If we do not pass this legislation, it is going to be Senators such as the Senator who raised this objection and others who have impeded the progress in this legislation who are going to have to explain to all of those whose systems break down why it is that happened, because one of the problems we are having confronting the Year 2K problems is an inadequate number of people to perform all of the various information technology jobs required to be conducted for those problems to be fixed. That is just one aspect of it. It is late in the evening so I am not going to go into all of the many others, but I think that any study that has been conducted by serious researchers reveals that there not only exists, but will continue to be, an ever larger number of vacancies in this area.

This legislation that was stopped tonight not only covers increasing the number of high-tech workers, it also is a very important piece of legislation to our academic institutions—in two respects. First, regarding many of the high-tech jobs, many of the H–1B visa users are in fact employed on our campuses teaching American kids how to perform these high-technology jobs so we can meet the demand in this area in the future. If we do not have these scientists, these educators, we are going to continue to fail to meet the challenge.

In addition, our academic institutions were relying on the passage of this legislation to address a very serious problem created by the Hathaway decision with regard to the prevailing wage they must pay people who come in under the H–1B Program. So this does not just affect the private sector, it affects our academic institutions as well.

In addition, the Senator from Iowa and others who question the problem do not need to just listen to people on our side of the aisle. They can listen to the President of the United States who, I believe just 2 weeks ago this evening, was in Silicon Valley in California before a group of executives from the high-tech industries there talking about this issue. The day after his staff and my staff and I reached agreement on the legislation that has been blocked this evening, he took credit for the ability, that we were then apparently going to have, to move forward to it and acknowledged the need for the legislation in taking credit for the settlement and agreement we had reached.

Obviously, whether it is the White House, the Department of Commerce, Virginia Tech University, or any one of a number of other sources, there is an acknowledged existence of a problem here that has to be addressed. I am extremely disappointed at what has transpired this evening.

I would just say, in conclusion, we have not, obviously, reached the end of this session. There is still some time, hopefully, for reconsideration by the Senator from Iowa and any others who may have concerns. I hope they will rethink this. I hope they will realize, in undermining this legislation, in stopping it at this time, they are going to be hurting not just the business sector and the information technology sector, but the academic sector. They are also going to prevent us from instituting a whole new array of job training programs and scholarship programs that were going to be launched by this legislation. So I hope they will take a look at that, reconsider, and if they look at the numbers a little more closely, I think they will reach the same conclusions we have.

Mr. President, I close by saying I hope the Senator from Iowa, and others who might share his position, again will look closely at the statistics I have talked about tonight, examine all the other aspects of this legislation and what it will mean if it does not move forward in all the different contexts I have outlined and the many others I have not had time for, rethink whether or not it is appropriate to put this off to some future date, and think about the consequences, whether it is in the context of the Y2K problems or the current economic conditions we have in the world marketplace where America's high-tech industries' growth is essential to the maintenance of our economic strength, and reconsider their position.

I yield the floor.

PROTECTION OF CHILDREN FROM SEXUAL PREDATORS ACT OF 1998

Mr. COATS. Mr. President, I now ask unanimous consent that the Senate proceed to the consideration of calendar No. 587, H.R. 3494.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3494) to amend Title 18 United States Code with respect to violent sex crimes against children, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Protection of Children From Sexual Predators Act of 1998''.

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

TITLE I—PROTECTION OF CHILDREN FROM PREDATORS

SEC. 101. USE OF INTERSTATE FACILITIES TO TRANSMIT IDENTIFYING INFORMATION ABOUT A MINOR FOR CRIMINAL SEXUAL PURPOSES.

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

"§ 2425. Use of interstate facilities to transmit information about a minor

''Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, knowingly initiates the transmission of the name, address, telephone number, social security number, or electronic mail address of another individual, knowing that such other individual has not attained the age of 16 years, with the intent to entice, encourage, offer, or solicit any person to engage in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title, imprisoned not more than 5 years, or both.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 117 of title 18, United States Code, is amended by adding at the end the following:

''2425. Use of interstate facilities to transmit information about a minor.''.

SEC. 102. COERCION AND ENTICEMENT.

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

(1) in subsection (a)—

(A) by inserting ''or attempts to do so,'' before ''shall be fined''; and

(B) by striking ''five'' and inserting ''10''; and

(2) by striking subsection (b) and inserting the following:

''(b) Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.''.

SEC. 103. INCREASED PENALTIES FOR TRANSPORTATION OF MINORS OR ASSUMED MINORS FOR ILLEGAL SEXUAL ACTIVITY AND RELATED CRIMES.

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

(1) by striking subsection (a) and inserting the following:

''(a) TRANSPORTATION WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY.—A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.''; and

(2) in subsection (b), by striking ''10 years'' and inserting ''15 years''.

SEC. 104. REPEAT OFFENDERS IN TRANSPORTATION OFFENSE.

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

"§ 2426. Repeat offenders

''(a) MAXIMUM TERM OF IMPRISONMENT.—The maximum term of imprisonment for a violation of this chapter after a prior sex offense conviction shall be twice the term of imprisonment otherwise provided by this chapter.

''(b) DEFINITIONS.—In this section—

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

''(A) under this chapter, chapter 109A, or chapter 110; or

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

''(2) STATE.—the term 'State' means a State of the United States, the District of Columbia, any commonwealth, possession, or territory of the United States.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 117 of title 18, United States Code, is amended by adding at the end the following:

''2426. Repeat offenders.''.

SEC. 105. INCLUSION OF OFFENSES RELATING TO CHILD PORNOGRAPHY IN DEFINITION OF SEXUAL ACTIVITY FOR WHICH ANY PERSON CAN BE CHARGED WITH A CRIMINAL OFFENSE.

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

"§ 2427. Inclusion of offenses relating to child pornography in definition of sexual activity for which any person can be charged with a criminal offense

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

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 117 of title 18, United States Code, is amended by adding at the end the following:

''2427. Inclusion of offenses relating to child pornography in definition of sexual activity for which any person can be charged with a criminal offense.''.

SEC. 106. TRANSPORTATION GENERALLY.

Section 2421 of title 18, United States Code, is amended—

(1) by inserting ''or attempts to do so,'' before ''shall be fined''; and

(2) by striking ''five years'' and inserting ''10 years''.

TITLE II—PROTECTION OF CHILDREN FROM CHILD PORNOGRAPHY

SEC. 201. ADDITIONAL JURISDICTIONAL BASE FOR PROSECUTION OF PRODUCTION OF CHILD PORNOGRAPHY.

(a) USE OF A CHILD.—Section 2251(a) of title 18, United States Code, is amended by inserting ''if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer,'' before ''or if''.

(b) ALLOWING USE OF A CHILD.—Section 2251(b) of title 18, United States Code, is amended by inserting '', if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer,'' before ''or if''.

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

SEC. 202. INCREASED PENALTIES FOR CHILD PORNOGRAPHY OFFENSES.

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

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

(2) in paragraph (2), by striking ''the possession of child pornography'' and inserting ''aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography''.

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

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

(2) in paragraph (2), by striking ''the possession of child pornography'' and inserting ''aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography''.

TITLE III—SEXUAL ABUSE PREVENTION

SEC. 301. ELIMINATION OF REDUNDANCY AND AMBIGUITIES.

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

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

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

(1) in paragraph (5), by striking the period at the end and inserting ''; and''; and

(2) by adding at the end the following:

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

SEC. 302. INCREASED PENALTIES FOR ABUSIVE SEXUAL CONTACT.

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

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

SEC. 303. REPEAT OFFENDERS IN SEXUAL ABUSE CASES.

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

"§ 2247. Repeat offenders

''(a) MAXIMUM TERM OF IMPRISONMENT.—The maximum term of imprisonment for a violation of this chapter after a prior sex offense conviction shall be twice the term otherwise provided by this chapter.

''(b) PRIOR SEX OFFENSE CONVICTION DEFINED.—In this section, the term 'prior sex offense conviction' has the meaning given that term in section 2426(b).''.

TITLE IV—PROHIBITION ON TRANSFER OF OBSCENE MATERIAL TO MINORS

SEC. 401. TRANSFER OF OBSCENE MATERIAL TO MINORS.

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

"§ 1470. Transfer of obscene material to minors

''Whoever, using the mail or any facility or means of interstate or foreign commerce, knowingly transfers obscene matter to another individual who has not attained the age of 16 years, knowing that such other individual has not attained the age of 16 years, or attempts to do so, shall be fined under this title, imprisoned not more than 10 years, or both.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 71 of title 18, United States Code, is amended by adding at the end the following:

''1470. Transfer of obscene material to minors.''.

TITLE V—INCREASED PENALTIES FOR OFFENSES AGAINST CHILDREN AND FOR REPEAT OFFENDERS

SEC. 501. DEATH OR LIFE IN PRISON FOR CERTAIN OFFENSES WHOSE VICTIMS ARE CHILDREN.

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

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

''(1) IN GENERAL.—Subject to paragraph (2) and notwithstanding any other provision of law, a person who is convicted of a Federal offense that is a serious violent felony (as defined in subsection (c)) or a violation of section 2422, 2423, or 2251 shall, unless the sentence of death is imposed, be sentenced to imprisonment for life, if—

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

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

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

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

SEC. 502. SENTENCING ENHANCEMENT FOR CHAPTER 117 OFFENSES.

(a) IN GENERAL.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal Sentencing Guidelines to provide a sentencing enhancement for offenses under chapter 117 of title 18, United States Code.

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

SEC. 503. INCREASED PENALTIES FOR USE OF A COMPUTER IN THE SEXUAL ABUSE OR EXPLOITATION OF A CHILD.

Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall—

(1) review the Federal Sentencing Guidelines for—

(A) aggravated sexual abuse under section 2241 of title 18, United States Code;

(B) sexual abuse under section 2242 of title 18, United States Code;

(C) sexual abuse of a minor or ward under section 2243 of title 18, United States Code; and

(D) coercion and enticement of a minor under section 2422(b) of title 18, United States Code, contacting a minor under section 2422(c) of title 18, United States Code, and transportation of minors and travel under section 2423 of title 18, United States Code; and

(2) upon completion of the review under paragraph (1), promulgate amendments to the Federal Sentencing Guidelines to provide appropriate enhancement if the defendant used a computer with the intent to persuade, induce, entice, coerce, or facilitate the transport of a child of an age specified in the applicable provision of law referred to in paragraph (1) to engage in any prohibited sexual activity.

SEC. 504. INCREASED PENALTIES FOR KNOWING MISREPRESENTATION IN THE SEXUAL ABUSE OR EXPLOITATION OF A CHILD.

Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall—

(1) review the Federal Sentencing Guidelines on aggravated sexual abuse under section 2241 of title 18, United States Code, sexual abuse under section 2242 of title 18, United States Code, sexual abuse of a minor or ward under section 2243 of title 18, United States Code, coercion and enticement of a minor under section 2422(b) of title 18, United States Code, contacting a minor under section 2422(c) of title 18, United States Code, and transportation of minors and travel under section 2423 of title 18, United States Code; and

(2) upon completion of the review under paragraph (1), promulgate amendments to the Federal Sentencing Guidelines to provide appropriate enhancement if the defendant knowingly misrepresented the actual identity of the defendant with the intent to persuade, induce, entice, coerce, or facilitate the transport of a child of an age specified in the applicable provision of law referred to in paragraph (1) to engage in a prohibited sexual activity.

SEC. 505. INCREASED PENALTIES FOR PATTERN OF ACTIVITY OF SEXUAL EXPLOITATION OF CHILDREN.

Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall—

(1) review the Federal Sentencing Guidelines on aggravated sexual abuse under section 2241 of title 18, United States Code, sexual abuse under section 2242 of title 18, United States Code, sexual abuse of a minor or ward under section 2243 of title 18, United States Code, coercion and enticement of a minor under section 2422(b) of title 18, United States Code, contacting a minor under section 2422(c) of title 18, United States Code, and transportation of minors and travel under section 2423 of title 18, United States Code; and

(2) upon completion of the review under paragraph (1), promulgate amendments to the Federal Sentencing Guidelines to increase penalties applicable to the offenses referred to in paragraph (1) in any case in which the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor.

SEC. 506. CLARIFICATION OF DEFINITION OF DISTRIBUTION OF PORNOGRAPHY.

Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall—

(1) review the Federal Sentencing Guidelines relating to the distribution of pornography covered under chapter 110 of title 18, United States Code, relating to the sexual exploitation and other abuse of children; and

(2) upon completion of the review under paragraph (1), promulgate such amendments to the Federal Sentencing Guidelines as are necessary to clarify that the term ''distribution of pornography'' applies to the distribution of pornography—

(A) for monetary remuneration; or

(B) for a nonpecuniary interest.

SEC. 507. DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.

In carrying out this title, the United States Sentencing Commission shall—

(1) with respect to any action relating to the Federal Sentencing Guidelines subject to this title, ensure reasonable consistency with other guidelines of the Federal Sentencing Guidelines; and

(2) with respect to an offense subject to the Federal Sentencing Guidelines, avoid duplicative punishment under the Federal Sentencing Guidelines for substantially the same offense.

TITLE VI—CRIMINAL, PROCEDURAL, AND ADMINISTRATIVE REFORMS

SEC. 601. PRETRIAL DETENTION OF SEXUAL PREDATORS.

Section 3156(a)(4) of title 18, United States Code, is amended by striking subparagraph (C) and inserting the following:

''(C) any felony under chapter 109A, 110, or 117; and''.

SEC. 602. CRIMINAL FORFEITURE FOR OFFENSES AGAINST MINORS.

Section 2253 of title 18, United States Code, is amended by striking ''or 2252 of this chapter'' and inserting ''2252, 2252A, or 2260 of this chapter, or who is convicted of an offense under section 2421, 2422, or 2423 of chapter 117,''.

SEC. 603. CIVIL FORFEITURE FOR OFFENSES AGAINST MINORS.

Section 2254(a) of title 18, United States Code, is amended—

(1) in paragraph (2), by striking ''or 2252 of this chapter'' and inserting ''2252, 2252A, or 2260 of this chapter, or used or intended to be used to commit or to promote the commission of an offense under section 2421, 2422, or 2423 of chapter 117,''; and

(2) in paragraph (3), by striking ''or 2252 of this chapter'' and inserting ''2252, 2252A, or 2260 of this chapter, or obtained from a violation of section 2421, 2422, or 2423 of chapter 117,''.

SEC. 604. REPORTING OF CHILD PORNOGRAPHY BY ELECTRONIC COMMUNICATION SERVICE PROVIDERS.

(a) IN GENERAL.—The Victims of Child Abuse Act of 1990 (42 U.S.C. 13001 et seq.) is amended by inserting after section 226 the following:

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

''(a) DEFINITIONS.—In this section—

''(1) the term 'electronic communication service' has the meaning given the term in section 2510 of title 18, United States Code; and

''(2) the term 'remote computing service' has the meaning given the term in section 2711 of title 18, United States Code.

''(b) REQUIREMENTS.—

''(1) DUTY TO REPORT.—Whoever, while engaged in providing an electronic communication service or a remote computing service to the public, through a facility or means of interstate or foreign commerce, obtains knowledge of facts or circumstances that provide probable cause to believe that a violation of section 2251, 2251A, 2252, 2252A, or 2260 of title 18, United States Code, involving child pornography (as defined in section 2256 of that title), has occurred shall, as soon as reasonably possible, make a report of such facts or circumstances to a law enforcement agency or agencies designated by the Attorney General.

''(2) DESIGNATION OF AGENCIES.—Not later than 180 days after the date of enactment of this section, the Attorney General shall designate the law enforcement agency or agencies to which a report shall be made under paragraph (1).

''(3) FAILURE TO REPORT.—A provider of electronic communication services or remote computing services described in paragraph (1) who knowingly and willfully fails to make a report under that paragraph shall be fined—

''(A) in the case of an initial failure to make a report, not more than $50,000; and

''(B) in the case of any second or subsequent failure to make a report, not more than $100,000.

''(c) CIVIL LIABILITY.—No 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.

''(d) LIMITATION OF INFORMATION OR MATERIAL REQUIRED IN REPORT.—A report under subsection (b)(1) may include additional information or material developed by an electronic communication service or remote computing service, except that the Federal Government may not require the production of such information or material in that report.

''(e) MONITORING NOT REQUIRED.—Nothing in this section may be construed to require a provider of electronic communication services or remote computing services to engage in the monitoring of any user, subscriber, or customer of that provider, or the content of any communication of any such person.

''(f) CONDITIONS OF DISCLOSURE OF INFORMATION CONTAINED WITHIN REPORT.—

''(1) IN GENERAL.—No law enforcement agency that receives a report under subsection (b)(1) shall disclose any information contained in that report, except that disclosure of such information may be made—

''(A) to an attorney for the government for use in the performance of the official duties of the attorney;

''(B) to such officers and employees of the law enforcement agency, as may be necessary in the performance of their investigative and record-keeping functions;

''(C) to such other government personnel (including personnel of a State or subdivision of a State) as are determined to be necessary by an attorney for the government to assist the attorney in the performance of the official duties of the attorney in enforcing Federal criminal law; or

''(D) as permitted by a court at the request of an attorney for the government, upon a showing that such information may disclose 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.

''(2) DEFINITIONS.—In this subsection, the terms 'attorney for the government' and 'State' have the meanings given those terms in Rule 54 of the Federal Rules of Criminal Procedure.''.

(b) EXCEPTION TO PROHIBITION ON DISCLOSURE.—Section 2702(b)(6) of title 18, United States Code, is amended to read as follows:

''(6) to a law enforcement agency—

''(A) if the contents—

''(i) were inadvertently obtained by the service provider; and

''(ii) appear to pertain to the commission of a crime; or

''(B) if required by section 227 of the Crime Control Act of 1990.''.

SEC. 605. CIVIL REMEDY FOR PERSONAL INJURIES RESULTING FROM CERTAIN SEX CRIMES AGAINST CHILDREN.

Section 2255(a) of title 18, United States Code, is amended by striking ''2251 or 2252'' and inserting ''2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423''.

SEC. 606. ADMINISTRATIVE SUBPOENAS.

(a) IN GENERAL.—Chapter 223 of title 18, United States Code, is amended—

(1) in section 3486, by striking the section designation and heading and inserting the following:

''§3486. Administrative subpoenas in Federal health care investigations''; and

(2) by adding at the end the following:

''§3486A. Administrative subpoenas in cases involving child abuse and child sexual exploitation

''(a) AUTHORIZATION.—

''(1) IN GENERAL.—In any investigation relating to any act or activity involving a violation of section 1201, 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title in which the victim is an individual who has not attained the age of 18 years, the Attorney General, or the designee of the Attorney General, may issue in writing and cause to be served a subpoena—

''(A) requiring a provider of electronic communication service or remote computing service to disclose the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of such service and the types of services the subscriber or customer utilized, which may be relevant to an authorized law enforcement inquiry; or

''(B) requiring a custodian of records to give testimony concerning the production and authentication of such records or information.

''(2) ATTENDANCE OF WITNESSES.—Witnesses summoned under this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

''(b) PROCEDURES APPLICABLE.—The same procedures for service and enforcement as are provided with respect to investigative demands in section 3486 apply with respect to a subpoena issued under this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 223 of title 18, United States Code, is amended by striking the item relating to section 3486 and inserting the following:

''3486. Administrative subpoenas in Federal health care investigations.

''3486A. Administrative subpoenas in cases involving child abuse and child sexual exploitation.''.

SEC. 607. GRANTS TO STATES TO OFFSET COSTS ASSOCIATED WITH SEXUALLY VIOLENT OFFENDER REGISTRATION REQUIREMENTS.

(a) IN GENERAL.—Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071) is amended—

(1) by redesignating the second subsection designated as subsection (g) as subsection (h); and

(2) by adding at the end the following:

''(i) GRANTS TO STATES FOR COSTS OF COMPLIANCE.—

''(1) PROGRAM AUTHORIZED.—

''(A) IN GENERAL.—The Director of the Bureau of Justice Assistance (in this subsection referred to as the 'Director') shall carry out a program, which shall be known as the 'Sex Offender Management Assistance Program' (in this subsection referred to as the 'SOMA program'), under which the Director shall award a grant to each eligible State to offset costs directly associated with complying with this section.

''(B) USES OF FUNDS.—Each grant awarded under this subsection shall be—

''(i) distributed directly to the State for distribution to State and local entities; and

''(ii) used for training, salaries, equipment, materials, and other costs directly associated with complying with this section.

''(2) ELIGIBILITY.—

''(A) APPLICATION.—To be eligible to receive a grant under this subsection, the chief executive of a State shall, on an annual basis, submit to the Director an application (in such form and containing such information as the Director may reasonably require) assuring that—

''(i) the State complies with (or made a good faith effort to comply with) this section; and

''(ii) where applicable, the State has penalties comparable to or greater than Federal penalties for crimes listed in this section, except that the Director may waive the requirement of this clause if a State demonstrates an overriding need for assistance under this subsection.

''(B) REGULATIONS.—

''(i) IN GENERAL.—Not later than 90 days after the date of enactment of this subsection, the Director shall promulgate regulations to implement this subsection (including the information that must be included and the requirements that the States must meet) in submitting the applications required under this subsection. In allocating funds under this subsection, the Director may consider the annual number of sex offenders registered in each eligible State's monitoring and notification programs.

''(ii) CERTAIN TRAINING PROGRAMS.—Prior to implementing this subsection, the Director shall study the feasibility of incorporating into the SOMA program the activities of any technical assistance or training program established as a result of section 40152 of this Act. In a case in which incorporating such activities into the SOMA program will eliminate duplication of efforts or administrative costs, the Director shall take administrative actions, as allowable, and make recommendations to Congress to incorporate such activities into the SOMA program prior to implementing the SOMA program.

''(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection, $25,000,000 for each of fiscal years 1999 and 2000.''.

(b) STUDY.—Not later than March 1, 2000, the Director shall conduct a study to assess the efficacy of the Sex Offender Management Assistance Program under section 170101(i) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(i)), as added by this section, and submit recommendations to Congress.

TITLE VII—MURDER AND KIDNAPPING INVESTIGATIONS

SEC. 701. AUTHORITY TO INVESTIGATE SERIAL KILLINGS.

(a) IN GENERAL.—Chapter 33 of title 28, United States Code, is amended by adding at the end the following:

''§540B. Investigation of serial killings

''(a) IN GENERAL.—The Attorney General and the Director of the Federal Bureau of Investigation may investigate serial killings in violation of the laws of a State or political subdivision, if such investigation is requested by the head of a law enforcement agency with investigative or prosecutorial jurisdiction over the offense.

''(b) DEFINITIONS.—In this section:

''(1) KILLING.—The term 'killing' means conduct that would constitute an offense under section 1111 of title 18, United States Code, if Federal jurisdiction existed.

''(2) SERIAL KILLINGS.—The term 'serial killings' means a series of 3 or more killings, not less than 1 of which was committed within the United States, having common characteristics such as to suggest the reasonable possibility that the crimes were committed by the same actor or actors.

''(3) STATE.—The term 'State' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 33 of title 28, United States Code, is amended by adding at end the following:

''540B. Investigation of serial killings.''.

SEC. 702. KIDNAPPING.

(a) CLARIFICATION OF ELEMENT OF OFFENSE.—Section 1201(a)(1) of title 18, United States Code, is amended by inserting '', regardless of whether the person was alive when transported across a State boundary if the person was alive when the transportation began'' before the semicolon.

(b) TECHNICAL AMENDMENT.—Section 1201(a)(5) of title 18, United States Code, is amended by striking ''designated'' and inserting ''described''.

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

SEC. 703. MORGAN P. HARDIMAN CHILD ABDUCTION AND SERIAL MURDER INVESTIGATIVE RESOURCES CENTER.

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

(b) PURPOSE.—The CASMIRC shall be managed by National Center for the Analysis of Violent Crime of the Critical Incident Response Group of the Federal Bureau of Investigation (in this section referred to as the ''NCAVC''), and by multidisciplinary resource teams in Federal Bureau of Investigation field offices, in order to provide investigative support through the coordination and provision of Federal law enforcement resources, training, and application of other multidisciplinary expertise, to assist Federal, State, and local authorities in matters

involving child abductions, mysterious disappearance of children, child homicide, and serial murder across the country. The CASMIRC shall be co-located with the NCAVC.

(c) DUTIES OF THE CASMIRC.—The CASMIRC shall perform such duties as the Attorney General determines appropriate to carry out the purposes of the CASMIRC, including—

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

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

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

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

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

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

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

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

(d) APPOINTMENT OF PERSONNEL TO THE CASMIRC.—

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

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

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

(e) REPORT TO CONGRESS.—One year after the establishment of the CASMIRC, the Attorney General shall submit to Congress a report, which shall include—

(1) a description of the goals and activities of the CASMIRC; and

(2) information regarding—

(A) the number and qualifications of the members appointed to the CASMIRC;

(B) the provision of equipment, administrative support, and office space for the CASMIRC; and

(C) the projected resource needs for the CASMIRC.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 1999, 2000, and 2001.

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

TITLE VIII—RESTRICTED ACCESS TO INTERACTIVE COMPUTER SERVICES

SEC. 801. PRISONER ACCESS.

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

SEC. 802. RECOMMENDED PROHIBITION.

(a) FINDINGS.—Congress finds that—

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

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

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

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

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

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

(b) SENSE OF CONGRESS.—It is the sense of Congress that State Governors, State legislators, and State prison administrators should prohibit unsupervised access to the Internet by State prisoners.

SEC. 803. SURVEY.

(a) SURVEY.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall conduct a survey of the States to determine to what extent each State allows prisoners access to any interactive computer service and whether such access is supervised by a prison official.

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

(c) STATE DEFINED.—In this section, the term ''State'' means each of the 50 States and the District of Columbia.

TITLE IX—STUDIES

SEC. 901. STUDY ON LIMITING THE AVAILABILITY OF PORNOGRAPHY ON THE INTERNET.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Attorney General shall request that the National Academy of Sciences, acting through its National Research Council, enter into a contract to conduct a study of computer-based technologies and other approaches to the problem of the availability of pornographic material to children on the Internet, in order to develop possible amendments to Federal criminal law and other law enforcement techniques to respond to the problem.

(b) CONTENTS OF STUDY.—The study under this section shall address each of the following:

(1) The capabilities of present-day computer-based control technologies for controlling electronic transmission of pornographic images.

(2) Research needed to develop computer-based control technologies to the point of practical utility for controlling the electronic transmission of pornographic images.

(3) Any inherent limitations of computer-based control technologies for controlling electronic transmission of pornographic images.

(4) Operational policies or management techniques needed to ensure the effectiveness of these control technologies for controlling electronic transmission of pornographic images.

(c) FINAL REPORT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a final report of the study under this section, which report shall—

(1) set forth the findings, conclusions, and recommendations of the Council; and

(2) be submitted by the Committees on the Judiciary of the House of Representatives and the Senate to relevant Government agencies and committees of Congress.

SEC. 902. STUDY OF HOTLINES.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall conduct a study in accordance with subsection (b) and submit to Congress a report on the results of that study.

(b) CONTENTS OF STUDY.—The study under this section shall include an examination of—

(1) existing State programs for informing the public about the presence of sexual predators released from prison, as required in section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071), including the use of CD-ROMs, Internet databases, and Sexual Offender Identification Hotlines, such as those used in the State of California; and

(2) the feasibility of establishing a national hotline for parents to access a Federal Bureau of Investigation database that tracks the location of convicted sexual predators established under section 170102 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14072) and, in determining that feasibility, the Attorney General shall examine issues including the cost, necessary changes to Federal and State laws necessitated by the creation of such a hotline, consistency with Federal and State case law pertaining to community notification, and the need for, and accuracy and reliability of, the information available through such a hotline.

AMENDMENT NO. 3811

(Purpose: To make technical and conforming amendments)

Mr. COATS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Indiana [Mr. COATS], for Mr. HATCH, Mr. LEAHY, and Mr. DEWINE, proposes an amendment numbered 3811.

Mr. COATS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 116, lines 22 and 23, strike ''territory'' and insert ''commonwealth, territory,''.

On page 118, strike lines 1 through 3, and insert the following:

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

On page 132, lines 9 and 10, strike ''that provide probable cause to believe that'' and insert ''from which''.

On page 132, line 13, strike ''has occurred'' and insert ''is apparent,''.

Mr. COATS. Mr. President, I ask unanimous consent that the amendment be agreed to.

The amendment (No. 3811) was agreed to.

AMENDMENT NO. 3812

(Purpose: To amend chapter 110 of title 18, United States Code, to provide for ''zero tolerance'' for possession of child pornography)

Mr. COATS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Indiana [Mr. COATS], for Mr. HATCH, proposes an amendment numbered 3812.

Mr. COATS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 121, between lines 6 and 7, insert the following:

SEC. 203. ''ZERO TOLERANCE'' FOR POSSESSION OF CHILD PORNOGRAPHY.

(a) MATERIAL INVOLVING THE SEXUAL EXPLOITATION OF MINORS.—Section 2252 of title 18, United States Code, is amended—

(1) in subsection (a)(4), by striking ''3 or more'' each place that term appears and inserting ''1 or more''; and

(2) by adding at the end the following:

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

''(1) possessed less than 3 matters containing any visual depiction proscribed by that paragraph; and

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

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

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

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

(1) in subsection (a)(5), by striking ''3 or more images'' each place that term appears and inserting ''an image''; and

(2) by adding at the end the following:

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

''(1) possessed less than 3 images of child pornography; and

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

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

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

Mr. COATS. Mr. President, I ask unanimous consent that the amendment be agreed to, the committee substitute be agreed to, the bill considered read the third time and passed, as amended, the amendment to the title be agreed to, and the title, as amended, be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 3812) was agreed to.

The committee amendment, as amended, was agreed to.

The bill (H.R. 3494), as amended, was considered read the third time, and passed.

The title amendment was agreed to.

The title amendment, as amended, was agreed to.

The title was amended so as to read: ''To amend title 18, United States Code, to protect children from sexual abuse and exploitation, and for other purposes.''

Mr. HATCH. Mr. President, I am pleased to note the passage of H.R. 3494, the Hatch-Leahy-DeWine ''Protection of Children from Sexual Predators Act of 1998.'' I want to thank Senators LEAHY and DEWINE for their cooperation in drafting and advocating the passage of this important piece of legislation. I also want to commend Congressman MCCOLLUM for his determined efforts in marshaling H.R. 3494 through the House.

Although it was necessary to make some changes to the House version in an effort to achieve bipartisan support in the Senate, the final product is a strong bill which goes a long way toward improving the ability of law enforcement and the courts to respond to high-tech sexual predators of children. Pedophiles who roam the Internet, purveyors of child pornography, and serial child molesters are specifically targeted.

The Internet is a wonderful creation. By allowing for instant communication around the globe, it has made the world a smaller place, a place in which people can express their thoughts and ideas without limitation. It has released the creative energies of a new generation of entrepreneurs and it is an unparalleled source of information.

While we should encourage people to take full advantage of the opportunities the Internet has to offer, we must also be vigilant in seeking to ensure that the Internet is not perverted into a hunting ground for pedophiles and other sexual predators, and a drive-through library and post office for purveyors of child pornography. Our children must be protected from those who would choose to sexually abuse and exploit them. And those who take the path of predation should know that the consequences of their actions will be severe and unforgiving.

How does this bill provide additional protection for our children? By prohibiting the libidinous dissemination on the Internet of information related to minors and the sending of obscene material to minors, we make it more difficult for sexual predators to gather information on, and lower the sexual inhibitions of, potential targets. By prohibiting to possession of even one item or image containing child pornography, we are stating in no uncertain terms that we have ''zero tolerance'' for the sexual exploitation of children. And by requiring electronic communication service providers to report the commission of child pornography offenses to authorities, we mandate accountability and responsibility on the Internet.

Additionally, law enforcement is given effective tools to pursue sexual predators. The Attorney General is provided with authority to issue administrative subpoenas in child pornography cases. Proceeds derived from these offenses, and the facilities and instrumentalities used to perpetuate these offenses, will be subject to forfeiture. And prosecutors will not have the power to seek pretrial detention of sexual predators prior to trial.

Federal law enforcement will be given increased statutory authority to assist the States in kidnapping and serial murder investigations, which often involve children. In that vein, H.R. 3494 calls for the creation of the Morgan P. Hardiman Child Abduction and Serial Murder Investigative Resources Center.

That center will gather information, expertise and resources that our nation's law enforcement agencies can draw upon to help combat these heinous crimes.

Sentences for child abuse and exploitation offenses will be made tougher. In addition to increasing the maximum penalties available for many crimes against children and mandating tough sentences for repeat offenders, the bill will also recommend that the Sentencing Commission reevaluate the guidelines applicable to these offenses, and increase them where appropriate to address the egregiousness of these crimes. And H.R. 3494 calls for life imprisonment in appropriate cases where certain crimes result in the death of children.

Protection of our children is not a partisan issue. We have drawn upon the collective wisdom of the House as well as from Senators on both sides of the aisle to draft a bill which includes strong, effective legislation protecting children. Once again, I urge the House to act quickly to pass this bill so that we can get it to the President for his signature this session. Protection for our children delayed is protection denied.

Mr. LEAHY. Mr. President, I am glad that we have been able to achieve passage of a bill that will help protect children from sexual predators.

As the leaders of the Senate Judiciary Committee, it is the responsibility of Chairman HATCH and myself to schedule legislation for consideration by the Committee and to draft changes, if warranted. Many bills never are scheduled for committee votes, and as the legislative session draws to a close, it becomes increasingly important that any bills brought to the Senate Floor adequately address concerns raised, to improve their chances for enactment. At this stage of the legislative process, even one senator can prevent passage of an ill-considered or controversial bill. Passage today of the Hatch-Leahy-DeWine substitute to H.R. 3494 is due to the efforts of those members who have worked to resolve the legitimate concerns raised by the original bill we received from the House.

In the case of H.R. 3494, the Chairman and I, joined by Senator DEWINE. worked hard to bring forward a bill that was both strong and sensible and that would have a chance to win enactment in the short time remaining in the legislative session.

Unlike some who may just want to score political points, we actually want to enact this bill to protect children, something that I worked hard to do as a prosecutor, when I convicted child molesters in the state of Vermont. We wanted to bring forward a bill that could pass.

The problem area is the original House bill as it reached the Committee centered on its unintended consequences for law enforcement, regulation of the Internet, and important privacy rights that have nothing to do with child pornography.

As I have said before, the whole world watches when the United States regulates the Internet, and we have a special obligation to do it right.

The goal of H.R. 3494, and of the Hatch-Leahy-DeWine substitute, is to provide stronger protections for children from those who would prey upon them. Concerns over protecting our children have only intensified in recent years with the growing popularity of the Internet and the World Wide Web. Cyberspace gives users access to a wealth of information; it connects people from around the world. But is also creates new opportunities for sexual predators and child pornographers to ply their trade.

The challenge is to protect children from exploitation in cyberspace while ensuring that the vast democratic forum of the Internet remains an engine for the free exchange of ideas and information.

The Hatch-Leahy-DeWine version of the bill meets this challenge. While neither version is a cure-all for the scourge of child pornography, the substitute is a useful step toward limiting the ability of cyber-pornographers and predators from harming children.

The bill has come a long way since it was passed by the House last June. Significant objections were raised by civil liberties organizations and others to provisions in the original H.R. 3494, and we worked hard on a bipartisan basis to ensure that this bill would pass in the short time remaining in this Congress.

I thank the Chairman and Senator DEWINE, and other members of the Committee, for working together to address the legitimate concerns about certain provisions in the House-passed bill, and to make this substitute more focused and measured. Briefly, I would like to highlight and explain some of the changes we made, and why we made them.

As passed by the House, H.R. 3494 would make it a crime, punishable by up to 5 years' imprisonment, to do nothing more than ''contact'' a minor, or even just attempt to ''contact'' a minor, for the purpose of engaging in sexual activity. This provision, which would be extremely difficult to enforce and would invite court challenges, does not appear in the Hatch-Leahy-DeWine substitute. In criminal law terms, the act of making contact is not very far along the spectrum of an overt criminal act. Targeting ''attempts'' to make contact would be even more like prosecuting a thought crime. It is difficult to see how such a provision would be enforced without inviting significant litigation.

Another new crime created by the House bill prohibited the transmittal of identifying information about any person under 18 for the purpose of encouraging unlawful sexual activity. In its original incarnation, this provision would have had the absurd result of prohibiting a person under the age of consent from e-mailing her own address or telephone number to her boyfriend. The Hatch-Leahy-DeWine substitute fixes this problem by making it clear that a violation must involve the transmission of someone else's identifying information. In addition, to eliminate any notice problem arising from the variations in state statutory rape laws, the Senate bill conforms the bill to the federal age of consent—16—in provisions regarding the age of the identified minor. The Senate bill also clarifies that the defendant must know that the person about whom he was transmitting identifying information was, in fact, under 16. This change was particularly important because, in the anonymous world of cyberspace, a person may have no way of knowing the age of the faceless person with whom he is communicating.

Another provision of the House bill, which makes it a crime to transfer obscene material to a minor, raised similar concerns. Again, the Hatch-Leahy-DeWine bill lowers the age of minority from 18 to 16—the federal age of majority—and provides that the defendant must know he is dealing with someone so young. This provision of the Senate bill, like the House bill, applies only to ''obscene'' material—that is, material that enjoys no First Amendment protection whatever—material that is patently offensive to the average adult. The bill does not purport to proscribe the transferral of constitutionally protected material.

The original House bill would also have criminalized certain conduct directed at a person who had been ''represented '' to be a minor, even if that person was, in fact, an adult. The evident purpose was to make clear that the targets of sting operations are not relieved of criminal liability merely because their intended victim turned out to be an undercover agent and not a child. The new ''sting'' provisions addressed a problem that simply does not currently exist: No court has ever endorsed an impossibility defense along the lines anticipated by the House bill. The creation of special ''sting'' provisions in this one area could unintentionally harm law enforcement interests by lending credence to impossibility defenses raised in other sting and undercover situations. At the same time, these provisions would have criminalized conduct that was otherwise lawful: It is not a crime for adults to communicate with each other about sex, even if one of the adults pretends to be a child. Given these significant concerns, the ''sting'' provisions have been stricken from the House Leahy-DeWine substitute.

Another concern with the House bill was its modification of the child pornography possession laws. Current law requires possession of three or more pornographic images in order for there to be criminal liability. Congress wrote this requirement into the law as a way of protecting against government overreaching. By eliminating this numeric

requirement, the House bill put at risk the unsuspecting Internet user who, by inadvertence or mistake, downleaded a single pornographic image of a child. While we support the concept of zero tolerance for child pornography, the inevitable result of the House language in overriding the earlier congressional definition would be to chill the free exchange of information over the Web by making users fearful that, if they download illegal material by mistake, they could go to jail.

More importantly, this provision could also inadvertently harm law enforcement interests by chilling those who inadvertently or mistakenly come upon child pornography from bringing the material to the attention of law enforcement officers. Technically, under the House-passed bill, these law-abiding citizens would be subject to criminal liabiilty.

Efforts to avoid these unintended consequences, while promoting zero tolerance of child pornography, could not be resolved in the time constraints facing the Committee. However, our bipartisan efforts to draft workable language have borne fruit. The Hatch-Leahy-DeWine-Sessions amendment accommodates the objective of ''zero balance'' for child pornography, but permits a narrow affirmative defense for certain defendants who, in good faith, destroyed the prohibited material or reported it to law enforcement authorities. With this amendment, we have achieved zero tolerance without unintended consequences for innocent Internet users and for law enforcement.

The House bill would have given the Attorney General sweeping administrative authority to subpoena records and witnesses investigations involving crimes against children. This proposed authority to issue administrative subpoenas would have given federal agents the power to compel disclosures without any oversight by a judge, prosecutor, or grand jury, and without any of the grand jury secrecy requirements. We appreciate that such secretary requirements may pose obstacles to full and efficient cooperation of federal/state task forces in their joint efforts to reduce the steadily increasing use of the Internet to perpetrate crimes against children, including crimes involving the distribution of child pornography. In addition, we understand that some U.S. Attorneys' Offices are reluctant to open grand jury investigations when the only goal is to identify individuals who have not yet, and may never, commit a federal (as opposed to state or local) offense.

The Hatch-Leahy-DeWine substitute accommodates these competing interests by granting the Department a narrowly drawn authority to subpoena the information that it most needs: Routine subscriber account information from Internet Service Providers (ISPS), which may provide appropriate notice to subscribers.

The new reporting requirement established by H.R. 3494 would also create new problems. Under current law, ISPs are generally free to report suspicious communications to law enforcement authorities. Under H.R. 3494, ISPs would be required to report such communications when they involve child pornography; failure to do so would be punishable by a substantial fine.

In addressing this issue, the Chairman, Senator DEWINE and I are committed to eradicating the market of child pornography, believing that child pornography is inherently harmful to children. ISPs that come across such material should report it, and, in most cases, they already do. We must tread cautiously, however, before we compel private citizens to act as good Samaritans or to assume duties and responsibilities that are better left to law enforcement following statutory defined procedures to safeguard privacy and ensure due process.

The ISPs have cooperated in refining this provision of the House bill to make it more workable. Particular consideration was given to the appropriate standard for triggering a duty to report. We wanted to make the bar sufficiently high to discourage ISPs from erring on the side of over-reporting every questionable image. Over-reporting would overwhelm law enforcement agencies with worthless investigative leads and make it more difficult for them to isolate the leads worth pursuing. Over-reporting would also jeopardize the First Amendment rights of Internet users, while needlessly magnifying the administrative burden of the ISPs.

Under H.R. 3494, ISPs have a duty to make a report to law enforcement authorities only when they obtain knowledge of material from which a violation of the federal child pornography laws ''is apparent.'' While the committee-reported bill required ISPs to make a report only when they had ''probable cause'' to believe that the child pornography laws were being violated, the substitute passed today adopts an ''is apparent'' standard. The latter standard is stricter than the ''probable cause'' standard and so will reduce any incentive for over-reporting. I ask unanimous consent that a letter from America Online regarding the ''is apparent'' standard be included in the record.

If the ''is apparent'' standard is met, an ISP must expeditiously file a report with law enforcement authorities. This report is to include the ''facts or circumstances'' from which a violation of the law is apparent, so that law enforcement agencies can determine whether or not further investigation or prosecution is called for. Information in the ISP's files identifying the name of a subscriber does not fall within this description, since child pornography offenses will either be apparent or not, without regard to the name of a party to an image transmission or other violative act. If law enforcement determines that further investigation is warranted, it may subpoena, the ISP for any identifying information that the ISP may possess. The new administrative subpoena power should expedite this process.

The substitute also refines the reporting requirement in other ways:

First, by providing that there is no liability for failing to make a report unless the ISP knew both of the existence of child pornography and of the duty to report it (if it rises to the level of probable cause).

Second, by making clear that we are not imposing a monitoring requirement of any kind: ISPs must report child pornography when they come across it or it is brought to their attention, but they are not obligated to go out looking for it, which raises significant privacy concerns and conflicts with other laws.

Third, by adding privacy protections for any information reported under the bill.

Fourth, to protect smaller ISPs who could be put out of business for a first offense, by lowering the maximum fine for first offenders to $50,000; a second or subsequent failure to report, however, may still result in a fine of up to $100,000.

Thus, improved, the reporting requirement will accomplish its objectives without violating the privacy rights of Internet users, unduly burdening the ISPs, or inundating law enforcement with a lot of worthless information.

In conclusion, I commend Senators HATCH and DEWINE for their efforts to address the terrible problem of child predators and pornographers. I am glad that we were able to join forces to construct a substitute that goes a long way toward achieving our common goals.

AMERICA ONLINE INC.,
Washington, DC, September 25, 1998.

Hon. PATRICK LEAHY,
Ranking Member, Judiciary Committee, US Senate, Washington, DC.

DEAR SENATOR LEAHY: I am writing to follow up on the letter of September 18 on the ISP reporting provisions of H.R. 3494, to which America Online was a signatory.

In discussions preceding markup, there was an ISP request for a tighter standard for the duty-to-report screening test, to avoid unnecessary and counter-productive reporting. In response, the committee used a ''probable cause'' standard. While we are grateful for your intent, there has remained some uncertainty about the effect of the original ''is apparent'' standard and, thus, about which standard is actually more limiting of the material covered, and thus more workable for ISP's. Subsequently, a number of ISP's have analyzed and discussed the question, and it is our collective judgment that the ''is apparent'' standard is preferable. This is the basis for our request that the language be changed.

To elaborate: under proposed 227(b)(1) of the Victims of Child Abuse Act, as added by Sec. 604 of H.R. 3494, Internet and online service providers (ISP's) would have a duty to report to a law enforcement authority any child pornography of which it gains knowledge in the provision of its service. In each case the ISP must judge whether material is covered under this duty or not. The test it

uses in this process of analysis is the subject of our request. Based on our review of the history of the ''is apparent'' standard, we believe it to result in a narrower reporting scope than ''probably cause,'' which at best calls for an uncertain ''more likely than not'' judgment.

A more workable approach is to trigger the duty when the ISP receives knowledge of ''facts or circumstances from which a violation of [applicable law] is apparent****'' While the ISP has no duty to monitor its users, in essence this language creates a ''red flag:'' if the ISP in the operation of its service obtains knowledge of material which is clearly child pornography, a red flag should be raised. Such material must be reported to the authorities. It is not, the ISP may be heavily fined—it ignores the red flag at its peril.

As you are aware, this standard originated in Title II of the Digital Millennium Copyright Act, developed in the Judiciary Committee and passed 99–0 by the Senate earlier this summer. For material present on ISPs' servers or material to which ISP's link on the Internet, committee desired to create a standard of liability triggered by disregard of any ''red flags''. It sought a test falling between the familiar ''should have known, could have known'' standard, which was deemed too broad in its coverage, and absolute certainty of infringement, which was deemed too narrow. ''Apparent'' has more the meaning of ''clear on its face,'' and is a higher standard of evidence of illegality than ''probable cause'', which implies ''more likely than not, based on all the circumstances.''. As the bill's extensively-negotiated ''Section by Section'' written analysis states: ''Under this standard, a service provider would have no obligation to seek out copyright infringement, but it would not qualify for the safe habor if it had turned a blind eye to 'red flags' of obvious infringement.''

Again, given this history and understanding of the ''is apparent'' standard, we believe it will be a significant improvement over ''probable cause'' in H.R. 3494's duty-to-report provisions.

In conclusion, thank you for your willingness to continue working with us on this point. Your sensitivity, and that of the Chairman, have once again been crucial in laying down a workable legislative road map for the Internet/online medium.

Very truly yours,

JILL A. LESSER,
Director, Law & Public Policy,
Assistant General Counsel.

Mr. LAUTENBERG. Mr. President, we live in a world where it is increasingly difficult to protect our children. The advent of sophisticated computer technology has made it too easy for depraved criminals to gather information about children and prey upon them. And nothing is more heinous and reprehensible than the brutalization of a child. We cannot be too vigilant in the battle against child predators.

I am pleased that today, with the passage of the Child Protection and Sexual Predator Punishment Act, the Senate is marching forward in this fight. This legislation will provide tough punishment for those who would sexually abuse the youth of our Nation.

This measure contains an important provision, the Joan's Law Act, that Senator TORRICELLI and I originally introduced as a separate bill. This measure is based on a New Jersey law, which was named after a 7-year-old-girl, Joan D'Alessandro. Tragically, Joan was raped and killed in 1973. Although her murderer was convicted of the crime and sentenced to 20 years in State prison, he has become eligible for parole and continues to seek his release.

Joan's family has repeatedly had to fight against parole for this vicious killer. They have been forced to relive this tragedy again and again, as they try to ensure that others are protected from the terrible horror they have suffered.

Joan's law will spare other families from these battles. It provides that, unless the death sentenced is imposed, any criminal convicted of a sexual offense that results in the death of a minor under the age of 14 will be sentenced to life imprisonment. With this effort, we will ensure that cold-blooded murderers who abuse our children will be kept behind bars for the rest of their lives.

Mr. President, I wish that we could do more to alleviate the pain and trauma suffered by the D'Alessandro family. With profound courage and dignity, they have endured so much for so long. Their relentless battle for justice, and their tireless efforts to protect others is an inspiration to us all. I am deeply heartened that Congress has passed this legislative memorial to Joan.

Mr. CONRAD. Mr. President, I would like to say a few words about my strong support of the Mississippi Sioux Tribes Judgment Fund Distribution Act.

In 1967, the Indian Claims Commission rendered a judgment in favor of the Sisseton-Wahpeton Sioux Tribe, the Devils Lake Sioux Tribe (now the Spirit Lake Nation), and the Assiniboine and Sioux Tribe of Fort Peck, to satisfy land compensation claims. In 1968, Congress appropriated $5.9 million for this settlement.

In 1972, Congress passed legislation to provide for the distribution of this award to the three Tribes. Twenty-five percent ($1.5 million) was set aside for lineal descendants who are not tribal members. Funds were distributed to the Devils Lake Sioux and the Sisseton-Wahpeton Sioux in 1974, and a partial distribution was made to the Assiniboine and Sioux Tribe in 1979. However, because the original judgment did not include shares for the lineal descendants, the issue has been tied up in litigation and the lineal descendants' share of the funds has remained undistributed since the passage of distribution legislation in 1972. Since that time, the interest on the fund has grown to nearly $15 million. The bill we have approved today will distribute 71.6005 percent of these funds to the lineal descendants, and 28.3995 percent to the Tribes.

I say again, as I have said on numerous occasions, this situation has gone on long enough. Neither the Tribes nor the lineal descendants benefit from these funds being tied up in court. The Indian Affairs Committee has worked with the Tribes, the Department of the Interior, and representatives of the lineal descendants to craft the compromise embodied in this legislation.

Mr. President, I am pleased by the passage of this legislation, which helps finalize a judgment made three decades ago. This legislation is a fair compromise, one that will help break the stalemate that has prevented the distribution of these judgment funds. I thank my colleagues for their support and assistance.

AMENDING THE ARMORED CAR INDUSTRY RECIPROCITY ACT OF 1993

Mr. COATS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of calendar No. 538, H.R. 624.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 624) to amend the Armored Car Industry Reciprocity Act of 1993 to clarify certain requirements and to improve the flow of interstate commerce.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. COATS. Mr. President, I ask unanimous consent that the bill be considered read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 624) was considered read the third time, and passed.

ANTI-MICROBIAL REGULATION TECHNICAL CORRECTIONS ACT OF 1998

Mr. COATS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4679, which was received from the House.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4679) to amend the Federal Food, Drug and Cosmetic Act to clarify the circumstances in which a substance is considered to be a pesticide chemical for purposes of such act, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. COATS. Mr. President, I ask unanimous consent that the bill be considered read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.