well as integrate into a community by providing with services, such as transportation, counseling, child care services, case management, employment counseling, and other assistance. Any recipient of a grant must annually prepare and submit a report to the Attorney General describing the number of minors, adults, and dependents assisted, and the types of housing assistance and support services provided.

Under the program, victims would be eligible for assistance for a period of 18 months and would be entitled to seek a waiver for an additional six months of assistance based on an inability to obtain adequate housing.

From the Committee on the Judiciary, for consideration of the Senate bill and the House amendments, and modifications committed to conference:

F. JAMES SENSENBRENNER,
HOWARD COBLE,
LAMAR SMITH,
MARK GREEN,
MELISSA A. HART.

For consideration of the Senate bill and House amendments, and modifications committed to conference:

MARTIN FROST.

From the Committee on Education and the Workforce, for consideration of sec. 8 of the Senate bill and secs. 222, 305, and 508 of the House amendments, and modifications committed to conference:

PETE HOEKSTRA,
PHIL GINGREY,
RUBÉN HINOJOSA.

From the Committee on Transportation and Infrastructure, for consideration of sec. 303 and title IV of the House amendments, and modifications committed to conference:

DON YOUNG,
TOM PETRI,
JIM MATHESON,

Managers on the Part of the House.

ORRIN HATCH,
CHUCK GRASSLEY,
JEFF SESSIONS,
LINDSEY GRAHAM,
JOE BIDEN,

Managers on the Part of the Senate.

