

PUBLIC LAW 108-21—APR. 30, 2003

PROSECUTORIAL REMEDIES AND OTHER  
TOOLS TO END THE EXPLOITATION OF  
CHILDREN TODAY ACT OF 2003

Public Law 108–21  
108th Congress

An Act

Apr. 30, 2003  
[S. 151]

To prevent child abduction and the sexual exploitation of children, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Prosecutorial  
Remedies and  
Other Tools to  
end the  
Exploitation of  
Children Today  
Act of 2003.  
18 USC 1 note.

**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.  
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Sec. 105. Penalties against sex tourism.  
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Sec. 107. Attempt liability for international parental kidnapping.  
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**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.  
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- Sec. 301. National coordination of AMBER alert communications network.  
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- Sec. 321. Increased support.  
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**Subtitle C—Sex Offender Apprehension Program**

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**Subtitle D—Missing Children Procedures in Public Buildings**

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- Sec. 362. Definitions.  
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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

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- 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.  
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 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.**

18 USC 1 note.

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”; 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.”.

Effective date.  
28 USC 994 note.

#### 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

42 USC 5119a  
note.

Deadlines.

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.

Notification.

(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 by, 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 fingerprint technology infrastructure of the participating State.

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

Deadline.

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

Deadline.

## **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 kidnaping),”; 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 kidnaping, 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

42 USC 5791.

**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.

Deadline.

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

42 USC 5791a.

(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.

42 USC 5791b.

**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 information 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.

Deadline.

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

42 USC 5791c.

(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.

42 USC 5791d.

**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 forwarding 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**

Code Adam Act of 2003.

**SEC. 361. SHORT TITLE.**

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

42 USC 5601 note.

**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.

42 USC 5792.

(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.

42 USC 5792a.

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

Deadline.

(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 guidelines, 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.”

28 USC 994 note.

(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 imposition 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);”;

(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—

28 USC 994 note.

(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:

Deadline.  
Reports.

“(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.”.

28 USC 994 note.

(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.—

28 USC 994 note.

(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.

28 USC 994 note.

(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.

28 USC 994 note.

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

28 USC 994 note.

(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). Deadline.

(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. Deadline.

(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— 28 USC 994 note.  
Deadline.

(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”.

28 USC 991 note.

(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**

18 USC 2251  
note.

#### **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

Deadline.

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.”

18 USC 1466A  
note.

(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.

28 USC 994 note.

(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.

Deadline.  
18 USC 2557  
note.

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

28 USC 994 note.

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 United States Attorney’s Offices, and those trial attorneys shall have as their primary focus, the investigation and prosecution of Federal child pornography and obscenity laws.

Deadline.

(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.

18 USC 1466A  
note.  
Deadline.

(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

28 USC 994 note.

with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines 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.”.

42 USC 14071  
note.

(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.

42 USC 14071  
note.

(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:

Secure  
Authentication  
Feature and  
Enhanced  
Identification  
Defense Act of  
2003.  
18 USC 1001  
note.

“(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”.

Illicit Drug Anti-Proliferation Act of 2003.  
21 USC 801 note.

(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—

28 USC 994 note.

(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 describe 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.** 42 USC 13975.

“(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.”.

Approved April 30, 2003.

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LEGISLATIVE HISTORY—S. 151 (H.R. 1104):

HOUSE REPORTS: No. 108–47, Pt. 1 accompanying H.R. 1104 (Comm. on the Judiciary) and 108–66 (Comm. of Conference).

SENATE REPORTS: No. 108–2 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 149 (2003):

Feb. 24, considered and passed Senate.

Mar. 27, considered and passed House, amended, in lieu of H.R. 1104.

Apr. 10, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 39 (2003):

Apr. 30, Presidential remarks and statement.

