

# CHILD ABDUCTION PREVENTION ACT

---

---

HEARING  
BEFORE THE  
SUBCOMMITTEE ON CRIME, TERRORISM,  
AND HOMELAND SECURITY  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

**H.R. 5422**

OCTOBER 1, 2002

**Serial No. 112**

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://www.house.gov/judiciary>

U.S. GOVERNMENT PRINTING OFFICE

81-981 PDF

WASHINGTON : 2002

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON THE JUDICIARY

F. JAMES SENSENBRENNER, JR., WISCONSIN, *Chairman*

HENRY J. HYDE, Illinois	JOHN CONYERS, JR., Michigan
GEORGE W. GEKAS, Pennsylvania	BARNEY FRANK, Massachusetts
HOWARD COBLE, North Carolina	HOWARD L. BERMAN, California
LAMAR SMITH, Texas	RICK BOUCHER, Virginia
ELTON GALLEGLY, California	JERROLD NADLER, New York
BOB GOODLATTE, Virginia	ROBERT C. SCOTT, Virginia
STEVE CHABOT, Ohio	MELVIN L. WATT, North Carolina
BOB BARR, Georgia	ZOE LOFGREN, California
WILLIAM L. JENKINS, Tennessee	SHEILA JACKSON LEE, Texas
CHRIS CANNON, Utah	MAXINE WATERS, California
LINDSEY O. GRAHAM, South Carolina	MARTIN T. MEEHAN, Massachusetts
SPENCER BACHUS, Alabama	WILLIAM D. DELAHUNT, Massachusetts
JOHN N. HOSTETTLER, Indiana	ROBERT WEXLER, Florida
MARK GREEN, Wisconsin	TAMMY BALDWIN, Wisconsin
RIC KELLER, Florida	ANTHONY D. WEINER, New York
DARRELL E. ISSA, California	ADAM B. SCHIFF, California
MELISSA A. HART, Pennsylvania	
JEFF FLAKE, Arizona	
MIKE PENCE, Indiana	
J. RANDY FORBES, Virginia	

PHILIP G. KIKO, *Chief of Staff-General Counsel*  
PERRY H. APELBAUM, *Minority Chief Counsel*

---

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

LAMAR SMITH, Texas, *Chairman*

MARK GREEN, Wisconsin, <i>Vice Chair</i>	ROBERT C. SCOTT, Virginia
HOWARD COBLE, North Carolina	SHEILA JACKSON LEE, Texas
BOB GOODLATTE, Virginia	MARTIN T. MEEHAN, Massachusetts
STEVE CHABOT, Ohio	WILLIAM D. DELAHUNT, Massachusetts
BOB BARR, Georgia	ADAM B. SCHIFF, California
RIC KELLER, Florida	
MIKE PENCE, Indiana	

JAY APPERSON, *Chief Counsel*  
SEAN MCLAUGHLIN, *Counsel*  
ELIZABETH SOKUL, *Counsel*  
KATY CROOKS, *Counsel*  
ERIC HULTMAN, *Full Committee Counsel*  
BOBBY VASSAR, *Minority Counsel*

# CONTENTS

OCTOBER 1, 2002

## OPENING STATEMENT

	Page
The Honorable Lamar Smith, a Representative in Congress From the State of Texas, and Chairman, Subcommittee on Crime, Terrorism, and Homeland Security .....	1
The Honorable Mark Green, a Representative in Congress From the State of Wisconsin .....	2
The Honorable Robert C. Scott, a Representative in Congress From the State of Virginia, and Ranking Member, Subcommittee on Crime, Terrorism, and Homeland Security .....	22

## WITNESSES

Mr. Daniel P. Collins, Associate Deputy Attorney General, United States Department of Justice	
Oral Testimony .....	3
Prepared Statement .....	4
Mr. Ernest E. Allen, President and Chief Executive Officer, National Center for Missing and Exploited Children	
Oral Testimony .....	16
Prepared Statement .....	19

## APPENDIX

### MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of the Honorable Sheila Jackson Lee, a Representative in Congress From the State of Texas .....	31
Prepared Statement of the Honorable Jennifer Dunn, a Representative in Congress From the State of Washington, and the Honorable Martin Frost, a Representative in Congress from the State of Texas .....	32



## CHILD ABDUCTION PREVENTION ACT

---

TUESDAY, OCTOBER 1, 2002

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON CRIME, TERRORISM,  
AND HOMELAND SECURITY  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 4:04 p.m., in Room 2237, Rayburn House Office Building, Hon. Lamar S. Smith [Chairman of the Subcommittee] presiding.

Mr. SMITH. The Subcommittee on Crime, Terrorism, and Homeland Security will come to order. Bobby Scott, the Ranking Member, has been detained on the House floor and should be here shortly, but with his concurrence, we are going to begin and then I will recognize him when he arrives. I will also recognize myself for an opening statement, and then other Members, and then I'll introduce the witnesses and we'll get started.

The Subcommittee on Crime, Terrorism, and Homeland Security today examines H.R. 5422, the Child Abduction Prevention Act of 2002. The recent wave of high-profile child abductions illustrates the tremendous need for legislation in this area. These criminals breach the security of our homes to steal, molest, rape, and kill our children. Immediate action is necessary.

Sexual exploitation of children, a prime motive for kidnapping, is on the rise. H.R. 5422, the Child Abduction Prevention Act of 2002, will reverse that trend. This legislation sends a clear message, child abductors will not escape justice. It strengthens penalties against kidnapping; subjects those who abduct and sexually exploit children to the possibility of lifetime supervision; aids law enforcement to prevent, investigate, and prosecute crimes against children; and provides families and communities with immediate and effective assistance to recover a missing child.

We must assure that law enforcement has every possible tool to try and recover a missing child quickly and safely. Prompt public alerts about an abducted child could be the difference between life and death.

To help accomplish this, H.R. 5422 establishes a national AMBER Alert program based on Representative Jennifer Dunn's and Representative Martin Frost's bill to expand the Child Abduction Communications Warning Network throughout the United States. For those individuals who would harm a child, we must ensure that the punishment is severe and that sexual predators are not allowed to slip through the cracks of the system to harm other children.

To this end, this legislation provides a 20-year mandatory minimum sentence of imprisonment for non-family abductions of a child under the age of 18, lifetime supervision for sex offenders, and mandatory life imprisonment for second-time offenders.

Furthermore, H.R. 5422 removes any statute of limitations and opportunity for pretrial release for crimes of child abduction and sex offenses. Those who abduct children are often serial offenders who have already been convicted of similar offenses. Sex offenders and child molesters are four times more likely than other violent criminals to recommit their crimes.

In response, H.R. 5422 includes Mr. Gekas's bill, which passed the House 409 to three on June 25, 2002. The integration of this provision affords judges the discretion to impose lifetime supervision against such offenders.

This bill incorporates also Congressman Sensenbrenner's legislation, H.R. 4477, which passed the House on June 26, 2002, by a vote of 418 to eight. The sex terrorism industry obtains its victims through kidnapping and trafficking of women and children. These women and children are then forced into prostitution. H.R. 5422 works to end this.

Passage of this legislation also increases support for the National Center for Missing and Exploited Children, the nation's resource center for child protection. The Center assists in the recovery of missing children and raises public awareness on ways to protect children from abduction, molestation, and sexual exploitation. H.R. 5422 doubles the Federal funds for the Center to \$20 million by 2004 in recognition of its important role in these efforts to prevent child abduction.

We appreciate the witnesses who are here. They are excellent witnesses. They've appeared before this Subcommittee before and we look forward to their testimony.

Before we get to it, I'm going to recognize other Members for their opening statement. The gentleman from Wisconsin, Mr. Green, is recognized.

Mr. GREEN. Thank you, Mr. Chairman. I will be very brief. I know the time is short. I want to commend you for having this hearing. I think it is important and it is timely. As you have mentioned, we've seen a lot of publicity in recent months about some high-profile child abductions, some of which have turned out horribly.

It is true that in many ways, some of the raw numbers in this area are getting better. They're going down a little bit, and people always ask, so why the attention? I think the attention is important and action is necessary because these crimes strike at the heart of who we are. They strike at our communities, they strike in our families, they really threaten our sense of well-being and our sense of community. It is terribly important that we take actions to prevent reoccurrence of such tragedies where possible. It is part of building a better America and building a sense of family and community.

With that, Mr. Chairman, I yield back.

Mr. SMITH. Thank you, Mr. Green.

The gentleman from North Carolina, does he have an opening statement?

Mr. COBLE. No, Mr. Chairman.

Mr. SMITH. The gentleman from Florida, who is wearing the best looking shirt of the day, does he have an opening statement?

Mr. KELLER. No, Mr. Chairman.

Mr. SMITH. Okay. If not, we'll proceed. Let me introduce the witnesses. They are Mr. Daniel P. Collins, Associate Deputy Attorney General, U.S. Department of Justice, and Mr. Ernest E. Allen, President and Chief Executive Officer, National Center for Missing and Exploited Children.

Again, we welcome you both, and Mr. Collins, we will begin with your testimony.

**STATEMENT OF DANIEL P. COLLINS, ASSOCIATE DEPUTY ATTORNEY GENERAL, UNITED STATES DEPARTMENT OF JUSTICE**

Mr. COLLINS. Thank you, Mr. Chairman. Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to testify here today on behalf of the Department of Justice concerning H.R. 5422, the Child Abduction Prevention Act.

Children today are more at risk than ever to falling prey to sexual predators. The Internet, which has opened channels of communication between people from one end of the globe to the other, has also been exploited by sexual predators. Taking advantage of the easy communications that the Internet makes possible, sexual predators have used the web to fuel their deviant interests by exchanging child pornography with relative ease and, more than ever, by attempting to make contact with actual children in ways that were not previously possible.

In addition, the recent spate of child abductions has chilled the nation and underscored the need for Congressional action to ensure that our nation's laws do all that they can to protect our children from those who would prey upon them.

H.R. 5422 puts forward important proposals for legislative change to accomplish this critical goal. I would like to begin by thanking the Subcommittee for the extraordinary effort and genuine commitment that it has demonstrated to the protection of children from sexual abuse. The Department shares that commitment, values the cooperative relationship we have enjoyed with the Subcommittee in working towards this common goal, and looks forward to continuing that relationship so that, together, we will have done what we can to ensure a safe environment for America's children.

The Department strongly endorses the principles underlying the key elements of H.R. 5422. First, preventing future crime in several respects. First, by extending the length of authorized supervised release terms for persons convicted of child abduction and sex offenses, and also by establishing a rebuttable presumption in favor of pretrial detention for these offenses.

In addition to these preventive measures, the bill would also enhance law enforcement tools for identifying and apprehending offenders by including child exploitation offenses as wiretap predicates and also by eliminating the statute of limitations for certain child abductions and sex abuse offenses. The bill would also increase penalties to more accurately reflect the extreme seriousness

of these offenses, and in particular, to deal with appropriate harshness with repeat offenders of this kind of conduct.

The bill also incorporates provisions concerning the growing and disturbing industry of sex tourism by punishing offenders who travel abroad to prey upon children. The bill also supports a coordinated approach to the recovery of abducted children, in particular by supporting AMBER plans, and it also would provide the States with additional tools and assistance to pursue these common goals.

The detailed comments set forth in the Department's written statement identify some possible changes to the legislation that we believe might more effectively accomplish these stated goals. The Department is eager to work with the Subcommittee to address those issues and to devise a final bill that accomplishes prevention, enforcement, and punishment in the strongest and most effective manner.

I would be pleased to answer any questions that the Committee may have.

Mr. SMITH. Thank you, Mr. Collins.

[The prepared statement of Mr. Collins follows:]

PREPARED STATEMENT OF DANIEL P. COLLINS,

Mr. Chairman and members of the Subcommittee:

Thank you for the opportunity to present the views of the Department of Justice on H.R. 5422, the "Child Abduction Prevention Act" (CAPA). Children today are more at risk than ever to falling prey to sexual predators. The Internet, which has opened channels of communication between people from one end of the globe to another, has also been exploited by sexual predators. Taking advantage of the easy communications the Internet makes possible, sexual predators have used the web to fuel their deviant interests by exchanging child pornography with relative ease, and, more than ever, by attempting to make contact with actual children. In addition, the recent spate of child abductions has chilled the nation and underscored the need for congressional action to ensure that our nation's laws do all that they can to protect our children from those who would prey on them. H.R. 5422 puts forward important proposals for legislative change to accomplish this critical goal.

I would like to begin by thanking the Subcommittee for the extraordinary effort and genuine commitment that it has demonstrated to the protection of children from sexual abuse. The Department shares that commitment, values the cooperative relationship we have enjoyed with the Subcommittee in working towards this common goal, and looks forward to continuing that relationship so that, together, we will have done what we can to ensure a safe environment for America's children.

The Department's detailed views on each of the legislative provisions within H.R. 5422 are set forth below. The Department strongly supports the principles underlying these proposals:

- Preventing future crime by extending the length of supervised-release terms for offenders and by establishing a rebuttable presumption in favor of pretrial detention;
- Enhancing law enforcement tools for identifying and apprehending offenders, by including child exploitation offenses as wiretap predicates and by eliminating the statute of limitations for certain offenses;
- Increasing penalties to more accurately reflect the extreme seriousness of these offenses, especially repeat offenses;
- Punishing offenders who travel abroad to prey on children;
- Supporting a coordinated approach to the recovery of abducted children; and
- Providing the States with additional tools and assistance to pursue these common goals.

The detailed comments set forth below identify some possible changes to the legislation that might more effectively accomplish the stated goals. The Department is eager to work with the Subcommittee to address those issues and to devise a final bill that accomplishes prevention, enforcement, and punishment in the strongest and most effective manner.

Our comments on the specific provisions in the bill are as follows:

TITLE I—SANCTIONS AND OFFENSES

*Section 101—Supervised Release Term for Sex Offenders*

Section 101 of H.R. 5422 authorizes up to lifetime post-release supervision for persons convicted of child abduction or sex offenses. The Department of Justice supports the enactment of this important reform. In addition, we recommend certain enhancements of this proposal, as discussed below. Provisions very similar to those proposed in section 101 have already been passed by the House of Representatives in H.R. 4679.

Under current law, the maximum period of post-release supervision in federal cases is generally five years even for the most serious crimes, and the maximum period for most offenses is three years or less. *See* 18 U.S.C. § 3583(b). The reform proposed in section 101 of H.R. 5422 is responsive to the long-standing concerns of federal judges and prosecutors regarding the inadequacy of the existing supervision periods for sex offenders, particularly for the perpetrators of child sexual abuse crimes, whose criminal conduct may reflect deep-seated aberrant sexual disorders that are not likely to disappear within a few years of release from prison. The current length of the authorized supervision periods is not consistent with the need presented by many of these offenders for long-term—and in some cases, life-long—monitoring and oversight.

At the state level, a number of jurisdictions have responded to these concerns by authorizing supervision for up to life for broadly defined categories of sex offenders. *See, e.g.,* Ariz. Rev. Stat. § 13–902(E); Colo. Rev. Stat. § 18–1.3–1006(1)(b); D.C. Code § 24–403.01(b)(1)(4). Congress has already addressed the need for authorizing extended supervision for certain types of offenders in other areas. In particular, the USA PATRIOT ACT (Pub. L. 107–56, § 812) enacted 18 U.S.C. § 3583(j), which authorizes up to lifetime supervision for terrorism offenses. Also, provisions of the federal drug laws (in 21 U.S.C. § 841) have been construed by a number of the courts of appeals to mean that there is no upper limit on the potential duration of supervision for persons convicted of drug trafficking offenses. *See, e.g., United States v. Garcia*, 112 F.3d 395 (9th Cir. 1997); *United States v. Williams*, 65 F.3d 301, 309 (2d Cir. 1995); *United States v. Orozco-Rodriguez*, 60 F.3d 705, 707–08 (10th Cir. 1995).

As noted above, the House of Representatives has recently responded to the inadequacy of the existing supervision authorizations for sex offenders by passing H.R. 4679. Section 101 of the current bill fully incorporates H.R. 4679’s authorization of up to lifetime supervision for the offenses defined in the principal sex offense chapters of the federal criminal code—chapters 109A, 110, and 117 of title 18—and for the sex trafficking offense defined in 18 U.S.C. § 1591.

While most of the covered offenses in H.R. 4679 and in this bill are felonies, the enlarged supervision authorization would extend to a few misdemeanor sex offenses which are encompassed in the cross-referenced provisions (*see* 18 U.S.C. § 2243(b), 2244(a)(4), (b)). We do not disagree with the House of Representatives’ decision to include these misdemeanors, since the actual duration of supervision would remain subject to the court’s discretion and would be tailored to the offense and offender in particular cases. *See generally* H.R. Rep. No. 527, 107th Cong., 2d Sess. (2002) (discussion of misdemeanor coverage in committee report for H.R. 4679). In any event, as explained below, we recommend that most of these remaining misdemeanors be increased to felonies.

In one respect, the proposal relating to supervision in this bill—like the corresponding provision in the pending Senate child protection bill, § 9 of S. 2917—augments the provisions of H.R. 4679. Proposed 18 U.S.C. § 3583(k) in section 101 of the bill adds (non-parental) child abduction cases—i.e., offenses under the kidnaping statute, 18 U.S.C. § 1201, in which the victim is a minor—to the categories for which up to lifetime supervision is authorized. By way of comparison, the federal law standards for state sex offender registration programs, and the provisions of federal law identifying the federal offenders who are subject to special sex offender release notice and registration requirements, cover all non-parental child abductions, whether or not a sexual element can be shown in the offense. *See* 42 U.S.C. § 14071(a)(3)(A)(i); 18 U.S.C. § 4042(c)(4)(A). Including child abduction among the offenses for which up to lifetime supervision is authorized is equally appropriate, for essentially the same reasons that these offenses are included as “sex offender registration” predicates. As a practical matter, abductions of children by strangers are likely to be for the purpose of sexual abuse, but it may not be possible to establish that fact in a given case. This is particularly true if the victim, or the victim’s remains, are never recovered. Moreover, even in a non-sexual case—such as the kid-

napping of a child for ransom—the capacity and willingness of the offender to commit such a crime evidences a degree of dangerousness that justifies the availability of longer periods of post-release monitoring and oversight.

To ensure the efficacy of the reform proposed in section 101, we recommend that the Subcommittee make a conforming change in the provisions governing reimprisonment following the revocation of supervised release. Currently, 18 U.S.C. § 3583(e)(3) limits imprisonment following revocation to five years in case of a class A felony, three years in case of a class B felony, two years in case of a class C or D felony, and one year otherwise. This provision should be amended to make it clear that these are limitations on reimprisonment based on a *particular* revocation, rather than limits on aggregate reimprisonment for an offender who persistently violates release conditions and is subject to multiple revocations on that basis. This clarification could be effected simply by inserting “on any such revocation” after “required to serve” in 18 U.S.C. § 3583(e)(3).

In addition, we recommend a complementary change in 18 U.S.C. § 3583(h). Section 3583(h) currently provides that the court may impose an additional term of supervised release to follow reimprisonment based on revocation of release—but not if the maximum reimprisonment term allowed by § 3583(e)(3) was imposed. Thus, if the court wants to preserve the option of providing further supervision for the offender once the term of reimprisonment is over, the court cannot impose the maximum reimprisonment term specified in § 3583(e)—even if the maximum term is fully warranted. Since this limitation works against the effective supervision of released sex offenders and protection of the public, we recommend that it be eliminated. This change could be made by striking the words “that is less than the maximum term of imprisonment authorized under subsection (e)(3)” in 18 U.S.C. § 3583(h).

Finally, we recommend that the Subcommittee consider including some minimum term of supervision as part of this proposal, such as requiring that the sentence include a supervised release term of at least five years for felony offenses within the scope of section 101. By way of comparison, the provisions of the drug laws relating to post-release supervision mandate that the sentence impose supervision terms of specified lengths for various offenses and offenders. *See* 21 U.S.C. § 841. A corresponding requirement for sex offenders—such as a five year minimum in felony cases—would reflect the judgment that sex offenders generally pose a sufficient public safety concern that they should be subject to observation for a substantial period of time following release. This would not curtail the court’s normal authority to revisit the period of supervision imposed in the sentence at any time after one year following release, and to shorten or terminate supervision if appropriate. *See* 18 U.S.C. § 3583(e)(1). It would, however, reflect a judgment that the period of monitoring and oversight for offenders convicted of serious sex offenses should at least continue for a number of years following release, unless the court affirmatively determines that further supervision is unwarranted.

#### *Section 102—First Degree Murder for Child Abuse and Child Torture Murders*

Subsection 102 of the bill amends the federal murder statute, 18 U.S.C. § 1111, to include serious child abuse offenses among the predicate offenses for felony murder, and to classify child murders committed as part of a pattern or practice of assault or torture against children as first-degree murder. The proposed reform in this section was included in former Deputy Attorney General Eric Holder’s “children exposed to violence” initiative and in previously introduced legislation. *See* U.S. Department of Justice, Office of the Deputy Attorney General, *Children Exposed to Violence: Recommendations for State Legislation* 1–2, 12 (May 2000); S. 2783, 106th Cong., 2d Sess. § 4012 (2000). We support these changes, which will help to ensure that child abusers who kill their victims receive penalties that reflect the heinousness of their crimes.

1. *Felony murder.* 18 U.S.C. § 1111(a) currently classifies as first-degree murder any murder “committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, burglary, or robbery.” The amendments in section 102 of H.R. 5422 add “child abuse” to this list. Acts of child abuse with lethal consequences are as deserving of such treatment as killings occurring in the course of such offenses as burglary or robbery. A number of States have similarly included child abuse crimes as predicate offenses for felony murder. *See* Ariz. Rev. Stat. § 13–1105 (first degree murder); D.C. Code § 22–2101 (first degree murder); Fla. Stat. Ann. § 782.04 (first degree murder); Idaho Code § 18–4003 (first degree murder); Kan. Stat. Ann. §§ 21–3401, –3436 (first degree murder); Miss. Code Ann. § 97–3–19 (capital murder); N.D. Cent. Code § 12.1–16–01 (murder); Or. Rev. Stat. § 163.115(1)(b) (murder); Tenn.

Code Ann. § 39-13-202 (first degree murder); Utah Code Ann. § 76-5-203 (murder); Wyo. Stat. Ann. § 6-2-101 (first degree murder).

Under H.R. 5422, “child abuse” is defined for felony murder purposes as “intentionally, knowingly, or recklessly causing death or serious bodily injury to a child.” As with other felony murder predicates under 18 U.S.C. § 1111, such as robbery or sexual abuse, the commission of child abuse (as defined) together with the resulting death of the victim would suffice to establish liability for first degree murder. *See United States v. Thomas*, 34 F.3d 44, 48-49 (2d Cir. 1994).

2. *Pattern of abuse murders.* The section also amends 18 U.S.C. § 1111(a) to classify as first-degree murder any “murder . . . perpetrated as part of a pattern or practice of assault or torture against a child or children.” This covers both cases involving a pattern of abuse against the murdered child, and cases involving a pattern of abuse against a number of children.

In this context as well, there is substantial precedent at the state level for similar provisions. A number of states define homicidal offenses which essentially consist of killing a child where the fatal conduct was part of a broader pattern of abuse. *See, e.g.*, Alaska Stat.

§ 11.41.100 (liability for first-degree murder based in part on infliction of serious physical injury on a child by at least two separate acts, where one of the acts results in the death of the child); Del. Code Ann. title 11, § 633 (defining offense of murder by abuse or neglect in the second degree in part as causing the death of a child where the person “has engaged in a previous pattern of abuse and/or neglect of such child”); Minn. Stat. § 609.185 (liability for first-degree murder based in part on causing “the death of a minor while committing child abuse, when the perpetrator has engaged in a past pattern of child abuse upon the child”); Or. Rev. Stat. § 163.115(1)(c) (murder by abuse defined in part as causing the death of a child or a dependent person where the offender “has previously engaged in a pattern or practice of assault or torture of the victim or another child . . . or . . . dependent person”).

Provisions of this type reflect the fact that fatal child abuse offenses do not take place in a vacuum. The perpetrators of such crimes frequently have histories of abusive conduct committed against the victim of the killing and/or other children. If, for example, an abuser has effectively engaged in the slow killing of a child over time through a continuing course of abuse, the heinousness of his conduct is not less than that of a person who engages in a single homicidal act with premeditation.

The proposed amendments to 18 U.S.C. § 1111 define “pattern or practice of assault or torture” as “assault or torture committed on at least two occasions.” Hence, at least one act of assault or torture, in addition to the fatal act, is required. This is similar to Alaska Stat. § 11.41.100 and Or. Rev. Stat. § 163.115(1)(c), which specify that a total of two acts (including the fatal act) are sufficient to constitute a pattern or practice for purposes of the pattern-of-abuse murder provisions. The effect is to establish liability for first-degree murder whenever the perpetrator’s conduct involved: (1) murdering a child through assault or torture, and (2) the commission of assault or torture on at least one other occasion against that child or another child or children. The terms “assault” and “torture” are defined by cross-reference to existing federal law provisions which use these concepts (18 U.S.C. § 113 and § 2340 respectively).

The amendments define “child” for purposes of both the felony murder and the pattern-of-abuse murder provisions as a person below 18 who is under the perpetrator’s care or control or who is at least six years younger than the perpetrator. The limitations in the definition reflect the fact that the proposed provisions are focused on the problem of child abuse murders, and are not designed to reach every homicide in which the victim happens to be a juvenile. Some state provisions attempt to draw this line by setting a lower age ceiling than 18 under their child murder provisions. However, children in their mid-teens remain legally and practically under the control of their parents and caretakers, and hence remain particularly vulnerable to abuse—including potentially lethal abuse—by such persons. Rather than excluding such older victims of lethal child abuse, the proposal requires either that the affected child or children be under the perpetrator’s care or control, or that there be at least a six-year age difference. As a practical matter, in most fatal child abuse cases, some type of relationship of care or control exists between the perpetrator and the victim or victims, either generally or on the particular occasion(s) when abuse occurs. The alternative ground—which categorically covers cases involving a significant age difference (at least six years)—would moot questions that otherwise could arise about whether a relationship of care or control exists in marginal or ambiguous situations. It also ensures coverage of cases in which there is no relationship of care or control, but which are appropriate in any event for coverage by

special child murder provisions, such as a predatory child abuser who fatally attacks a child he does not know or a parent who has lost custody and then kills the child.

*Section 103—Sexual Abuse Penalties*

*Subsection (a)*

Subsection (a) of section 103 increases the maximum penalties for a number of offenses under the sex offense chapters of the criminal code. We support these penalty increases, a number of which are also included in the corresponding Senate bill. See S. 2917, § 10.

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

Under current federal law, there are large variations in the maximum penalties authorized for substantively similar sex offenses, depending on the particular basis for the exercise of federal jurisdiction. For example, consider a case that involves a forcible rape or engaging in a sexual act with a victim below the age of 12. If such an offense is committed in the special maritime and territorial jurisdiction of the United States, up to life imprisonment is authorized under 18 U.S.C. § 2241. But if an identical offense is committed by such means as luring the victim through the Internet, or transporting the victim from one state to another, the normal maximum penalty under the sex offense provisions applicable to such crimes (18 U.S.C. § 2422, 2423) is only ten or 15 years.

We accordingly endorse the increases in maximum penalties proposed in section 103(a) of the bill. Paragraph (1) increases the maxima for certain offenses under chapter 110 of the criminal code, which involve the production, distribution, or possession of child pornography. Paragraph (2) increases the maxima for certain offenses under chapter 117, which encompasses offenses involving sexual abuse or commercial sexual exploitation in which federal jurisdiction is premised on interstate elements, such as interstate movement of the victim or the offender, or use of interstate facilities. In cases where the offense involves conduct such as rape or engaging in sexual acts with a young child, these changes will provide maximum penalties closer to those which are currently available for comparable offenses under chapter 109A. Paragraph (3) increases a maximum penalty under the sex trafficking statute, 18 U.S.C. § 1591.

Beyond the increases in maximum penalties for current felony offenses described above, we would recommend that the bill include penalty increases for certain offenses in the sex offense chapters which are currently graded as misdemeanors. In particular, 18 U.S.C. § 2243(b) and 2244(a)(2) define the offenses of sexual abuse and abusive sexual contact with wards—such as sexual abuse of inmates by a correctional officer, or sexual abuse by a caretaker of a mentally impaired person who is in federal custody. The current misdemeanor gradings of these offenses do not reflect adequately the seriousness of these offenses, the breach of trust they involve, their effects on the victims, or the harm they cause to federal government operations as they relate to the custody and care of offenders and others, and to public confidence in the integrity of such operations. We accordingly recommend that these offenses be subject to more substantial penalties, and specifically that 18 U.S.C. § 2243(b) be made a felony punishable by up to five years of imprisonment, and that 18 U.S.C. § 2244(a)(4) be made a felony punishable by up to two years of imprisonment.

Likewise, we recommend upgrading 18 U.S.C. § 2244(b), which covers engaging in sexual contact with another person without that person's permission in the special maritime and territorial jurisdiction or in a federal prison. The current grading of this offense as a Class B misdemeanor, punishable by up to six months of imprisonment, does not adequately reflect the seriousness of cases it may encompass, such as unwanted sexual contact by inmates as part of sexual aggression against other more vulnerable prisoners. We recommend that this offense be at least upgraded to a Class A misdemeanor, punishable by up to a year of imprisonment, and preferably that it be upgraded to a felony punishable by up to two years of imprisonment.

*Subsection (b)*

Subsection (b) of section 103 proposes various new or increased mandatory minimum penalties for offenses involving child pornography, and for offenses involving sexual abuse or commercial sexual exploitation in which federal jurisdiction is based

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

The Subcommittee may wish to consider, as an alternative or supplementary measure to address these problems, a general prohibition of sentencing below the range specified by the sentencing guidelines in child abduction and sex offense cases, except on grounds of substantial assistance to authorities.<sup>1</sup> In more aggravated cases, this approach would ensure sentences above those required by statutory mandatory minimum provisions alone, because adjustments increasing the offense level and the criminal history category affect the determination of the guidelines range. A reform of this type would help to ensure that the efficacy of the sentencing guidelines system in promoting adequate penalties and protecting the public from child abductors and sexual predators is not undermined in practice.

We are currently developing more detailed recommendations to address sentencing problems in sex offense cases under current law, and will share them with the Subcommittee as soon as possible. We look forward to working with the Subcommittee on this important issue.

#### *Section 104—Stronger Penalties Against Kidnapping*

Section 104 proposes a number of changes to ensure appropriately severe penalties in kidnapping cases. In the absence of some other appropriate set of enhancements (such as graduated enhancements based on the age of the victim), we support the proposal in subsection (a)(1) to increase the base level for kidnapping under USSG § 2A4.1(a) from 24 to 32. This would increase the guidelines range, at the lowest criminal history category and without other adjustments, from 51–63 months to 121–151 months. We likewise support the proposal in subsection (a)(2) to strike USSG § 2A4.1(b)(4)(C), which now reduces the offense level by one if the victim is released before 24 hours have elapsed. The kidnapper is not entitled to a break merely because he let the victim go, *e.g.*, after he was done raping her. Kidnappers should be subject to increased penalties for holding their victims longer—as USSG § 2A4.1(b)(4)(A)–(B) provide—rather than to leniency for not holding them longer.

We also support the proposal in subsection (a)(3) to change the offense-level increase under U.S.S.G. § 2A4.1(b)(5) for cases in which the victim is sexually exploited, from three levels to six levels. (The application notes define sexual exploitation for this purpose to include offenses under 18 U.S.C. §§ 2241–44, 2251, and 2421–23.) The relatively modest three level increase under the current guidelines does not adequately reflect the difference in seriousness between an unaggravated kidnapping and a kidnapping in which, for example, the victim is raped.

Subsection (b) of section 104 proposes a mandatory minimum sentence of 20 years for kidnappings within the scope of 18 U.S.C. § 1201(g), a provision that basically applies to kidnappings of minors by adults who are not near relatives or guardians of the victim. This proposal is responsive to the sentencing system's current failure to accord appropriate weight to the age of the victim in kidnapping cases. We are currently studying more detailed recommendations to address the problem of leniency in the sentencing of kidnapping cases under current law, and will share them with the Subcommittee as soon as possible.

<sup>1</sup> A provision of this type could be formulated as an amendment to 18 U.S.C. § 3553(b), which would generally preclude going below the guidelines range in sentencing for an offense under 18 U.S.C. § 1201 involving a minor victim, or an offense under chapter 109A, 110, or 117 or section 1591 of title 18. The authority to reduce the sentence on the ground of substantial assistance to the authorities in investigation or prosecution, which is often critical in securing the cooperation of accomplices, should be preserved if this approach is taken. Under current law, such substantial assistance is a basis both for sentencing below the guidelines range and sentencing below statutory mandatory minimum penalties. *See* USSG § 5K1.1; 18 U.S.C. § 3553(e).

*Section 105—Penalties Against Sex Tourism*

We support the amendments proposed in section 105 of the bill to strengthen the “sex tourism” provisions of federal law. Section 105 amends 18 U.S.C. § 2423 in relation to subsection (b) of that section. Currently, § 2423(b) generally prohibits travel in interstate commerce, and travel by United States persons in foreign commerce, for the purpose of engaging in any sexual act with a person under the age of 18 that would violate the sexual abuse chapter of the criminal code (chapter 109A of title 18) if committed in the special maritime and territorial jurisdiction. In most respects, the proposal in this section is the same as the “sex tourism” bill that the House of Representatives recently passed. *See* H.R. 4477, 107th Cong., 2d Sess.; H.R. Rep. No. 525, 107th Cong., 2d Sess (2002). These bills would make a number of important changes:

First, the current formulation of § 2423(b) requires that the government show that the defendant intended to engage in sexual abuse of a minor at the time he departed from the United States. This is difficult to prove, and irrelevant in any event to the culpability of a United States person who sexually abuses children in a foreign country. Under proposed § 2423(c) in the bill, it is sufficient to show that a United States person traveled abroad and engaged in such conduct, regardless of what his intentions may have been when he left the United States.

Second, § 2423(b) as amended in the bill would clearly cover persons who come into the United States from other countries to engage in sexual abuse or exploitation of children.

Third, the prohibited conduct under the statute is broadened to include all “illicit sexual conduct” as defined in proposed § 2423(f), which includes commercial sex acts (as defined in 18 U.S.C. § 1591(c)(1)) with persons under 18. That encompasses sexual acts with 16 and 17 year old prostitutes which would not otherwise be covered under the chapter 109A offenses that are currently referenced in § 2423(b). (Under the current law, the relevant chapter 109A offense would normally be 18 U.S.C. § 2243(a), which has an age 16 cut-off.)

Fourth, proposed § 2423(d) in the bill directly reaches tour operators who serve “sex tourists” who travel for the purpose of engaging in illicit sexual conduct as defined in proposed § 2423(f).

As noted above, the proposal in section 105 is in most respects the same as H.R. 4477. However, in cases in which liability depends on engaging in a “commercial sex act” with a person under 18, section 105 makes it an affirmative defense for the defendant to show that he reasonably believed that the person was 18 or older. *See* proposed § 2423(g) in the bill. In contrast, H.R. 4477 would require the government to prove that the defendant knew or should have known that the other person was below 18. We strongly support the approach of the current bill (H.R. 5422) on this issue.

Placing the burden of proof on the defendant concerning a mistake regarding the victim’s age is consistent with the approach of the general federal law provision prohibiting sexual acts with underage persons—18 U.S.C. § 2243(a)—which makes mistake of age an affirmative defense that the defendant must establish by a preponderance of the evidence (*see* § 2243(c)). Liability for engaging in sexual acts with underage persons under the proposal will generally depend either on engaging in conduct prohibited by 18 U.S.C. § 2243(a) or conduct prohibited as a “commercial sex act.” There is no reason for placing the burden on the government to establish the defendant’s knowledge or belief regarding the victim’s age in the latter circumstance (“commercial sex act”), when the burden of proof is on the defendant under existing law in the former circumstance (violation of 18 U.S.C. § 2243(a)) and will remain so in that circumstance under the amended statute. Moreover, as a practical matter, requiring the government to prove beyond a reasonable doubt that the defendant knew or should have known that a child prostitute was under 18 would make prosecution difficult. The direct evidence of the defendant’s knowledge or belief on this issue resides in his own mind, and any indirect evidence will likely be based on circumstances and conduct known only to the defendant, occurring in a jurisdiction outside of the United States. Moreover, the defendant would in any event be engaging in sexually exploitative behavior that has no positive social value, and it is not unreasonable to require him to bear the burden of ascertaining that the victim is 18 or older before engaging in a “commercial sex act” with another. A reasonable mistake about age should accordingly be treated as an affirmative defense, as H.R. 5422 proposes.

Finally, we note that section 103(a) of the bill proposes to increase the maximum penalty under current 18 U.S.C. § 2423(b) from 15 years to 30 years. If maximum penalty increases of the sort proposed in section 103(a) are adopted, the maximum penalties under the proposed revision of 18 U.S.C. § 2423(b) in section 105 should be increased correspondingly.

*Section 106—Two Strikes You’re Out*

Section 106 of the bill proposes a mandatory life imprisonment provision for recidivist child molesters. This proposal is the same as H.R. 2146 as passed by the House of Representatives. We support this proposal in concept, but recommend that its formulation be modified, to ensure that the applicability of the mandatory penalty does not depend on fortuities in the basis for federal jurisdiction over the offense.

Currently, subsection (c) of 18 U.S.C. § 2241 generally authorizes imprisonment for any term of years or life for engaging in sexual acts with children below the age of 12, for raping children below the age of 16, or for attempts to commit such offenses. Subsection (c) further provides that a person who commits an offense under that subsection, and has a previous federal or state conviction for such an offense, is to be sentenced to life imprisonment (if not sentenced to death). Thus, a “two strikes” mandatory life imprisonment provision for serious recidivist child molesters already exists under current federal law. The existing provision is inadequate, however, because its applicability depends on jurisdictional predicates which are narrowly defined. For example, § 2241(c) generally applies to an offender who rapes a 12-year-old in the special maritime and territorial jurisdiction—but it does not apply to an offender who transports a 12-year-old in interstate or foreign commerce and rapes her, lures a 12-year-old through the Internet and rapes her, or travels interstate to rape a 12-year-old, though offenses of these types are otherwise subject to federal jurisdiction. *See* 18 U.S.C. § 2422(b), § 2423. Hence, such offenses cannot be prosecuted under 18 U.S.C. § 2241(c), and its mandatory life imprisonment provision is inapplicable to persons federally prosecuted for such offenses who have previous convictions for similar offenses.

The proposal in section 105 of H.R. 5422 attempts to provide a more consistently applicable “two strikes” rule, but significant gaps in coverage would still remain as this proposal is currently formulated. For example, in light of the definition of “Federal sex offense” under the proposal, the predicate offenses would not include raping a child in the production of child pornography in violation of 18 U.S.C. § 2251, or raping a child where the offense is effected through Internet luring of the victim or interstate travel of the offender in violation of 18 U.S.C. § 2422(b) or § 2423(b). We would be pleased to work with the Subcommittee in developing a formulation of this proposal which ensures consistently that persons repeatedly convicted of serious sex offenses against children are incarcerated permanently.

## TITLE II—INVESTIGATIONS AND PROSECUTIONS

*Section 201—Law Enforcement Tools to Protect Children*

Section 201 of the bill would facilitate the effective investigation of sex offenses through court-ordered wiretapping, by incorporating additional sex offenses as wiretapping predicates. The proposal is the same as H.R. 1877 as passed by the House of Representatives. We support the expansion of predicate offenses proposed in this section, but believe that it is incomplete as currently drafted.

Current federal law allows the interception of oral and electronic communications (“wiretapping”) if authorized by a court order. A number of requirements must be satisfied to issue such an order, including probable cause to believe that an offense specifically enumerated in 18 U.S.C. § 2516 has been or will be committed and that particular communications concerning the offense will be obtained through the proposed interception. The current enumeration in 18 U.S.C. § 2516 is inadequate in relation to such offenses as child sexual exploitation, Internet luring of children for purposes of sexual abuse, and sex trafficking. For example, while the list of wiretap predicates now includes a variety of offenses involving, for example, theft, fraud, and trafficking in stolen property, it does not include the crime under 18 U.S.C. § 2251A of buying or selling a child to be used in the production of child pornography, any of the crimes under chapter 117 of the criminal code relating to interstate transportation or travel or use of interstate instrumentalities to promote prostitution or other sexual offenses, or the offense of sex trafficking in persons under 18 U.S.C. § 1591. The proposal in section 201 of this bill improves investigative authority in relation to sex offenses by adding as wiretap predicates several offenses under the sex offense chapters of the criminal code which are not currently covered—specifically, 18 U.S.C. §§ 2251A, 2252A, 2423(b), and (with some qualification) §§ 2422 and 2423(a).

However, section 201 does not include a number of sex offenses for which the use of wiretapping in investigation—subject to the usual requirements for a court order, including a judicial determination of probable cause and inadequacy of other investigative methods—may plainly be appropriate. The relevant omitted offenses include the sex trafficking statute, 18 U.S.C. § 1591, and 18 U.S.C. § 2260 (production of child pornography for importation), § 2421 (transportation of persons for purposes of

prostitution or criminal sexual conduct generally), and § 2425 (use of interstate facilities to transmit information about a child below the age of 16 for purposes of criminal sexual conduct). In addition, the bill's coverage of 18 U.S.C. § 2422(a) (coercion or enticement of person to travel for purposes of prostitution or criminal sexual conduct), § 2422(b) (coercing or enticing minor to engage in prostitution or criminal sexual conduct through use of facility or means of interstate or foreign commerce), and § 2423(a) (transportation of minor for purposes of prostitution or criminal sexual conduct) is qualified, requiring a hypothetical inquiry about what the penalty grading of the intended sexual activity would be under other chapters of the criminal code if different jurisdictional predicates existed.

We recommend that the proposal be augmented to include consistently the sex offenses noted above as wiretap predicates. *See* S. 2917, § 8 (complete list in corresponding Senate bill provision). Doing so would fully effectuate the important objectives of this reform, which were aptly described in the House Judiciary Committee's deliberations concerning H.R. 1877:

Because of advances in computer technology, as well as 24 million children who regularly use the Internet, child molesters have easy access to potential victims and new opportunities to ply their trade.

The FBI has testified that computer technology is becoming the technique of choice and that those types of crimes are increasing. . . . The American Medical Association released a study last summer on children who regularly use the Internet. The study found that nearly 1 in 5 children surveyed received an unwanted sexual solicitation online in the last year, yet few reported the action to police. We cannot ignore this growing problem.

Law enforcement officials must have the tools necessary to deal with these crimes. Often, child molesters used the Internet to make initial contact with the child. They then convince the child to go off-line and use a telephone to set up meetings with the children.

Current Federal criminal law authorizes law enforcement officials to wiretap [in investigating] some child sexual exploitation crimes but not others. The interception of oral communications through wiretaps significantly enhances investigations. . . .

According to a March 2002 Congressional Research Service report, "The trafficking in people for prostitution and forced labor is one the fastest growing areas of international criminal activity and one that is of increasing concern to the U. S. and the international community. The overwhelming majority of those traffick[ed] are women and children. More than 700,000 people are believed to be trafficked each year worldwide, some 50,000 to the United States. Trafficking is now considered the third largest source of profits for organized crime behind only drugs and weapons, generating billions of dollars annually. . . .

[T]rafficking victims are raped, starved, forced into drug use, and denied medical care. Law enforcement officials must be given every tool available, including wiretapping, to investigate and stop this trafficking.

H.R. Rep. No. 468, 107th Cong., 2d Sess. 20, 23 (remarks of Rep. Smith).

*Section 202—No Statute of Limitations for Child Abduction and Sex Crimes*

We support section 202 of the bill, which provides that child abductions and felony sex offenses can be prosecuted without limitation of time.

In most contexts, the perpetrator of a federal crime who manages to avoid identification for five years has probably avoided prosecution forever, because the limitation period applicable to most federal crimes is five years. *See* 18 U.S.C. § 3282. There are some exceptions to this limitation—*see, e.g.*, 18 U.S.C. § 3281 (no limitation period for capital crimes); 18 U.S.C. § 3293 (ten-year limitation period for certain financial institution offenses); 18 U.S.C. § 3294 (twenty-year limitation period for certain thefts of artwork). Existing law also modifies the current limitation rules for certain cases involving child victims by providing that the limitation period does not bar prosecution "for an offense involving the sexual or physical abuse of a child under the age of eighteen years . . . before the child reaches the age of 25 years." 18 U.S.C. § 3283. While this is better than a flat five-year rule, it remains inadequate in many cases. For example, a person who abducted and raped a child could not be prosecuted beyond this extended limit—even if DNA matching conclusively identified him as the perpetrator one day after the victim turned 25. Nor is this provision applicable in any case that does not involve child victims, such as that of a serial rapist of adult victims who is identified a number of years after the commission of the crimes through DNA matching.

There is recent precedent for congressional action on this issue. Specifically, § 809 of the USA PATRIOT ACT (P.L. 107-56) enacted 18 U.S.C. § 3286(b), which eliminated the limitation period for prosecution of many terrorism offenses. We have noted in previous congressional testimony the need to adopt similar reforms to extend or eliminate the limitation period for prosecution in cases involving sexually assaultive crimes or potential DNA identification. *See* Statement of Sarah V. Hart, Director, National Institute of Justice, before the Senate Judiciary Subcommittee on Crime and Drugs Regarding DNA Initiatives, at 7-8 (May 14, 2002).

At the state level, the rules governing the initiation of criminal prosecutions are often more permissive than those currently applicable in federal cases. A number of states have no limitation period for the prosecution of felonies generally, or for other broadly defined classes of serious crimes. *See, e.g.*, Ala. Code § 15-3-5 (no limitation period for prosecution of felonies involving violence, drug trafficking, or other specified conduct); Ky. Rev. Stat. § 500.050 (generally no limitation period for prosecution of felonies); Md. Cts. & Jud. Proc. Code § 5-106 (same); N.C. Gen. Stat. § 15-1 (same); Va. Code § 19.2-8 (same); *see also* Ariz. Rev. Stat. § 13-107(E) (limitation period for prosecution of serious offenses tolled during any time when identity of perpetrator is unknown). Other states have amended their statutes of limitations in light of the development of DNA technology and its ability to make conclusive identifications of offenders even after long lapses of time. Common reforms include extending or eliminating the limitation period for prosecution in sexual assault cases or cases that may be solvable through DNA testing. *See, e.g.*, Ark. Code § 5-1-109(b)(1); Del. Code tit. 11 § 205(i); Ga. Code § 17-3-1(b), (c.1); Idaho Code § 19-401; Ind. Code § 35-41-4-2(b); Kan. Stat. § 21-3106(7); La. Crim. Proc. Code art. 571; Mich. Comp. Laws § 767.24(2)(b); Minn. Stat. § 628.26(m); Or. Rev. Stat. § 131.125(8); Tex. Crim. Proc. Code art. 12.01(1)(B).

Section 202 of the bill would enact a new section 3296 in title 18, providing that federal child abduction and felony sex offenses can be prosecuted without limitation of time. The covered felonies would be the same as those for which up to lifetime supervision is authorized by section 101 of the bill. This is parallel to the USA PATRIOT ACT reforms, which eliminated the upper limit on the duration of supervision and the limitation period for the commencement of prosecution for identically defined classes of terrorism offenses. *See* P.L. 107-56 §§ 809, 812.

The proposal in section 202 also parallels the USA PATRIOT ACT in providing that its statute of limitations reform will apply retroactively to offenses committed before its enactment. *See* P.L. 107-56 § 809(b) (providing in identical language that statute of limitations reform “shall apply to the prosecution of any offense committed before, on, or after the date of the enactment of this section.”) This is an important provision which ensures that, for example, there will be no time bar to the prosecution of rape cases which were unsolvable at the time of their commission, but which may now be solvable through the use of the DNA matching technology and databases.

The retroactive application of this type of reform is constitutional because the Constitution’s prohibition of ex post facto laws only bars (1) criminalizing conduct that was non-criminal when it occurred; (2) aggravating the seriousness of a crime; (3) increasing the penalty for a crime after its commission; or (4) retroactively reducing the nature or quantum of evidence sufficient for conviction of a crime. *See Carmell v. Texas*, 529 U.S. 513 (2000); *Collins v. Youngblood*, 497 U.S. 37 (1990). Since legislative changes that affect the limitation period for prosecution do none of these things, they are not constitutionally proscribed ex post facto measures. *See Carmell*, 529 U.S. at 539 (“mistake to stray beyond” these four identified historic categories of types of impermissible ex post facto laws); *United States v. Grimes*, 142 F.3d 1342, 1350-51 (11th Cir. 1998) (noting uniform holdings of the federal courts of appeals that retroactive legislative changes of limitation periods are constitutional as applied to prosecutions in cases where the previous limitation period had not yet expired), *cert. denied*, 525 U.S. 1088 (1999); *People v. Frazer*, 982 P.2d 180, 190-98 (Cal. 1999) (holding that retroactive legislative extension of limitation period is not an impermissible ex post facto law even as applied to a case in which the previous limitation period already had expired), *cert. denied*, 529 U.S. 1108 (2000). Moreover, the Due Process Clause does not incorporate any principle of justice or repose that generally entitles the perpetrator of, for example, a child abduction or rape to permanent immunity from prosecution merely because he has succeeded in avoiding identification and apprehension for some period of time, or because of a procedural rule limiting the time to commence prosecution which has been superseded by later legislation. *See, e.g., Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314-16 (1945) (due process does not forbid legislative changes in statutes of limitations that revive time-barred actions); *Frazer*, 982 P.2d at 198-205 (extending the same due process analysis to criminal statutes of limitations).

*Section 221—No Pretrial Release for Those Who Rape or Kidnap Children*

Our understanding of section 221 is that it was intended to add certain offenses against children to the list of crimes which currently gives rise to a rebuttable presumption in favor of pretrial detention. The relevant offenses would include child abduction and child rape. So understood, we support this proposal, and would be pleased to work with the Subcommittee in perfecting its formulation.

Under current law, a defendant may be detained before trial if the government establishes by clear and convincing evidence that no release conditions will reasonably assure the appearance of the person and the safety of others. Current law also provides rebuttable presumptions that the standard for pretrial detention is satisfied in certain circumstances. For example, such a presumption exists if the court finds probable cause to believe that the defendant committed a drug offense punishable by imprisonment for 10 years or more, or that the person committed a crime of violence or drug trafficking crime while armed with a firearm, in violation of 18 U.S.C. § 924(c). See 18 U.S.C. § 3142(e).

Thus, existing law creates a presumption that, for example, an armed robber charged under 18 U.S.C. § 924(c) cannot safely be released before trial. A presumption of this type is at least equally warranted in relation to such crimes as child abduction and child rape. Indeed, believing otherwise would require closing one's eyes to reality.

*Section 241—Amendment*

This provision would require federal, state, and local law enforcement agencies to report each case of a missing child under the age of 21 (rather than the current age 18) to the National Crime Information Center (NCIC). We note that the NCIC already allows for missing persons of any age to be entered into the NCIC, based on certain criteria. We would be pleased to work with the Subcommittee in examining how the existing reporting arrangements might be improved.

*Section 261—Recordkeeping to Demonstrate Minors Were Not Used in Production of Pornography*

Section 261 would impose a one-time requirement on the Attorney General to prepare and submit a report to Congress detailing the number of times since January 1993 that the Department of Justice has inspected records of producers of materials regulated pursuant to 18 U.S.C. § 2257 and detailing the number of prosecutions under that section. We believe that this provision is unnecessary. We do, however, share the concern that the recordkeeping provisions of § 2257, which were written in the pre-Internet era, may require reviewing and updating in order to ensure their effectiveness. We would be pleased to work with the Subcommittee in addressing this issue.

## TITLE III—PUBLIC OUTREACH

*Section 301—National Coordination of AMBER Alert Communications Network*

AMBER is an acronym for America's Missing: Broadcast Emergency Response. The AMBER Program was created in 1996 as a legacy to 9-year-old Amber Hagerman who was kidnapped and murdered in Arlington, Texas. Following her murder, concerned individuals contacted local radio stations in the Dallas area and suggested that the station broadcast special "alerts" over the airways to help find abducted children. The Dallas/Fort Worth Association of Radio Managers, with the assistance of law-enforcement agencies in northern Texas, established the first AMBER Plan.

The purpose of the AMBER Plan is to provide a rapid response to the most serious child-abduction cases. Rapid response is critical when a child is abducted because data show that 74% of children who are killed during an abduction are killed within the first 3 hours. When an AMBER alert is activated, in addition to the tremendous resources of law-enforcement agencies, thousands of radio listeners and television viewers are added to the team of people engaged in the recovery of the abducted child. The combined efforts of the police and the public will help reunite more abducted children with their families.

There are currently 61 AMBER plans across the country and 20 statewide plans. AMBER Plans are voluntary, cooperative agreements between law-enforcement agencies and local broadcasters to send an emergency alert to the public when a child has been abducted and it is believed that the child's life is in grave danger. Under the AMBER Plan, radio and television stations interrupt programming to broadcast information about the missing child using the Emergency Alert System (EAS), formerly known as the Emergency Broadcast System. So far, with only par-

tial implementation across the country, 31 children have been recovered as a result of AMBER plans.

H.R. 5422 promotes national coordination, assistance and grant funding for AMBER Plans across the country. The Department of Justice supports the concepts embodied in this legislation because AMBER alerts are a powerful law enforcement tool in the recovery of abducted children. AMBER plans send a strong message that law enforcement and broadcasters are actively involved in the protection of our Nation's children.

Given the ease of interstate travel, creating a seamless network of AMBER plans across the country is the next step in the success of the AMBER program. A nationwide AMBER network will ensure that law enforcement can activate an alert and engage communities in the search for an abducted child across state lines, across a region, within a defined region or, if necessary, nationwide.

Under H.R. 5422, the Department of Justice would designate one of our officials as a nationwide point of contact for the development of the national network. H.R. 5422 tasks the AMBER Alert Coordinator of the Department of Justice with eliminating gaps in the network, including gaps in interstate travel, working with States to encourage development of additional AMBER plans, working with States to ensure regional coordination among plans, and serving as a nationwide point of contact. The Department of Justice is uniquely situated to perform these duties and we would be pleased to do so.

In fact, approximately one year ago, the Department in cooperation with the National Center for Missing and Exploited Children (NCMEC) developed an information packet for distribution to any state or locality interested in establishing an AMBER plan. Many of the programs in existence today were established with the help of NCMEC and the Department of Justice.

In addition to providing aid in the establishment of AMBER programs, H.R. 5422 requires that the AMBER Alert Coordinator cooperate with the Federal Bureau of Investigation in carrying out his or her duties. As the FBI is a component of the Department of Justice, such coordination will be straightforward. Also, the FBI's Crimes Against Children Program is a specialized unit within the FBI with substantial expertise in combating all types of crimes against children, especially abductions and kidnaping. This CAC program stands ready to respond any time there is an abduction where the perpetrator crosses state lines or a state or local law enforcement agency requests their assistance.

*Section 302—Minimum Standards for Issuance and Dissemination of Alerts through AMBER Alert Communications Network*

H.R. 5422 also tasks the Department of Justice Coordinator with establishing nationwide minimum standards for the issuance of an AMBER alert and the extent of dissemination of the alert. The legislation allows for voluntary adoption of these standards. The Department supports the establishment of minimum standards because such standards will hopefully limit the use of the system to those rare instances of serious child abductions. Limiting the use of AMBER Alerts is critical to the long-term success of the program. Overuse or misuse of AMBER Alerts could lead to public fatigue or numbness to the alerts.

NCMEC currently recommends that an AMBER Alert be issued only when law enforcement confirms that the child has been abducted and is in serious danger of bodily harm and where there is enough descriptive information about the child or the suspect to believe that an immediate broadcast will help. These recommendations are a good start in establishing appropriate minimum standards for the issuance of an alert.

This section requires the Coordinator to consult with state and local law enforcement agencies to establish standards for limiting the alerts to appropriate geographic areas. The Department supports this concept for the same reasons that we believe establishing standards for the issuance of alerts is a good idea—ensuring that AMBER alerts are not overused is critical to the long term success of the program. Limiting alerts to a geographic region where they can be most useful is the best approach to successfully using AMBER alerts as a tool to bring abducted children home safely.

Consultation with state and local law enforcement will be beneficial in the effort to establish minimum standards because these are the individuals who have already begun using the AMBER program and they will continue to be the primary users of the program in the future. One strength of H.R. 5422 is that the control over the AMBER programs remains with States and localities while giving those entities the benefit of national coordination.

The Coordinator is also required to cooperate with local broadcasters, the Secretary of Transportation, and the Federal Communications Commission in estab-

lishing standards. All of these people and agencies can provide valuable input to the development of standards that will be useful to law enforcement and broadcasters, and beneficial to the community.

*Section 303—Grant Program for Notification and Communications Systems Along Highways for Recovery of Abducted Children*

This section authorizes \$20,000,000 for fiscal year 2003 for the Secretary of Transportation to make grants to States for the development or enhancement of notification or communications systems along highways for alerts and other information for the recovery of abducted children.

The Department of Transportation has recognized the value of the AMBER Alert Program and supports state and local governments' choice to implement the program. The DOT believes that public agencies should develop a formal policy and have a sound set of procedures for calling an AMBER alert. A key to the success of such programs is seamless coordination between law enforcement agencies and those responsible for public outreach, including the transportation community.

To assist in this effort, the DOT recently issued a policy that supports the use of changeable message signs along highways for AMBER alerts. These child abduction alerts may be communicated through various means including radio and television stations, highway advisory radio, changeable message signs, and other media.

The Department of Transportation will continue to work with state and local governments on this important issue. DOT looks forward to working with Congress on funding to support this important initiative.

*Section 304—Grant Program for Support of AMBER Alert Communications Plans*

This section of H.R. 5422 directs the Attorney General to administer a grant program for "the development and enhancement of programs and activities for the support of AMBER Alert communication plans." The Department of Justice supports the concepts addressed in this portion of the legislation. The Department believes that developing and distributing educational and training programs, law enforcement programs, and providing funds for equipment upgrades relating to AMBER programs is an important service to our Nation. We look forward to working with Congress on funding to support this important initiative.

*Section 305—Increased Support*

Section 305 amends 42 U.S.C. § 5773(b)(2) to increase the authorized NCMEC funding level to \$20,000,000 in 2003 and 2004. The Administration strongly supports the programs and mission of NCMEC, as shown in the President's 2003 Budget, which includes \$14.5 million for NCMEC—\$11.5 million in the Department of Justice and \$3 million in the Secret Service. We look forward to working with Congress on providing appropriate funding for this critical program.

*Section 306—Sex Offender Apprehension Program*

Section 306 of H.R. 5422 amends 42 U.S.C. § 3796dd(d) by adding, to the list of authorized objectives for COPS grant funding, assistance to states in enforcing their sex offender registration requirements. The Office of Community Oriented Policing Services (COPS), within the Department of Justice, is responsible for making grants to state and local law enforcement agencies to help them fight crime and advance community policing. COPS grants are currently used to hire community policing officers, hire school resource officers, purchase time-saving technology, combat methamphetamine production and use, assist tribal law enforcement, and advance community policing strategies through training and technical assistance. The Administration has no objection to adding this new objective, provided that use of COPS grant funding for this purpose is at the discretion of local law enforcement, not mandated by the federal Government.

Mr. SMITH. Mr. Allen?

**STATEMENT OF ERNEST E. ALLEN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN**

Mr. ALLEN. Yes, Mr. Chairman. I have submitted written testimony, and with your permission, I'd like to briefly summarize.

First, I'd like to express my thanks, our thanks, to you and to this Committee for your extraordinary leadership on behalf of children in this legislation and in many other ways, and to announce

our enthusiasm about H.R. 5422. I specifically want to thank you for the Committee's continuing confidence and support for the work of the National Center, as evidenced by the extension of our authorization legislation. We are deeply grateful for your kindness and your confidence.

I think underlying this legislation, we believe that the most important element is that for the progress we have made, as Mr. Green indicated, the reality is we need to do more. In 74 percent of abduction homicides, the child is dead within the first 3 hours, so time is the enemy and we have to move quickly. We believe that the elements of this legislation not only help us respond more quickly and effectively, but they provide tools for addressing the problem, better tools for law enforcement, and they improve the mechanisms for tracking, identifying, and then punishing those offenders who prey upon children. We think this is very important and timely legislation.

Let me briefly address a few key sections. First, as it relates to supervised release for sex offenders. Today, there are more than 400,000 registered sex offenders in the United States. Sixty percent of those offenders are in our communities, and the reality is that while all sex offenders are not the same and we can't incarcerate everybody, it is a disturbing reality that particularly those offenders who prey upon children tend to do it again and again.

We're convinced that most Americans do not recognize the fact that the majority of the victims of the nation's sex offenses are kids. According to the Department of Justice, two-thirds of imprisoned sexual assault offenders in our prisons victimized victims less than 18 years of age, and nearly four in ten imprisoned rapists reported that their victims were 12 or younger.

The Lifetime Supervision Act introduced by Congressman Gekas addresses a long-held concern of ours, and that is that the worst thing we can do for society is to tell an offender to go forth and sin no more. There must be meaningful and continuing supervision. It's in society's best interest. It's also in the best interest of these offenders.

Secondly is section 102 on the first degree murder for child abuse and torture. Today, the sad reality is that persons who commit the crime of murder of a child in the United States rarely receive the same level of punishment as those who commit their offenses against adults. The language contained within this legislation will allow the courts, prosecutors, and juries to rectify the anomalies in the law that have far too long allowed murderers of children to receive lesser punishments. We think these are important changes and we support them.

Thirdly, as it relates to penalties generally, in sections 103 and 104, the implementation of stronger penalties for offenders who commit sexual offenses and for offenders who are found guilty of kidnapping, we think sends a real strong message that these crimes are of the most serious nature and will be punished accordingly. We support those changes.

Regarding section 105 and the penalties against sex tourism, one of the things that Congress has asked us and the Justice Department has asked us to track through our cyber tip line is to handle leads regarding sex tourism involving children, and we have re-

ceived hundreds of those leads. The reality is, this is a booming industry and that children in America and around the world are increasingly being viewed as commercial commodities.

This new section punishes offenders, and let me add that one of the problems with existing law has been that we must prove that an individual is traveling with the intent to violate the criminal law as it relates to child sexual exploitation. The new section punishes offenders for any acts violating Federal law relating to illicit sexual conduct with children while traveling abroad. The challenge of proving mens rea, of proving intent for traveling—that the traveling was for criminal purposes is extraordinarily difficult for prosecutors, and as a consequence, very few cases of child sex tourism have been filed for prosecution.

We believe that section 105 effectively provides law enforcement with a level playing field by setting forth evidentiary requirements for convictions that are significantly more straightforward than existing law. The sexual trafficking of women and children around the world is a multi-million-dollar industry and we think this legislation is a significant step forward.

Section 201, law enforcement tools to protect children, as Mr. Collins mentioned, the Child Sex Crimes Wiretapping Act, we believe provides an essential and valuable tool for law enforcement to catch up regarding the sexual exploitation of children. It allows us, allows law enforcement to use search and seizure tools available for other kinds of offenses that have heretofore not been available for these Internet crimes. We've worked with Congresswoman Nancy Johnson on this and we support this provision.

And finally, let me say a word about the AMBER Alert legislation. As most of you know, for the past 2 years, the Center has been working with the creators of this program in Texas, the Tarrant County Sheriff, the Dallas-Fort Worth radio broadcasters, and others where the program was born after the abduction and murder of Amber Hagerman 6 years ago, and working in partnership with the National Association of Broadcasters, the National Association of Attorneys General, the International Association of Chiefs of Police, and the National Sheriffs' Association, we have been trying to get communities across America to implement this effort, and let me just interject here that the momentum is carrying beyond our borders, and I am very pleased that today at the hearing we have with us the Solicitor General of the Province of Alberta in Canada, Heather Forsythe, who has come here to talk about implementing AMBER in Alberta. Ms. Forsythe, we are delighted that you are here—

Mr. SMITH. Unless I'm mistaken, I think we're putting her statement in the record or her observations in the record, as well.

Mr. Allen, are you finished?

Mr. ALLEN. Let me just say very briefly that we think it's important that this legislation move forward. We think that the incentives you provide are incredibly important. We hope that this legislation moves quickly through this vehicle or another, because the States and communities across America need it and we need it now.

Mr. SMITH. Thank you, Mr. Allen.

[The prepared statement of Mr. Allen follows:]

## PREPARED STATEMENT OF ERNEST E. ALLEN

Mr. Chairman and distinguished members of the Subcommittee, I welcome this opportunity to appear before your Subcommittee today to announce the unequivocal support of the National Center for Missing & Exploited Children for H.R. 5244, the "Child Abduction Prevention Act" introduced by Chairman Sensenbrenner. Mr. Chairman, you have long been a champion on behalf of children and I commend you and the members of this Subcommittee for your tireless efforts in this latest legislative initiative that will greatly enhance the safety and protection of America's children. I thank you for your recognition of these critical issues that are addressed in H.R. 5244 and also for your continued and generous support of the Congressionally mandated role that the National Center for Missing and Exploited Children implements everyday on behalf of our children and families. The "Child Abduction Prevention Act" will help us meet those challenges that are so clearly recognized by you, Mr. Chairman, and the members of this Subcommittee as set forth in this legislation.

We know all too well that when a child is kidnapped, time is the enemy, and we need every available resource to bring that child home. Statistics show that the first few hours are critical to the successful outcome of the case. According to the Justice Department, 74 percent of the children who were kidnapped and later found murdered were killed within the first three hours after being taken, so we don't have time to waste. The "Child Abduction Prevention Act" will greatly enhance the collective response time by law enforcement and the community at large to realize timely interventions and save lives.

The National Center for Missing & Exploited Children fully supports the omnibus legislation contained in H.R. 5244. There are a number of sections within the legislation that I would especially like to address for the Subcommittee, but before I do, allow me to provide the Subcommittee with some general background on the National Center for Missing & Exploited Children and why we are at the forefront of the issues contained in this legislation.

The National Center is a non-profit organization congressionally mandated under the *Missing Children's Assistance Act of 1984*. We work in partnership with the U.S. Department of Justice, as the official national resource center and clearinghouse on the issue of missing and exploited children. Our funding supports specific operational functions mandated by Congress, including:

- a national 24-hour toll-free hotline;
- a photo distribution system to generate leads regarding missing children;
- a system of case management and technical assistance to the nation's 18,000 law enforcement agencies and families in the search for and recovery of missing children;
- training programs for federal, state and local law enforcement. The National Center has worked with law enforcement on more than 90,000 missing child cases, resulting in the recovery of nearly 67,000 children; and
- serving as the designated agency by Congress for being the 911 for Internet crimes against children.

While we are perhaps best known for our work in the field of missing children, the National Center for Missing and Exploited Children is also a leader in the battle against child sexual exploitation and is at the epicenter of the war against child sexual exploitation.

On January 31, 1997, in response to the increasing prevalence of child sexual victimization, NCMEC officially opened its Exploited Child Unit (ECU). The ECU is responsible for the receipt, processing, initial analysis and referral to law enforcement of information regarding the sexual exploitation of a child.

In 1997 the former Director of the FBI and I testified before the Senate Appropriations Subcommittee on Commerce, Justice, State and the Judiciary. The Subcommittee asked about the severity of the problem of Internet-based child sexual exploitation. Director Freeh and I agreed that it was a serious and growing problem that we were just beginning to recognize and address, and that much more needed to be done at the federal, state and local levels. As a result of that hearing, Congress directed NCMEC to establish an Internet-based, reporting mechanism for child pornography, online enticement of children, child molestation, child prostitution and child sex tourism. Congress also directed the Department of Justice to establish multi-jurisdictional Internet Crimes Against Children Task Forces across the country.

On March 9, 1998 NCMEC launched its CyberTipline, [www.cybertipline.com](http://www.cybertipline.com), the "911 for the Internet," to serve as the national online clearinghouse for investigative

leads and tips regarding child sexual exploitation. NCMEC's CyberTipline is linked via server with the FBI, Customs Service and Postal Inspection Service. Leads are received and reviewed by NCMEC's analysts, who visit the reported sites, examine and evaluate the content, use search tools to try to identify perpetrators, and provide all lead information to the appropriate law enforcement agency. The FBI, Customs Service and Postal Service have real time access to the leads. The results: to date, NCMEC has received and processed over 85,000 leads, resulting in hundreds of arrests and prosecutions.

In light of the foregoing brief overview of our daily involvement in the critical issues addressed in H.R. 5244, I would briefly highlight in the time allowed the following points:

#### SECTION 101—SUPERVISED RELEASE TERMS FOR SEX OFFENDERS

The "Lifetime Supervision Act," introduced by Representative Gekas, addresses a pivotal concern long held by law enforcement and the National Center for Missing & Exploited Children. As this Subcommittee is aware Mr. Chairman, certain offenders that prey on children are within the highest classification of any type of offender for re-offending after having served their term of incarceration for their most recent crime. The recidivism rates for those who are sexual predators of children are unparalleled by other criminals and the devastation wrought upon their victims inevitably have life-altering consequences. Often the next victim or victims are not discovered for many years, allowing a cycle of violence to be perpetrated by the same offender to continue unabated. In some cases, the violence against children escalates beyond his historical patterns of violence, a fact we all have witnessed in graphic detail in the headlines this summer. Mr. Chairman, this important section of H.R. 5244 provides the Court with the important responsibility and discretion to order the supervision for life of those offenders who pose a clear and present danger to our children. We are of the opinion that the implementation of this section will save children's lives.

#### SECTION 102—FIRST DEGREE MURDER FOR CHILD ABUSE AND TORTURE

Mr. Chairman, as the members of this Subcommittee are well aware, more often than not our children are second-class citizens when it comes to our criminal justice system. Persons who commit the crime of murder of a child in the United States rarely receive the same level of punishment as those who commit the same crime against an adult would receive. The language contained within section 102 will allow the courts, prosecutors and juries to rectify the anomalies in the law that have far too long allowed murderers of children to receive a "slap on the wrist" for punishment. In refining the definitions of pattern and practice, recklessly causing death or serious bodily injury, and most importantly allowing inferences under subsection (5)(B) from the "character, manner, and circumstances of the perpetrator's conduct in a finding of recklessness," this legislation will provide a way in which those of us fighting in the trenches can balance the scales of justice for murdered children.

#### SECTIONS 103 AND 104—PENALTIES

The implementation of stronger penalties for offenders who commit sexual offenses and for offenders who are found guilty of kidnapping will be an effective message that these crimes are of the most serious nature and will be punished accordingly. It reaffirms the position that our children are indeed our most precious resource in this country and that violence against them is not acceptable. Those who commit such unspeakable crimes against children will be subjected to the last full measure of justice that they so richly deserve, and this section of H.R. 5244 allows the courts to place such offenders in prison for significant periods of time, exactly where they belong. The mandatory minimum sentence of 20 years incarceration if the victim of the kidnapping is under the age of 18 sends an unqualified message as to the seriousness of the offense.

#### SECTION 105—PENALTIES AGAINST SEX TOURISM

This section as introduced by Chairman Sensenbrenner represents a qualitative improvement over the current law regarding child sex tourism. Presently prosecutors must prove that an individual is traveling with the "intent" to violate the criminal law as it relates to child sexual exploitation. The new section punishes offenders for any acts violating federal law relating to illicit sexual conduct with children while traveling abroad. The challenge of proving the "mens rea" or "intent" for traveling was for "criminal purposes" is extraordinarily difficult for prosecutors and as a consequence very few cases of child sex tourism have been filed for prosecution.

Section 105 effectively provides law enforcement with a level playing field by setting forth evidentiary requirements for convictions that are significantly more straightforward than existing law. The sexual trafficking of women and children around the world is a multi-million dollar industry that results in untold suffering and devastation to its victims. A significant participant in this ongoing victimization of children are the so called "sex tour operators" who arrange and facilitate the travel of the sexual predator, knowing the purpose for the travel is to sexually exploit children in other countries. The profits for the sex tour operators represent blood money from children all around the world, often in circumstances that are almost beyond hope. This legislation is in many ways the first step in providing a chance for those children and appropriate punishment for those who traffic in human misery.

#### SECTION 201—LAW ENFORCEMENT TOOLS TO PROTECT CHILDREN

This section as introduced by Representative Nancy Johnson as "The Child Sex Crimes Wiretapping Act of 2002", significantly expands the predicate offenses involving sexual crimes against children that would allow the search and seizure of evidence, electronic or otherwise, through time honored methods used in other investigations of serious offenses. As this Subcommittee is aware, the advent of the Internet and World Wide Web coupled with personal computers in many homes and libraries is providing unprecedented access to educational, recreational and developmental resources for our children; unfortunately it also has provided unwanted exposure of our children to the most insidious sexual materials and predators in our history. As technology speeds its way into the 21st century, our efforts to protect our children in a timely and effective manner begin with effective laws that provide tools for law enforcement to be successful in a dynamic technological environment. Section 201 enhances that much needed capability of law enforcement to meet the challenges of computer-facilitated sexual exploitation of children by providing a legal basis for effectively searching and seizing evidence of crimes against children.

#### SECTION 301—NATIONAL COORDINATION OF AMBER ALERT COMMUNICATIONS NETWORK

Mr. Chairman, for the past two years NCMEC has assisted communities throughout the United States with developing successful AMBER Plans. This program is a lasting legacy to 9-year-old Amber Hagerman who was kidnapped and brutally murdered while riding her bicycle in Arlington, Texas in 1996. NCMEC serves as the nation's AMBER Alert coordinator by tracking and documenting the success of this program nationwide. NCMEC is the clearinghouse for all AMBER Alert information. The AMBER program has grown from 27 AMBER Plans on local and state-wide levels one year ago to 66 AMBER Plans nationwide, 24 of those covering entire states. Moreover, our data tracking information demonstrates that the AMBER Plan has assisted in the safe recovery of 31 children nationwide.

Over the past two years the National Center for Missing & Exploited Children, in conjunction with the National Association of Broadcasters, has been waging a national campaign to place the AMBER Program in every city and town in America. To that end, we hired a full time manager to coordinate our efforts. As a part of our national strategy to ensure that AMBER Plans are established properly, NCMEC developed an AMBER Alert Kit that includes a training manual and videotape demonstrating effective tools for the successful implementation of the AMBER Plan. This kit is available, free of charge, to all law enforcement agencies and broadcasters upon request.

I believe national legislation such as H.R. 5244 will serve as a catalyst for more communities to develop effective AMBER Plans by providing funding that can be used for much needed equipment such as the Emergency Alert System. Because the timing of the implementation of the AMBER Program nationwide is critical, NCMEC also supports AMBER Alert language moving independently through Congress under H.R. 5326, which mirrors S.2896 in the Senate. Moreover, NCMEC is in support of language contained in S.2896 that mandates that the AMBER Alert Coordinator consult with the National Center for Missing & Exploited Children and other private entities that have significant experience with this issue.

We are encouraged by the swift and decisive action by this Subcommittee, Mr. Chairman, and in particular your stewardship of these vital issues through the legislative process. Thank you for the opportunity to address this Subcommittee on these important issues and allowing NCMEC to voice our support of this critical legislative initiative. NCMEC stands ready to assist the Congress as a resource and champion for children. Together we can make a difference in the lives of our children, and balance the scales of justice for them.

Mr. SMITH. As I mentioned a few minutes ago, the Ranking Member, Bobby Scott, had been detained on the floor. He has now arrived and I will recognize him for his opening statement, and after that, we will go to our questions.

Mr. SCOTT. Thank you, Mr. Chairman. I apologize. We had a bill that we had considered in this Committee, as a matter of fact, on the floor and I apologize for being detained.

I appreciate your holding a hearing on the AMBER Alert part of this bill. Unfortunately, the bill is a smorgasbord of sound bite-based provisions that sound good for about 10 seconds, but fall apart as you try to explain some of the things that are in the bill. Two strikes and you're out, lifetime supervision, sex crimes wire-tapping, mandatory minimum sentencing all sound good, all sound like you're doing something about crime, but you have to look at the underlying provisions of the bill.

The two strikes part of the bill, lifetime supervision, the sex tourism bill, sex crimes wiretap bill have all passed not only this Subcommittee but have also passed the House and await Senate action. But it makes for better sound bites to run through the entire process twice.

The AMBER Alert portion of the bill, which is the only justification for holding the hearing, has already passed the Senate unanimously and could have already passed the House unanimously and be on the President's desk by tomorrow to be signed during the first ever White House Conference on Missing, Exploited, and Run Away Children. Instead, we are going to get bogged down on this bipartisan, noncontroversial provision by including totally controversial provisions, trying to get them through Congress on the strength of the AMBER Alert because they will not merit Senate consideration on their own merits. This is not true of just the current Senate. Most of the provisions have been languishing over in the Senate the last three Congresses without any action.

When you look up close at these bills, you see why they do not warrant consideration anywhere. The two strikes bill says that a second offense sex crime involving a minor would require a mandatory life without parole. When the bill was filed, it would even apply if one of the crimes was a misdemeanor. While this part has been taken out, it still applies to cases involving consensual sexual activities between high school teens. If an 18-year-old high school junior engages in consensual sex with a 14-year-old high school freshman girl friend a second time, he or she is not simply subject to life sentence based upon circumstances, but it is mandated by this bill that he serve a life sentence without parole.

That means if the parents frown upon such a relationship and cause prosecution of the older teen to discourage it, he could get probation or a light sentence. But if they do it again, it is life without parole. On the other hand, if the parents smile upon the relationship, it is entirely lawful for them to consent to the teens to get married or have a child if the female should become pregnant. So parents are given the choice of calling for marriage or mandating life in prison based on—so parents are given the choice of calling for marriage or mandating life without parole depending on how they view the relationship.

These kinds of consensual activities should not be in the bill. The best part of the bill is that they have very limited application, and that's because they're Federal jurisdiction only and so they will not be broadly applied. The worst part is that they bring about unfair, draconian results upon Native Americans, who are totally subject to Federal jurisdiction. Offenders who commit the same crime in the same State will get vastly different sentences, from probation to life without parole, depending on which side of the reservation line they commit the line.

While two strikes and you're out, lifetime supervision, and mandatory minimum sentences make for good sound bites, again, they don't make for good policy. Mr. Chairman, at the appropriate time, I'll offer an amendment to remove all these controversial parts of the bill so that we can pass a clean AMBER Alert provision and get it to the President for his signature. I hope my colleagues will support that effort. Thank you.

Mr. SMITH. Thank you, Mr. Scott.

I will now proceed with questions and I'll recognize myself. I have a couple. The first one is for Mr. Collins.

Mr. Collins, in your testimony, you refer to the fact that the increased mandatory minimum penalties is responsive to real problems of excessive leniency in sentencing under existing law. Will you go into greater detail as to what you meant by excessive leniency in sentencing under existing laws? I happen to agree with you, but if you can go to the specifics, that will be helpful.

Mr. COLLINS. Yes, Mr. Chairman. One of the most significant problems that prosecutors face is not so much the existing penalty structure or even the guidelines themselves, but the enforcement of them when the rubber hits the road in actual cases. We've actually taken a look at some of the statistics from the Sentencing Commission's annual reports to look at the rates of downward departure in various categories of cases, and the pattern that emerges from there bears out what we hear from line prosecutors, which is that there is a higher rate of downward departures for sex abuse cases and child pornography cases than there is for cases generally.

The average over the last six fiscal years for all non-immigration offenses—and I set immigration offenses aside because they have high rates of departure because of fast track programs in place in certain border districts in the country—the average downward departure rate for other than substantial assistance to the Government is about 12 percent. For sex abuse cases, it's almost 20 percent. And for pornography/prostitution cases together as a group, it's about 21 percent. And then for child pornography possession offenses, it tends to be about 25 percent.

So we basically see a disregard of the sentencing guidelines and the structures that are in place which, on paper, indicate that there is an appropriate degree of severity, but there really is a serious problem of excessive leniency.

Mr. SMITH. Thank you, Mr. Collins.

Mr. Allen, in your testimony, you referred to the recidivism rate as extremely high among certain offenders. Do those offenders include the kidnapping offenders and the molestation offenders and the sex offenders, and if so, if you can do the same thing Mr. Collins did and give us some specifics.

Mr. ALLEN. Yes. Some of the research is a little old, but probably the most compelling research was research funded by the National Institute of Mental Health with a sentenced population of convicted child molesters. What they found was that the typical offender will victimize an average of 117 different children during his lifetime, and that number climbs to almost 300 kids involving those who victimize young boys. So this is highly recidivistic behavior.

Do they kidnap? There is some indication that the behavior escalates in severity. All who molest do not kidnap, but certainly some do, and one of the things that we're very concerned about is an apparent escalation in the level of violence associated with these acts.

Mr. SMITH. Mr. Allen, thank you.

I don't have any other questions and I will turn to the gentleman from Virginia, Mr. Scott, for his.

Mr. SCOTT. Thank you. I'd like to ask Mr. Collins a couple of questions. On the lifetime supervision for people who have committed a consensual act that falls under the provisions, is that an appropriate crime for lifetime supervision for which for the rest of a person's life they spit on the sidewalk, they might have to serve life imprisonment?

Mr. COLLINS. I think, Congressman Scott, a number of points need to be made with respect to section 101, and first, that it merely establishes the statutory maximum authorized period. So it is not a mandatory period. The courts will still have discretion. The guidelines as they exist now have a guidelines range for what the range of supervised release in the absence of a departure should be. If this legislation is enacted, the Commission will have to revise that guideline to indicate how it thinks it should apply here. So there will be some discretion for judges and it will be guided by the Sentencing Commission, subject to departures. I would not expect that in a first case involving statutory rape that lifetime supervision might result from that.

Mr. SCOTT. In terms of the Sentencing Commission in setting the penalty, it sets guidelines not only for the term of incarceration, but for the term of supervision.

Mr. COLLINS. That's correct. There is a separate provision on that in the guidelines as they exist today.

Mr. SCOTT. On the sex tourism legislation, are misdemeanor offenses part of that possible crime?

Mr. COLLINS. The sex tourism—

Mr. SCOTT. In other words, if two teenagers in Washington, D.C., agreed to go to a hotel in Arlington, would that become a Federal—and engage in inappropriate touching, would that be a Federal crime under this Sex Tourism Prohibition Act?

Mr. COLLINS. The Sex Tourism Prohibition Act, which is contained here in section 105, would, in the definitional section, define illicit sexual conduct, which is the relevant conduct that is the element of the offense here, is defined with reference to the set of offenses in chapter 109(A). So, in other words, if it's in the 109(A) list, sexual abuse, et cetera, and would have been an offense if committed within the special maritime and territorial jurisdiction of the U.S., then it is illicit sexual conduct for purposes of sex tourism.

Mr. SCOTT. Does 109(A) apply just to children?

Mr. COLLINS. 109(A) does not apply just to children, so it would include, for example, rape offenses. It does have a statutory rape—

Mr. SCOTT. How about fornication offenses?

Mr. COLLINS. It has a statutory rape provision in 2243, I believe—yes, 2243(a). So that would become—if you meet the requirements set forth in 2243(a) for statutory rape, that would become a predicate for illicit sexual conduct under the sex tourism provision.

Mr. SCOTT. Some of these go back and forth, so it's hard to keep up with them. Under 2421, it says any sexual activity for which a person can be charged with a criminal offense, 2421.

Mr. COLLINS. 2421 is not contained in chapter 109(A). That's a different chapter. The sex tourism provision borrows its definition of illicit sexual conduct not from the Travel Act but from chapter 109(A). So, in other words, aggravated sexual abuse, sexual abuse of a minor or ward, abusive sexual contact, or sexual abuse resulting in death. It also would cover commercial sex acts as defined in chapter 77.

Mr. SCOTT. Does it include consensual acts between teenagers?

Mr. COLLINS. It would—the definition of—in 2243(a), which is colloquially a statutory rape provision, would cover anyone who knowingly engages in a sexual act with another person who has attained the age of 12 but has not attained the age of 16 years and is at least 4 years younger than the person so engaging. So it would cover—

Mr. SCOTT. So 15 to 19—

Mr. COLLINS. It would cover 15 to 19. That's—

Mr. SCOTT.—who are engaged to be married—

Mr. COLLINS. Well, marriage is an—

Mr. SCOTT. Who are engaged to be married, not married—

Mr. COLLINS. That's correct.

Mr. SCOTT.—crossing State lines, could be brought under this statute—and what would their penalty be if they got caught?

Mr. COLLINS. The penalty would be that which is set forth in 105 as adding 2423(b), which would be a maximum of 15 years, but again, it's a guidelines offense.

Mr. SCOTT. Fifteen years, and what would the sentencing guidelines have two people engaged to be married crossing State lines to go to a hotel room, according to this legislation?

Mr. COLLINS. Off the top of my head—I can look it up. I don't know exactly what the guidelines give for statutory rape. The general theory of the legislation is generally to make Federal law the same across jurisdictional predicates. So, in other words, if Federal law already treats something one way for one predicate, it'll treat it the same way for others.

So, for example, in—and I think this issue came up at the last hearing we had on H.R. 4477, it's already Federal law that if they cross State lines and go to, say, a national park, or pull over on the George Washington Parkway at one of the overlook areas, they're covered by this provision. So the purpose of the legislation is simply to conform this separate jurisdictional predicate of travel. It would have the same structure in terms of elements and penalties as existing Federal law.

Mr. SCOTT. My time has expired, and I just want to make clear, and if they do it twice, it's life without parole, is that right?

Mr. COLLINS. Under the legislation here, the two strikes and you're out provision would include 24—would include 2243(a) in its list.

Mr. SCOTT. We just want to make clear that two people engaged to be married, crossing State lines under this bill would be life without parole if they're caught twice, is that right?

Mr. COLLINS. Well, it would require sequential convictions in the legislation, and we've indicated in our written statement that we think that there are some strengthening and modifications that can be made and we're happy to work with the Committee in doing that to the two strikes list.

Mr. SCOTT. Would consensual activity be something that could be clarified out of the bill, in your opinion?

Mr. COLLINS. I think we could take a look at the list of provisions that are here so that it's appropriately focused on two strikes. We'd be happy to work with the Members of the Committee on that.

Mr. SCOTT. Thank you, Mr. Chairman. I appreciate your indulgence.

Mr. SMITH. Sure. Thank you, Mr. Scott.

The gentleman from Wisconsin, Mr. Green, is recognized for his questions.

Mr. GREEN. Just to respond quickly to the last line of questioning that my colleague from Virginia brought up, we have dealt with this every time this bill has come up. There are some flaws in the logic that he puts out. Among them, if you take a look carefully at the terms of this provision, the span—the difference in ages that are required in order for it to be a violation render it almost impossible for the situation, the scenario he's created to have occurred twice and still be covered by this provision. There has to be a 4-year difference in age, and because of the age of the victim, the required age of the victim and the required age of the assailant, it literally couldn't happen twice during that time and be covered. I'm sure we'll deal with that again as we go to tomorrow.

First off, Mr. Allen, it's always a pleasure to see you. I want to commend you on the great work you're doing.

Mr. ALLEN. Thank you, Mr. Green.

Mr. GREEN. You're making a substantial, important difference, I think, in the public policy debate and it's—again, I just want to commend you for your work.

If you could, the question that the Chairman raised about recidivism numbers, if you could, when you have a chance, supply some of that information to the Committee, I think it would be very useful for us, not only in the debate on this legislation but as we take up more of the challenges of this area. I think it would be very helpful.

And then just quickly, Mr. Collins, the suggestions that you have in your written testimony on how the two strikes provisions could be strengthened by adding a couple of other offenses where you believe there may be gaps in our legislation, I think that's very helpful. We'd be very interested in taking a look at it. Obviously, part of the purpose of two strikes is to try to create symmetry and clar-

ity in the law, and I think your suggestions are very helpful ones. I thank you for that.

Mr. Chairman, I have no questions.

Mr. SMITH. Okay. Thank you, Mr. Green.

The gentlewoman from Texas, Ms. Jackson Lee, is recognized for her questions.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I thank you for holding this important hearing. I'm going to use most of my time to share my thoughts about this bill.

As you are aware, Mr. Chairman, I am the founder and chair of the Congressional Children's Caucus and I have worked with a number of the caucuses in the Congress dealing with the issues of child abduction, including the National Center, and I thank you and appreciate your work.

I would like this bill to have legs and to be able to move forward. Some would say, whenever we've spoken about a missing child, the numbers are low. I would point out to them the numbers are low because we've had a National Center and the Congress has adopted the premises and the principles of the Center over the last couple of years and we have worked. But I also will remind them that, for me, one child abducted is one child too many. One child murdered is one child too many.

However, I would like this bill to reflect a consensus and a bipartisan approach. Although I have supported all the measures in the bill that have been considered on the floor, I would like to acknowledge the tireless efforts of Congressman Bobby Scott and I would like for some of the issues that he has raised to be considered, and I note that Mr. Collins has taken under advisement some of these concerns, because I do believe that we do have a strong tradition of protecting civil liberties. That is a fundamental part of our national legal system.

But as I do that, let me again note that every day in this country, 2,100 children are reported missing to the FBI's National Crime Information Center. There are at least 5,000 children missing per year in Houston. The National Child Identification Program was created in 1997 with a goal of fingerprinting 20 million children. This program provides a free fingerprint kit to parents, who then take and store their children's fingerprints in their own homes—good news, because that has been very helpful in finding missing children. If this information was ever needed, fingerprints would be given to the police to help them in locating a missing child. This bill will complement the National Crime Information Center.

I've taken steps to protect children, as well, and some of the legislation that I have entered and seen passed in revised forms have been H.R. 72, the Infant Protection and Baby Switching Prevention Act. This dealt with the issue of an incident that occurred in a Virginia hospital where babies were switched. This legislation requires certain hospitals that are reimbursed under Medicare to have, in effect, security measures to reduce the likelihood of infant patient abduction and baby switching.

I've also filed a bill to deal with the abandonment of babies, because that is something that impacts the lives of children.

But, Mr. Chairman, I have also filed legislation, as I brought to your attention and I will share with you further, to instruct the Attorney General to establish a national DNA database only for convicted sex offenders and violent offenders against children. It was noted at the scene where Samantha Runyon lost her life that a lot of DNA evidence was there. I can imagine that this happens in crime scene after crime scene. I wish the results with respect to Samantha Runyon were quite different, but if, for example, that DNA could have been checked immediately, if, in fact, she was just missing, we could have determined immediately who might have been the perpetrator by using a national stand-alone DNA base for convicted sex offenders and violent offenders. I'm hoping, Mr. Chairman, that we might craft an amendment that might be added to this legislation to add this particular provision to this legislation.

Only 22 States have sex offender registries collect and maintain DNA samples as a part of the registration. Only 22 States have a DNA registry that can be utilized for sex offenders. Research on sex offenders found that over a four- to 5-year period, a 13.4 percent rate of recidivism in regard to commission of another sexual offense, and a 12.2 percent rate of recidivism with a non-sexual offense, violent offense, and a 36.6 percent rate of recidivism with any other offense.

One offense is, as I have said, one too many. A long-term follow-up on a study of child molesters in Canada found that 42 percent were reconvicted of a sexual or violent crime during the 15- to 30-year follow-up period. I do note that provisions in this legislation do take into consideration that tragedy.

There are provisions of this measure that would authorize COPS funding for Sex Offender Apprehension Program, SOAPs in States that have a sex offender registry and have laws that make it a crime for failure to notify authorities of any change in address by child sex offenders. I believe the DNA bank would complement this legislation and, of course, provide assistance thereof.

I have previously stated, I cannot take the murderous acts that are being perpetrated against our children and I would hope that we would work collectively together to ensure that never, never again does a family have to bend over the body of a nude, lost child, abducted, lost, and nude and brutally murdered child, ever again. The story of Elizabeth Smart, still not found; Laura Ayala of my own community, still not found. Victims of abduction are obviously children that we need to be concerned about, Danielle Van Dam losing her life; Rilya Wilson, still missing. These are the names of children that we need to be concerned.

I would ask that the statement be included in its entirety. But finally, Mr. Chairman, if you would indulge me for a moment to say that I'm very gratified that the AMBER system is working in some areas, but I do believe it is very important to make this a national network. Certainly, we had a recent abduction in Houston where the AMBER plan was in place, and I just joined my colleagues, Mr. Chairman, to also note of the use of the AMBER plan in retail stores and to again enhance the utilization all over this nation.

I would, Mr. Chairman, ask unanimous consent for this statement to be put in and ask a very quick question.

Mr. SMITH. Ms. Jackson Lee, without objection, the entire statement that you prepared will be made a part of the record.

I would like to move on in the interest of time to try to get to the markup. I have mentioned to several Members who have to be somewhere else at 5:00 that we would be finished by then.

Ms. JACKSON LEE. Well, let me put the question on the record and Mr. Allen might be able to just say yes or no and I will end on that.

Mr. SMITH. This will be a first. We'll try it. [Laughter.]

Ms. JACKSON LEE. Thank you.

Mr. SMITH. Ms. Jackson Lee, if you would proceed, you are recognized—

Mr. ALLEN. I can do that, Mr. Chairman.

Ms. JACKSON LEE. It is difficult when you're a serious legislator. [Laughter.]

Mr. Allen, this idea of a focused DNA bank for convicted sex offenders, might that be a helpful tool for law enforcement?

Mr. ALLEN. Yes.

Ms. JACKSON LEE. Thank you very much. I yield back, Mr. Chairman.

Mr. SMITH. Breaking records today. Thank you, Ms. Jackson Lee.

The gentleman from North Carolina, Mr. Coble, is recognized for his questions.

Mr. COBLE. Mr. Chairman, I will be equally brief. Gentlemen, good to have you all with us.

Mr. Collins, I want to revisit the Chairman's question to you regarding your testimony which states, it is responsive to real problems of excessive leniency in sentencing under existing laws relating to the necessity for mandatory sentencing. I did not fully grasp your answer. Walk me through that again.

Mr. COLLINS. Right now, the structure is that there's a statutory maximum. Within the maximum, the Sentencing Commission prescribes a range that in the ordinary case should be followed. You are allowed to depart from the range, and the expectation in the guidelines is that departures should be rare occurrences.

They are actually not so rare occurrences. The baseline rate of downward departure is about 12 percent. The rate of upward departure is quite small. So the departure from the guidelines tends all to be in the same direction and it's down. But then you can notice some trends that certain offenses, the leniency is much more marked than even the base leniency that characterizes the system, so that, for example, in sexual abuse cases generally, the downward departure rate is 20 percent, meaning in 20 percent of all cases sentenced nationwide for sexual abuse, judges are departing from the sentencing guidelines. If 20 percent is the national average, you can be sure that in some of the districts, it's a lot higher than 20 percent, and the same with pornography offenses generally.

In 21 percent of the cases nationwide over the last 6 years, sentenced for pornography/prostitution offenses, 21 percent of the cases, judges have departed downward from the prescribed guidelines range. And in child pornography possession cases in par-

ticular, it's even higher. It's close to 25, and occasionally, in some years, it's been higher than 25 percent.

So we have this system that appears to be quite harsh on paper, but in operation, judges are disregarding the guidelines.

Mr. COBLE. Thank you. I have no further questions, Mr. Chairman.

Mr. SMITH. Okay. Thank you, Mr. Coble.

The chair notes the presence of a working quorum, so we will proceed to the markup.

Mr. SCOTT. Mr. Chairman, I ask that a statement from Representatives Dunn and Frost be entered into the record. It essentially says nice things about the AMBER Alert part of the bill.

Mr. SMITH. Without objection, that statement will be made a part of the record.

Mr. SMITH. The witnesses are welcome to stay or leave, depending on what they would like to do while we proceed with the markup. It's at your discretion. We do appreciate your testimony today. I think we've gotten a lot accomplished in a short period of time and we appreciate your attendance here.

Mr. COLLINS. Thank you, Mr. Chairman.

Mr. ALLEN. Thank you, Mr. Chairman.

[Whereupon, at 4:48 p.m., the Subcommittee proceeded to other business.]

## A P P E N D I X

---

### MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, I lend my support to H.R. 5422, Proposed Omnibus "Child Abduction Prevention Act." As founder and co-chair of the Congressional Children's Caucus, I applaud the goals of this bill. However, there are some concerns about some of the measures incorporated in the bill. Although I have supported all the measures in the bill that have been considered on the floor, I would like acknowledge the tireless efforts of Congressman Bobby Scott to ensure that this measure does not violate the strong tradition of protecting civil liberties that is fundamental to our national legal system.

Every day in this country, 2,100 children are reported missing to the FBI's National Crime Information Center. There are at least 5,000 children missing per year in Houston. The National Child Identification Program was created in 1997 with the goal of fingerprinting 20 million children. This program provides a free fingerprint kit to parents, who then take and store their child's fingerprints in their own homes. If this information were ever needed, fingerprints would be given to the police to help them in locating a missing child. This bill will compliment the National Crime Information Center.

I have taken steps to protect the very youngest of such victims. I introduced H.R. 72, the Infant Protection and Baby Switching Prevention Act. This legislation would require certain hospitals reimbursed under Medicare to have in effect security procedures to reduce the likelihood of infant patient abduction and baby switching, including procedures for identifying all infant patients in the hospital in a manner that ensures that it will be evident if infants are missing.

I have also filed legislation to instruct the Attorney General to establish a national DNA database only for sex offenders and violent offenders against children. It was noted at the scene where Samantha Runion lost her life that a lot of DNA evidence was there. I can imagine that this happens in crime scene after crime scene.

Only 22 States sex offender registries collect and maintain DNA samples as part of the registration. Only 22 States have a DNA registry that can be utilized for sex offenders. Research on sex offenders found that over a 4- to 5-year period, a 13.4 percent rate of recidivism in regard to commission of another sexual offense, and a 12.2 percent rate of recidivism with a nonsexual offense, violent offense, and a 36.6 percent rate of recidivism with any other offense. One offense is one too many for me. A long-term follow-up on a study of child molesters in Canada found that 42 percent were re-convicted of a sexual or violent crime during the 15- to 30-year follow-up period. There are provisions of this measure that would authorize COPS funding for SEX Offender Apprehension Programs (SOAPs) in States that have a sex offender registry and have laws that make it a crime for failure to notify authorities of any change in address by child sex offenders. My legislation would help expand the sex offender registries—specifically as it relates to violent predators against children, making more states available for this funding.

Mr. Speaker, as I have previously stated, I cannot take the murderous acts that are being perpetrated on our children, one after another. There are times that I feel that we, in this country, have become jaded. One child after another, Samantha Runion being the last, most vicious and violent exhibition of the lowest grade of individual. Ms., Runion, a 5-year-old playing with her friend in front of her house was snatched away screaming and kicking and pleading for her life. Her nude body was found a day later with clear indication that she had been sexually assaulted and strangled.

Elizabeth Smart,—and Laura Ayala, of my own community—both were victims of Abduction. Laura Ayala was a 13-year-old just trying to get a newspaper for her homework, maybe less than 50 feet away from a store. She was snatched so fast that all the police found scattered newspaper and sandals left in place. The names go on and we all know them, Danielle Van Dam—Rilya Wilson, 5 years old, missing for a year before the children’s protective services in Florida even managed to say anything.

Mr. Chairman, we truly have a crisis, I believe. In a 1999 report authored about children as victims, it states, “Although the U.S. violent crime rate has been decreasing since 1994, homicide remains a leading cause of death for young people. Juveniles are twice as likely as adults to be victims of serious violent crimes and 3 times as likely to be victims of assault. Many of these victims are quite young. Law enforcement data indicates that 1 in 18 victims of violent crime is under the age of 12. In one-third of the sexual assaults reported to law enforcement, the victim is under the age of 12. In most cases involving serious violent crime, juvenile victims know the perpetrator, who is not the stereotypical stranger, but a family member or acquaintance.”

The AMBER (America’s Missing: Broadcast Emergency Response) alert system is a successful nationwide effort, which permits law enforcement agencies and broadcasters to rapidly exchange information in the most serious child abduction cases and quickly alert the public during the critical first few hours of a child’s abduction. This program is named after Amber Hagerman, who was abducted and murdered in Arlington, Texas several years ago. This program has been responsible for the amazing recovery of at least ten children. One of these programs is based in my district of Houston, Texas. In response to the May 1 abduction of 11-year-old Leah Henry of Houston, the Amber plan has been made more flexible, permitting alerts to air more frequently and through radio and television stations, rather than resorting to the emergency broadcast system. It is my hope that cities around the nation will adopt this valuable program.

We must all take a stand against child abduction and victimization. I am grateful to all other concerned organizations and citizens for doing so.

---

PREPARED STATEMENT OF THE HONORABLE JENNIFER DUNN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON, AND THE HONORABLE MARTIN FROST, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman and Members of the Subcommittee, thank you for this opportunity to submit testimony in support of the Omnibus Child Abduction Prevention Act. This issue is especially close to our hearts, and we appreciate your leadership in holding this hearing.

We have chosen to submit this testimony jointly because the safety of our nation’s children is a bipartisan issue. Every child abduction is a terrible crime; nothing could be more devastating to parents than to have their child snatched out of their lives. Over 2,000 children are abducted or missing every day. Although the vast majority of these cases are solved within hours, studies by the Department of Justice indicate that 74% of children who were kidnapped and later found murdered, were killed in the first three hours of being taken.

That is why, when a child is abducted, it is so important to mobilize the entire community quickly. Several high-profile child abductions and recoveries have recently drawn attention to a life-saving initiative that allows the community to respond immediately. The AMBER Alert Plan was instituted in 1996, when 9-year-old Amber Hagerman was kidnapped and murdered in Arlington, Texas. Amber’s tragic death had such a profound impact on her community and throughout North Texas that it prompted regional law-enforcement agencies and broadcasters to develop this innovative emergency alert plan to help recover abducted children.

The AMBER Plan is a voluntary, cooperative program between local law-enforcement agencies and broadcasters to send an emergency alert to the public when a child has been abducted and it is believed that the child’s life is in grave danger. Under the AMBER Plan, local radio and television stations interrupt programming to broadcast information about the abducted child usually using the Emergency Alert System. In some instances, electronic road signs, cellular phone messaging, and even posters at toll plazas have been used to get the word out to the community. By mobilizing thousands of people to safely recover an abducted child, it is hoped that this early warning system will not only assist in the safe recovery of a child, but also deter child abductions in the first place.

The AMBER Plan works. To date, the AMBER Alert has been credited with recovering 31 children. Thanks to the work of the National Center for Missing and Ex-

ploited Children and others, there are now 66 AMBER Plans, including 24 statewide plans. Still, the vast majority of America's communities have not established an AMBER Plan to protect their children.

We now have an unparalleled opportunity to build on the success of the AMBER Plan. The Omnibus Child Abduction Prevention Act incorporates provisions that we introduced earlier this year in the National AMBER Alert Network Act (H.R. 5326). These provisions will provide resources to help create AMBER Plans across America, and will work to build a seamless network of local AMBER Plans.

Currently, there is no national AMBER Alert system. Instead, the alert is targeted locally, regionally, or statewide. A system is now needed to ensure that neighboring states and communities will be able to coordinate their AMBER Alert Systems when an abductor takes a child out of a single state or metropolitan area.

Like our bill, the AMBER provisions of the Omnibus Child Protection Act help to coordinate communication by establishing a Coordinator at the Department of Justice to facilitate the implementation of state and local AMBER Alert Plans, and to direct regional coordination between AMBER Alert Plans. The Coordinator would set minimum, voluntary standards to help states coordinate alerts when necessary and applicable. The provision also provides for matching grant programs through the Department of Transportation and Department of Justice for highway signage, education and training programs, and equipment to facilitate AMBER Alert systems.

It is important to note that this measure does not mandate the creation of AMBER Plans. Rather, it offers states resources to create a seamless network of local AMBER Plans. This initiative has been endorsed by the National Center for Missing and Exploited Children, the National Association of Broadcasters, the Polly Klass Foundation, National Public Radio, the National Association of Police Organizations, and enjoys the overwhelming support of over 100 Members from both sides of the aisle.

On September 10th, the Senate passed a bill containing a similar provision, authored by Senators Feinstein and Hutchison. We appreciate your support for our work on behalf of missing children, and your leadership to include the bill as a provision in the Omnibus Child Abduction Prevention Act. Our joint work to decrease and ultimately prevent future abductions, and empower local communities with the necessary tools to recover missing children will pay off when we no longer have to name legislation in Congress after children-victims of abduction.

Mr. Chairman and Members of the Subcommittee, thank you again for your support and hard work on this critical issue.

