



**Legislative Bulletin.....April 10, 2003**

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**S. 151—Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (PROTECT Act)**

[Conference Report for House-passed H.R. 1104—To prevent child abduction, and for other purposes (Sensenbrenner)]

**Order of Business:** The conference report is scheduled to be considered on Thursday, April 10, 2003, under a closed rule

**Note:** In the 107<sup>th</sup> Congress on October 8, 2002, a similar bill, H.R. 5422, passed the House 390-24. (Roll call no. 446 <http://clerkweb.house.gov/cgi-bin/vote.exe?year=2002&rollnumber=446>).

**Summary:** (items in bolded red are new from the Conference Report)

**Title I:**

**Supervised Release Term for Sex Offenders:** Amends the Federal criminal code to make the authorized term of supervised release after imprisonment for the offenses of sexual abuse, sexual exploitation of children, transportation for illegal sexual activity (generally), and sex trafficking of children “any term of years or life” **and adds a new provision that for a felony sentence, there shall be a term of supervised release “of at least five years.”**

**1<sup>st</sup> Degree Murder for Child Abuse Murders:** Makes murder in the perpetration of child abuse or as part of a pattern or practice of assault or torture against children first-degree murder.

**Kidnapping Penalties:** Increases the penalties for violating sexual abuse statutes and directs the U.S. Sentencing Commission to increase the penalties for kidnapping. Increases the penalties against kidnapping and installs a mandatory minimum sentence of not less than 20 years.

The bill adds attempted international parental kidnapping to federal law (18 U.S.C. Section 1204) that currently covers only cases of successful international kidnapping.

**Two Strikes You're Out:** The bill amends the federal criminal code to provide for mandatory life imprisonment of a person convicted of a federal sex offense in which a minor is the victim (if the person has a prior sex conviction in which a minor was the victim), unless a death sentence is imposed.

**Penalties Against Sex Tourism:** Amends the federal criminal code provisions prohibiting traveling in interstate or foreign commerce for the purpose of engaging in an illicit sexual act with a juvenile to prohibit: (1) traveling into the United States for such purpose; (2) traveling in foreign commerce and engaging in such sexual conduct; or (3) arranging, inducing, procuring, or facilitating such travel. H.R. 1104 increases the penalties against sex tourism to a fine or imprisonment of not more than 30 years (the bill that passed the House in the 107<sup>th</sup> Congress had imprisonment of not more than 15 years).

**Pilot Program for National Criminal History Background Checks and Feasibility Study:** Modifies the House-passed Amendment offered by Rep. Carter (R-TX) which was a study regarding the feasibility of volunteer groups doing background checks. The Conference Report, in addition to requiring the feasibility study, also creates an 18-month pilot program within 90 days for three states volunteer groups to obtain national and State criminal history background checks through the FBI's Integrated Automated Finger Print Identification system. The bill allows states to collect a fee for this criminal background check.

**Child Safety Pilot Program:** Establishes an 18-month Child Safety Pilot Program to provide for the processing of 100,000 fingerprint check requests divided equally among the Boys and Girls Clubs of America, The National Mentoring Partnership, and the National Council of Youth Sports. The Attorney General may collect a fee not to exceed \$18 per background check. The conference report authorizes "such sums" to the National Center for Missing and Exploited Children for FY04-05 to carry out these programs and such sums to the three state Attny Generals to establish and enhance their fingerprint technology infrastructure.

## **Title II:**

**Wiretapping in Investigations of Sex Offenses:** Amends the federal criminal code to authorize the interception of wire, oral, or electronic communications in the investigation of: (1) the buying or selling of a child for sexual exploitation; (2) child pornography; (3) felony coercion and enticement to engage in prostitution or other illegal sexual activity; (4) felony transportation of minors to engage in prostitution or other illegal sexual activity (including a felony violation of sexual abuse and sexual exploitation of children provisions if the sexual activity occurred, or was intended to occur, within U.S. special maritime and territorial jurisdiction); and (5) travel with intent to engage in a sexual act with a juvenile.

Eliminates the statute of limitations for child abduction and sex crimes.

Prohibits pre-trial release for those who rape or kidnap children.

Removes the waiting period to report missing children.

### **Title III**

Requires each Federal, State, and local law enforcement agency to refer each reported case of a missing child under the age of 21 to the National Crime Information Center of the Department of Justice. Current law only requires the reporting of those under 18. In the Judiciary Committee mark-up, Rep. Sensenbrenner won on voice vote an amendment to have public health authorities and other public officials alerted in child abduction cases.

Increases the authorization for the annual grant to the National Center for Missing and Exploited Children (NCMEC) to \$20 million a year from \$10 million and extends the authorization through 2005.

**The Conference Report adds a new provision limiting NCMEC's liability, unless it is proven that they acted with intentional malice. It also adds a new provision establishing the creation of a cyber tipline to report Internet-related child sexual exploitation.**

Authorizes COPS funding to assist States in enforcing a law which requires that a convicted sex offender register his or her address with a State or local law enforcement agency and be subject to criminal prosecution for failure to comply.

### **Title IV:**

**Retains though slightly modifies the amendment offered by Rep. Feeney (R-FL) dealing with sentencing reform.**

### **Title V:**

**The Conference Report modifies the amendment offered by Rep. Lamar Smith (R-TX) dealing with Child Obscenity and Pornography in response to the Supreme Court case *Ashcroft v. the Free Speech Coalition*. According to the Committee, the language is a compromise between House and Senate anti-porn bills, for instance incorporating the House definition for computer-generated porn and the Senate's affirmative defense language with a technical amendment. The Conference Report contains a Senate provision regarding the admissibility of evidence to protect a minor's privacy, if that minor was depicted in obscenity and child pornography. It contains a Senate provision allowing civil action (lawsuits) for those victimized by the sexual exploitation and abuse of children, and allows them to seek appropriate relief including punitive damages and "reasonable attorneys' fees." It contains a Senate provision increasing, through the U.S. Sentencing Commission, sentencing penalties for interstate travel to engage in a sexual act with a juvenile.**

**The conference report adds a new provision authorized at such sums requiring that within six months the US Attorney General shall appoint 25 additional trial attorneys to the Child Exploitation and Obscenity Section of DOJ's Criminal Division, to focus primarily on the investigation and prosecution of federal child pornography and obscenity laws.**

**It also retains, though slightly modifies, a truth-in-domain-names provision amendment offered by Rep. Pence (R-IN) and adopted by the House dealing with websites that intentionally misleads people or children into seeing obscenity. It adds**

**a new provision related to make it a federal crime if an adult intentionally uses a minor to commit a crime of violence.**

**The bill adds a new section requiring crimes under this act must register with a sex offender registry and authorizes such sums for the Sex Offender Management Assistance Program to carry out these requirements.**

**The bill adds a new “Secure Authentication Feature and Enhanced Identification Defense Act of 2003 (SAFE ID Act),” which appears to add and increase penalties for fraud and false statements regarding ID’s.**

**Adds the “Illicit Drug Anti-Proliferation Act of 2003” which amends the Controlled Substance Act regarding the ownership or rental of property used for controlled substances storage, manufacturing, distribution, etc.**

**Authorizes \$5.9 million to the DEA to hire a “special agent in each state to serve as a Demand Reduction Coordinator” and authorizes such sums to educate youth, parents, etc about “club drugs.”**

**Authorizes the “John Doe DNA Indictments,” which will allow an unknown person to be indicted based solely on his DNA profile.**

**Authorizes \$30 million per year for each year from FY04-FY08 (\$150 million total) for transitional housing assistance grants for child victims of domestic violence, stalking or sexual assault.**

### **AMBER Alert Provisions:**

In the Judiciary Committee mark-up, an amendment offered by Rep. Coble was approved by a voice vote to modify some provisions in the AMBER Alert section. His amendment details eligible activities for receiving grants and adds a new, one-time study to examine State barriers to implementing AMBER Alert programs.

Requires the Attorney General to designate a DOJ officer as the national coordinator of the AMBER Alert communications network to (1) eliminate gaps in the network; (2) work with States to encourage development of additional elements; (3) work with States to ensure regional coordination; and (4) serve as the nationwide point of contact for the development of the network and regional coordination for alerts. The coordinator must notify and consult the FBI concerning each child abduction alert issued on the AMBER network.

The bill also establishes minimum voluntary standards for the issuance of alerts and the extent of dissemination of alerts, though it specifies that the Coordinator is not to interfere with the current local or state system of voluntary coordination.

Authorizes \$20 million for grants to States to pay up to 80% of the costs for the development and enhancement of communications systems along highways for recovery of abducted children. The Secretary of Transportation would carry out the program.

Authorizes \$5 million for grants to States to pay up to 50% of the costs of activities in support of AMBER Alert communications plans, including the development of education and training

programs, and law enforcement programs. The Attorney General would carry out the program.

**Additional Information:**

AMBER alerts are named for Amber Hagerman (a 9-year-old brutally murdered in Arlington, Texas, in 1996), and are now operating in 38 states, at least 42 counties, and multi-county regions, such as the D.C. metropolitan area.

Last year, President Bush announced his own plan to improve the AMBER system by ordering the Justice Department to set national standards. He said at a White House conference on Missing Exploited and Runaway Children that he was releasing \$10 million toward the effort of improving the system through a special coordinator in the Justice Department.

**Government Funding:** The National Center for Missing and Exploited Children (which is authorized to receive \$40 million **plus “such sums”** over the next two fiscal years), received \$19,039,786 in government grants in fiscal year 2001, 80.9% of its total revenue (Source: [www.guidestar.org](http://www.guidestar.org)).

**Administration Position:** A Statement of Administration Policy issued on March 26, 2003, states, “The Administration strongly supports House passage of H.R. 1104. The bill would greatly strengthen law enforcement’s ability to prevent, investigate, and prosecute violent crimes committed against children. H.R. 1104 would codify the Administration’s ongoing efforts to support AMBER Alert programs by providing for national coordination of state and local AMBER Alert programs and by establishing Federal grant programs for states to support AMBER Alert communication systems and plans. The Administration urges Congress to act quickly on this legislation.”

**Cost to Taxpayers:** **A CBO cost estimate for the conference report is not available. A CBO estimate for the House bill before it was amended on the floor was \$76 million over the 2004-2008 period, subject to appropriations. The Conference Report authorizes a number of new programs as detailed above.**

**Does the Bill Create New Federal Programs or Rules?:** Yes, the bill creates new and increases already existing penalties for crimes against children. The bill also reauthorizes the grant program for the National Center for Missing and Exploited Children, creates a new AMBER alert grant program, creates a new, one-time study to examine State barriers to implementing AMBER Alert programs, **and creates various new pilot programs and grant programs as detailed above**

**Committee Action:** H.R. 1104 was referred to the Judiciary Committee on March 5, 2003. A subcommittee hearing was held on March 11, and the subcommittee passed the bill by voice vote on the same day. The full committee marked up the bill and passed it as amended on an 18-2 vote (Democrats Scott and Watt voting no) on March 18, 2003.

**Constitutional Authority:** The Judiciary Committee (in report number 108-047, part 1) finds constitutional authority in Article I, Section 8 (Powers of Congress) but fails to cite a specific clause.

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