

109TH CONGRESS
1ST SESSION

H. R. 3132

AN ACT

To make improvements to the national sex offender
registration program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Children’s Safety Act of 2005”.

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

Sec. 1. Short title; table of contents.

TITLE I—SEX OFFENDER REGISTRATION AND NOTIFICATION
ACT

Sec. 101. Short title.

Sec. 102. Declaration of purpose.

Subtitle A—Jacob Wetterling Sex Offender Registration and Notification
Program

Sec. 111. Relevant definitions, including Amie Zyla expansion of sex offender
definition and expanded inclusion of child predators.

Sec. 112. Registry requirements for jurisdictions.

Sec. 113. Registry requirements for sex offenders.

Sec. 114. Information required in registration.

Sec. 115. Duration of registration requirement.

Sec. 116. In person verification.

Sec. 117. Duty to notify sex offenders of registration requirements and to reg-
ister.

Sec. 118. Jessica Lunsford Address Verification Program.

Sec. 119. National Sex Offender Registry.

Sec. 120. Dru Sjodin National Sex Offender Public Website.

Sec. 121. Public access to sex offender information through the Internet.

Sec. 122. Megan Nicole Kanka and Alexandra Nicole Zapp Community Notifi-
cation Program.

Sec. 123. Actions to be taken when sex offender fails to comply.

Sec. 124. Immunity for good faith conduct.

Sec. 125. Development and availability of registry management software.

Sec. 126. Federal duty when State programs not minimally sufficient.

Sec. 127. Period for implementation by jurisdictions.

Sec. 128. Failure to comply.

Sec. 129. Sex Offender Management Assistance (SOMA) Program.

Sec. 130. Demonstration project for use of electronic monitoring devices.

Sec. 131. Bonus payments to States that implement electronic monitoring.

Sec. 132. National Center for Missing and Exploited Children access to Inter-
state Identification Index.

Sec. 133. Limited immunity for National Center for Missing and Exploited
Children with respect to CyberTipline.

Sec. 134. Treatment and management of sex offenders in the Bureau of Pris-
ons.

Sec. 135. Assistance in identification and location of sex offenders relocated as
a result of Hurricane Katrina.

Sec. 136. GAO studies on feasibility of using driver’s license registration proc-
esses as additional registration requirements for sex offenders.

Subtitle B—Criminal law enforcement of registration requirements

- Sec. 151. Amendments to title 18, United States Code, relating to sex offender registration.
- Sec. 152. Investigation by United States Marshals of sex offender violations of registration requirements.
- Sec. 153. Sex offender apprehension grants.
- Sec. 154. Use of any controlled substance to facilitate sex offense.
- Sec. 155. Repeal of predecessor sex offender program.
- Sec. 156. Assistance for prosecutions of cases cleared through use of DNA backlog clearance funds.
- Sec. 157. Authorization of additional appropriations.
- Sec. 158. Grants to combat sexual abuse of children.
- Sec. 159. Expansion of training and technology efforts.

Subtitle C—Children’s Safety Office

- Sec. 161. Establishment.
- Sec. 162. Purpose.
- Sec. 163. Director.
- Sec. 164. Annual report.
- Sec. 165. Staff.
- Sec. 166. Authorization of appropriations.
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TITLE II—DNA FINGERPRINTING

- Sec. 201. Short title.
- Sec. 202. Expanding use of DNA to identify and prosecute sex offenders.
- Sec. 203. Stopping Violent Predators Against Children.
- Sec. 204. Model code on investigating missing persons and deaths.

TITLE III—PREVENTION AND DETERRENCE OF CRIMES AGAINST CHILDREN ACT OF 2005

- Sec. 301. Short title.
- Sec. 302. Assured punishment for violent crimes against children.
- Sec. 303. Ensuring fair and expeditious Federal collateral review of convictions for killing a child.
- Sec. 304. Statistics.
- Sec. 305. Study of interstate tracking of persons convicted of or under investigation for child abuse.
- Sec. 306. Access to Federal crime information databases by educational agencies for certain purposes.

TITLE IV—PROTECTION AGAINST SEXUAL EXPLOITATION OF CHILDREN ACT OF 2005

- Sec. 401. Short title.
- Sec. 402. Increased penalties for sexual offenses against children.
- Sec. 403. Sense of Congress with respect to prosecutions under section 2422(b) of title 18, United States Code.

TITLE V—FOSTER CHILD PROTECTION AND CHILD SEXUAL PREDATOR DETERRENCE

- Sec. 501. Short title.

- Sec. 502. Requirement to complete background checks before approval of any foster or adoptive placement and to check national crime information databases and state child abuse registries; suspension and subsequent elimination of opt-Out.
- Sec. 503. Access to Federal crime information databases by child welfare agencies for certain purposes.
- Sec. 504. Penalties for coercion and enticement by sex offenders.
- Sec. 505. Penalties for conduct relating to child prostitution.
- Sec. 506. Penalties for sexual abuse.
- Sec. 507. Sex offender submission to search as condition of release.
- Sec. 508. Kidnapping penalties and jurisdiction.
- Sec. 509. Marital communication and adverse spousal privilege.
- Sec. 510. Abuse and neglect of Indian children.
- Sec. 511. Civil commitment.
- Sec. 512. Mandatory penalties for sex-trafficking of children.
- Sec. 513. Sexual abuse of wards.

TITLE VI—MISCELLANEOUS PROVISION

- Sec. 601. Ban on firearm for person convicted of a misdemeanor sex offense against a minor.

TITLE VII—NATIONAL REGISTER OF CASES OF CHILD ABUSE OR NEGLECT

- Sec. 701. National register of cases of child abuse or neglect.

TITLE VIII—CHILD PORNOGRAPHY PREVENTION ACT OF 2005

- Sec. 801. Short title.
- Sec. 802. Findings.
- Sec. 803. Strengthening section 2257 to ensure that children are not exploited in the production of pornography.
- Sec. 804. Prevention of distribution of child pornography used as evidence in prosecutions.
- Sec. 805. Authorizing civil and criminal asset forfeiture in child exploitation and obscenity cases.
- Sec. 806. Prohibiting the production of obscenity as well as transportation, distribution, and sale.

TITLE IX—PERSONAL DATA OF CHILDREN

- Sec. 901. Misappropriation of data.

TITLE X—LOCAL LAW ENFORCEMENT HATE CRIMES PREVENTION

- Sec. 1001. Short title.
- Sec. 1002. Findings.
- Sec. 1003. Definition of hate crime.
- Sec. 1004. Support for criminal investigations and prosecutions by State and local law enforcement officials.
- Sec. 1005. Grant program.
- Sec. 1006. Authorization for additional personnel to assist State and local law enforcement.
- Sec. 1007. Prohibition of certain hate crime Acts.

Sec. 1008. Statistics.
Sec. 1009. Severability.

1 **TITLE I—SEX OFFENDER REG-**
2 **ISTRATION AND NOTIFICA-**
3 **TION ACT**

4 **SEC. 101. SHORT TITLE.**

5 This title may be cited as the “Sex Offender Reg-
6 istration and Notification Act”.

7 **SEC. 102. DECLARATION OF PURPOSE.**

8 In response to the vicious attacks by violent sexual
9 predators against the victims listed below, Congress in this
10 Act establishes a comprehensive national system for the
11 registration of sex offenders:

12 (1) Jacob Wetterling, who was 11 years old,
13 was abducted in 1989 in Minnesota, and remains
14 missing.

15 (2) Megan Nicole Kanka, who was 7 years old,
16 was abducted, sexually assaulted and murdered in
17 1994, in New Jersey.

18 (3) Pam Lychner, who was 31 years old, was
19 attacked by a career offender in Houston, Texas.

20 (4) Jetseta Gage, who was 10 years old, was
21 kidnapped, sexually assaulted, and murdered in
22 2005 in Cedar Rapids, Iowa.

1 (5) Dru Sjodin, who was 22 years old, was sex-
2 ually assaulted and murdered in 2003, in North Da-
3 kota.

4 (6) Jessica Lunsford, who was 9 years, was ab-
5 ducted, sexually assaulted, buried alive, and mur-
6 dered in 2005, in Homosassa, Florida.

7 (7) Sarah Lunde, who was 13 years old, was
8 strangled and murdered in 2005, in Ruskin, Florida.

9 (8) Amie Zyla, who was 8 years old, was sexu-
10 ally assaulted in 1996 by a juvenile offender in
11 Waukesha, Wisconsin, and has become an advocate
12 for child victims and protection of children from ju-
13 venile sex offenders.

14 (9) Christy Ann Fornoff, who was 13 years old,
15 was abducted, sexually assaulted and murdered in
16 1984, in Tempe, Arizona.

17 (10) Alexandra Nicole Zapp, who was 30 years
18 old, was brutally attacked and murdered in a public
19 restroom by a repeat sex offender in 2002, in
20 Bridgewater, Massachusetts.

21 (11) Polly Klaas, who was 12 years old, was ab-
22 ducted, sexually assaulted and murdered in 1993 by
23 a career offender in California.

1 **Subtitle A—Jacob Wetterling Sex**
2 **Offender Registration and Noti-**
3 **fication Program**

4 **SEC. 111. RELEVANT DEFINITIONS, INCLUDING AMIE ZYLA**
5 **EXPANSION OF SEX OFFENDER DEFINITION**
6 **AND EXPANDED INCLUSION OF CHILD PRED-**
7 **ATORS.**

8 In this title the following definitions apply:

9 (1) **SEX OFFENDER REGISTRY.**—The term “sex
10 offender registry” means a registry of sex offenders,
11 and a notification program, maintained by a juris-
12 diction.

13 (2) **JURISDICTION.**—The term jurisdiction
14 means any of the following:

15 (A) A State.

16 (B) The District of Columbia.

17 (C) The Commonwealth of Puerto Rico.

18 (D) Guam.

19 (E) American Samoa.

20 (F) The Northern Mariana Islands.

21 (G) The United States Virgin Islands.

22 (H) To the extent provided and subject to
23 the requirements of section 126, a federally rec-
24 ognized Indian tribe.

1 (3) AMIE ZYLA EXPANSION OF SEX OFFENDER
2 DEFINITION.—The term “sex offender” means an
3 individual who, either before or after the enactment
4 of this Act, was convicted of, or adjudicated a juve-
5 nile delinquent for, an offense (other than an offense
6 involving sexual conduct where the victim was at
7 least 13 years old and the offender was not more
8 than 4 years older than the victim and the sexual
9 conduct was consensual, or an offense consisting of
10 consensual sexual conduct with an adult) whether
11 Federal, State, local, tribal, foreign (other than an
12 offense based on conduct that would not be a crime
13 if the conduct took place in the United States), mili-
14 tary, juvenile or other, that is—

- 15 (A) a specified offense against a minor;
16 (B) a serious sex offense; or
17 (C) a misdemeanor sex offense against a
18 minor.

19 (4) EXPANSION OF DEFINITION OF OFFENSE
20 TO INCLUDE ALL CHILD PREDATORS.—The term
21 “specified offense against a minor” means an of-
22 fense against a minor that involves any of the fol-
23 lowing:

- 24 (A) Kidnapping (unless committed by a
25 parent).

1 (B) False imprisonment (unless committed
2 by a parent).

3 (C) Solicitation to engage in sexual con-
4 duct.

5 (D) Use in a sexual performance.

6 (E) Solicitation to practice prostitution.

7 (F) Possession, production, or distribution
8 of child pornography.

9 (G) Criminal sexual conduct towards a
10 minor.

11 (H) Any conduct that by its nature is a
12 sexual offense against a minor.

13 (I) Any other offense designated by the At-
14 torney General for inclusion in this definition.

15 (J) Any attempt or conspiracy to commit
16 an offense described in this paragraph.

17 (5) SEX OFFENSE.—The term “sex offense”
18 means a criminal offense that has an element involv-
19 ing a sexual act or sexual contact with another, or
20 an attempt or conspiracy to commit such an offense.

21 (6) SERIOUS SEX OFFENSE.—The term “seri-
22 ous sex offense” means—

23 (A) a sex offense punishable under the law
24 of a jurisdiction by imprisonment for more than
25 one year;

1 (B) any Federal offense under chapter
2 109A, 110, 117, or section 1591 of title 18,
3 United States Code;

4 (C) an offense in a category specified by
5 the Secretary of Defense under section
6 115(a)(8)(C) of title I of Public Law 105–119
7 (10 U.S.C. 951 note);

8 (D) any other offense designated by the
9 Attorney General for inclusion in this definition.

10 (7) MISDEMEANOR SEX OFFENSE AGAINST A
11 MINOR.— The term “misdemeanor sex offense
12 against a minor” means a sex offense against a
13 minor punishable by imprisonment for not more
14 than one year.

15 (8) STUDENT.—The term “student” means an
16 individual who enrolls or attends an educational in-
17 stitution, including (whether public or private) a sec-
18 ondary school, trade or professional school, and in-
19 stitution of higher education.

20 (9) EMPLOYEE.—The term “employee” includes
21 an individual who is self-employed or works for any
22 other entity, whether compensated or not.

23 (10) RESIDES.—The term “resides” means,
24 with respect to an individual, the location of the in-

1 individual's home or other place where the individual
2 lives.

3 (11) MINOR.—The term “minor” means an in-
4 dividual who has not attained the age of 18 years.

5 **SEC. 112. REGISTRY REQUIREMENTS FOR JURISDICTIONS.**

6 Each jurisdiction shall maintain a jurisdiction-wide
7 sex offender registry conforming to the requirements of
8 this title. The Attorney General shall issue guidelines and
9 regulations to interpret and implement this title.

10 **SEC. 113. REGISTRY REQUIREMENTS FOR SEX OFFENDERS.**

11 (a) IN GENERAL.—A sex offender must register, and
12 keep the registration current, in each jurisdiction where
13 the offender resides, where the offender is an employee,
14 and where the offender is a student.

15 (b) INITIAL REGISTRATION.—The sex offender shall
16 initially register—

17 (1) before completing a sentence of imprison-
18 ment with respect to the offense giving rise to the
19 registration requirement; or

20 (2) not later than 5 days after being sentenced
21 for that offense, if the sex offender is not sentenced
22 to a term of imprisonment.

23 (c) KEEPING THE REGISTRATION CURRENT.—A sex
24 offender must inform each jurisdiction involved, not later

1 than 5 days after each change of residence, employment,
2 or student status.

3 (d) RETROACTIVE DUTY TO REGISTER.—The Attor-
4 ney General shall prescribe a method for the registration
5 of sex offenders convicted before the enactment of this Act
6 or its effective date in a particular jurisdiction.

7 (e) STATE PENALTY FOR FAILURE TO COMPLY.—
8 Each jurisdiction, other than a Federally recognized In-
9 dian tribe shall provide a criminal penalty, that includes
10 a maximum term of imprisonment that is greater than one
11 year, and a minimum term of imprisonment that is no less
12 than 90 days, for the failure of a sex offender to comply
13 with the requirements of this title.

14 **SEC. 114. INFORMATION REQUIRED IN REGISTRATION.**

15 (a) PROVIDED BY THE OFFENDER.—The sex of-
16 fender must provide the following information to the ap-
17 propriate official for inclusion in the sex offender registry:

18 (1) The name of the sex offender (including any
19 alias used by the individual).

20 (2) The Social Security number of the sex of-
21 fender.

22 (3) The address and location of the residence at
23 which the sex offender resides or will reside.

24 (4) The place where the sex offender is em-
25 ployed or will be employed.

1 (5) The place where the sex offender is a stu-
2 dent or will be a student.

3 (6) The license plate number and description of
4 any vehicle owned or operated by the sex offender.

5 (7) A photograph of the sex offender.

6 (8) A set of fingerprints and palm prints of the
7 sex offender, if the appropriate official determines
8 that the jurisdiction does not already have available
9 an accurate set.

10 (9) A DNA sample of the sex offender, if the
11 appropriate official determines that the jurisdiction
12 does not already have available an appropriate DNA
13 sample.

14 (10) Any other information required by the At-
15 torney General.

16 (b) PROVIDED BY THE JURISDICTION.—The jurisdic-
17 tion in which the sex offender registers shall include the
18 following information in the registry for that sex offender:

19 (1) A statement of the facts of the offense giv-
20 ing rise to the requirement to register under this
21 title, including the date of the offense, and whether
22 or not the sex offender was prosecuted as a juvenile
23 at the time of the offense.

24 (2) The criminal history of the sex offender.

1 **SEC. 119. NATIONAL SEX OFFENDER REGISTRY.**

2 The Attorney General shall maintain a national data-
3 base at the Federal Bureau of Investigation for each sex
4 offender and other person required to register in a juris-
5 diction's sex offender registry. The database shall be
6 known as the National Sex Offender Registry.

7 **SEC. 120. DRU SJODIN NATIONAL SEX OFFENDER PUBLIC**
8 **WEBSITE.**

9 (a) ESTABLISHMENT.—There is established the Dru
10 Sjodin National Sex Offender Public Website (hereinafter
11 referred to as the “Website”).

12 (b) INFORMATION TO BE PROVIDED.—The Attorney
13 General shall maintain the Website as a site on the Inter-
14 net which allows the public to obtain relevant information
15 for each sex offender by a single query in a form estab-
16 lished by the Attorney General.

17 (c) ELECTRONIC FORWARDING.—The Attorney Gen-
18 eral shall ensure (through the National Sex Offender Reg-
19 istry or otherwise) that updated information about a sex
20 offender is immediately transmitted by electronic for-
21 warding to all relevant jurisdictions, unless the Attorney
22 General determines that each jurisdiction has so modified
23 its sex offender registry and notification program that
24 there is no longer a need for the Attorney General to do.

1 **SEC. 121. PUBLIC ACCESS TO SEX OFFENDER INFORMA-**
2 **TION THROUGH THE INTERNET.**

3 (a) IN GENERAL.—Except as provided in subsection
4 (b), each jurisdiction shall make available on the Internet
5 all information about each sex offender in the registry, ex-
6 cept for the offender’s Social Security number, the identity
7 of any victim, and any other information exempted from
8 disclosure by the Attorney General. The jurisdiction shall
9 provide this information in a manner that is readily acces-
10 sible to the public.

11 (b) EXCEPTION.—To the extent authorized by the At-
12 torney General, a jurisdiction need not make available on
13 the Internet information about a sex offender required to
14 register for committing a misdemeanor sex offense against
15 a minor who has attained the age of 16 years.

16 **SEC. 122. MEGAN NICOLE KANKA AND ALEXANDRA NICOLE**
17 **ZAPP COMMUNITY NOTIFICATION PROGRAM.**

18 (a) ESTABLISHMENT OF PROGRAM.—There is estab-
19 lished the Megan Nicole Kanka and Alexandra Nicole
20 Zapp Community Program (hereinafter in this section re-
21 ferred to as the “Program”).

22 (b) NOTIFICATION.—In the Program, as soon as pos-
23 sible, and in any case not later than 5 days after a sex
24 offender registers or updates a registration, an appro-
25 priate official in the jurisdiction shall provide the informa-
26 tion in the registry (other than information exempted from

1 disclosure by the Attorney General) about that offender
2 to the following:

3 (1) The Attorney General, who shall include
4 that information in the National Sex Offender Reg-
5 istry.

6 (2) Appropriate law enforcement agencies (in-
7 cluding probation agencies, if appropriate), and each
8 school and public housing agency, in each area in
9 which the individual resides, is employed, or is a stu-
10 dent.

11 (3) Each jurisdiction where the sex offender re-
12 sides, works, or attends school, and each jurisdiction
13 from or to which a change of residence, work, or
14 student status occurs.

15 (4) Any agency responsible for conducting em-
16 ployment-related background checks under section 3
17 of the National Child Protection Act of 1993 (42
18 U.S.C. 5119a).

19 (5) Social service entities responsible for pro-
20 tecting minors in the child welfare system.

21 (6) Volunteer organizations in which contact
22 with minors or other vulnerable individuals might
23 occur.

1 **SEC. 123. ACTIONS TO BE TAKEN WHEN SEX OFFENDER**
2 **FAILS TO COMPLY.**

3 An appropriate official shall notify the Attorney Gen-
4 eral and appropriate State and local law enforcement
5 agencies of any failure by a sex offender to comply with
6 the requirements of a registry. The appropriate official,
7 the Attorney General, and each such State and local law
8 enforcement agency shall take any appropriate action to
9 ensure compliance.

10 **SEC. 124. IMMUNITY FOR GOOD FAITH CONDUCT.**

11 The Federal Government, jurisdictions, political sub-
12 divisions of jurisdictions, and their agencies, officers, em-
13 ployees, and agents shall be immune from liability for good
14 faith conduct under this title.

15 **SEC. 125. DEVELOPMENT AND AVAILABILITY OF REGISTRY**
16 **MANAGEMENT SOFTWARE.**

17 The Attorney General shall develop and support soft-
18 ware for use to establish, maintain, publish, and share sex
19 offender registries.

20 **SEC. 126. FEDERAL DUTY WHEN STATE PROGRAMS NOT**
21 **MINIMALLY SUFFICIENT.**

22 If the Attorney General determines that a jurisdiction
23 does not have a minimally sufficient sex offender registra-
24 tion program, the Department of Justice shall, to the ex-
25 tent practicable, carry out the duties imposed on that ju-
26 risdiction by this title.

1 **SEC. 127. PERIOD FOR IMPLEMENTATION BY JURISDIC-**
2 **TIONS.**

3 Each jurisdiction shall implement this title not later
4 than 2 years after the date of the enactment of this Act.
5 However, the Attorney General may authorize up to two
6 one-year extensions of the deadline.

7 **SEC. 128. FAILURE TO COMPLY.**

8 (a) **IN GENERAL.**—For any fiscal year after the end
9 of the period for implementation, a jurisdiction that fails
10 to implement this title shall not receive 10 percent of the
11 funds that would otherwise be allocated for that fiscal year
12 to the jurisdiction under each of the following programs:

13 (1) **BYRNE.**—Subpart 1 of part E of title I of
14 the Omnibus Crime Control and Safe Streets Act of
15 1968 (42 U.S.C. 3750 et seq.), whether character-
16 ized as the Edward Byrne Memorial State and Local
17 Law Enforcement Assistance Programs, the Edward
18 Byrne Memorial Justice Assistance Grant Program,
19 or otherwise.

20 (2) **LLEBG.**—The Local Government Law En-
21 forcement Block Grants program.

22 (b) **REALLOCATION.**—Amounts not allocated under a
23 program referred to in paragraph (1) to a jurisdiction for
24 failure to fully implement this title shall be reallocated
25 under that program to jurisdictions that have not failed
26 to implement this title or may be reallocated to a jurisdic-

1 tion from which they were withheld to be used solely for
2 the purpose of implementing this title.

3 (c) **RULE OF CONSTRUCTION.**—The provisions of this
4 title that are cast as directions to jurisdictions or their
5 officials constitute only conditions required to avoid the
6 reduction of Federal funding under this section.

7 **SEC. 129. SEX OFFENDER MANAGEMENT ASSISTANCE**
8 **(SOMA) PROGRAM.**

9 (a) **IN GENERAL.**—The Attorney General shall estab-
10 lish and implement a Sex Offender Management Assist-
11 ance program (in this title referred to as the “SOMA pro-
12 gram”) under which the Attorney General may award a
13 grant to a jurisdiction to offset the costs of implementing
14 this title.

15 (b) **APPLICATION.**—The chief executive of a jurisdic-
16 tion shall, on an annual basis, submit to the Attorney Gen-
17 eral an application in such form and containing such infor-
18 mation as the Attorney General may require.

19 (c) **BONUS PAYMENTS FOR PROMPT COMPLIANCE.**—
20 A jurisdiction that, as determined by the Attorney Gen-
21 eral, has implemented this title not later than two years
22 after the date of the enactment of this Act is eligible for
23 a bonus payment. Such payment shall be made under the
24 SOMA program for the first fiscal year beginning after
25 that determination. The amount of the payment shall be—

1 (1) 10 percent of the total received by the juris-
2 diction under the SOMA program for the preceding
3 fiscal year, if implementation is not later than one
4 year after the date of enactment of this Act; and

5 (2) 5 percent of such total, if not later than two
6 years after that date.

7 (d) AUTHORIZATION OF APPROPRIATIONS.—In addi-
8 tion to any amounts otherwise authorized to be appro-
9 priated, there are authorized to be appropriated such sums
10 as may be necessary to the Attorney General, to be avail-
11 able only for the SOMA program, for fiscal years 2006
12 through 2008.

13 **SEC. 130. DEMONSTRATION PROJECT FOR USE OF ELEC-**
14 **TRONIC MONITORING DEVICES.**

15 (a) PROJECT REQUIRED.—The Attorney General
16 shall carry out a demonstration project under which the
17 Attorney General makes grants to jurisdictions to dem-
18 onstrate the extent to which electronic monitoring devices
19 can be used effectively in a sex offender management pro-
20 gram.

21 (b) USE OF FUNDS.—The jurisdiction may use grant
22 amounts under this section directly, or through arrange-
23 ments with public or private entities, to carry out pro-
24 grams under which the whereabouts of sex offenders are
25 monitored by electronic monitoring devices.

1 (c) PARTICIPANTS.—Not more than 10 jurisdictions
2 may participate in the demonstration project at any one
3 time.

4 (d) FACTORS.—In selecting jurisdictions to partici-
5 pate in the demonstration project, the Attorney General
6 shall consider the following factors:

7 (1) The total number of sex offenders in the ju-
8 risdiction.

9 (2) The percentage of those sex offenders who
10 fail to comply with registration requirements.

11 (3) The threat to public safety posed by those
12 sex offenders who fail to comply with registration re-
13 quirements.

14 (4) Any other factor the Attorney General con-
15 siders appropriate.

16 (e) DURATION.—The Attorney General shall carry
17 out the demonstration project for fiscal years 2007, 2008,
18 and 2009.

19 (f) INNOVATION.—In making grants under this sec-
20 tion, the Attorney General shall ensure that different ap-
21 proaches to monitoring are funded to allow an assessment
22 of effectiveness.

23 (g) ONE-TIME REPORT AND RECOMMENDATIONS.—
24 Not later than April 1, 2008, the Attorney General shall
25 submit to Congress a report—

1 (b) ELECTRONIC MONITORING LAWS AND POLI-
2 CIES.—

3 (1) IN GENERAL.—Laws and policies referred
4 to in subsection (a) are laws and policies that ensure
5 that electronic monitoring is required of a person if
6 that person is released after being convicted of a
7 State sex offense in which an individual who has not
8 attained the age of 18 years is the victim.

9 (2) MONITORING REQUIRED.—The monitoring
10 required under paragraph (1) is a system that ac-
11 tively monitors and identifies the person’s location
12 and timely reports or records the person’s presence
13 near or within a crime scene or in a prohibited area
14 or the person’s departure from specified geographic
15 limitations.

16 (3) DURATION.—The electronic monitoring re-
17 quired by paragraph (1) shall be required of the per-
18 son—

19 (A) for the life of the person, if—

20 (i) an individual who has not attained
21 the age of 12 years is the victim; or

22 (ii) the person has a prior sex convic-
23 tion (as defined in section 3559(e) of title
24 18, United States Code); and

1 (B) for the period during which the person
2 is on probation, parole, or supervised release for
3 the offense, in any other case.

4 (4) STATE REQUIRED TO MONITOR ALL SEX OF-
5 FENDERS RESIDING IN STATE.—In addition, laws
6 and policies referred to in subsection (a) also include
7 laws and policies that ensure that the State fre-
8 quently monitors each person residing in the State
9 for whom electronic monitoring is required, whether
10 such monitoring is required under this section or
11 under section 3563(a)(9) of title 18, United States
12 Code.

13 (c) BONUS PAYMENTS.—The bonus payment referred
14 to in subsection (a) is a payment equal to 10 percent of
15 the funds that would otherwise be allocated for that fiscal
16 year to the jurisdiction under each of the following pro-
17 grams:

18 (1) BYRNE.—Subpart 1 of part E of title I of
19 the Omnibus Crime Control and Safe Streets Act of
20 1968 (42 U.S.C. 3750 et seq.), whether character-
21 ized as the Edward Byrne Memorial State and Local
22 Law Enforcement Assistance Programs, the Edward
23 Byrne Memorial Justice Assistance Grant Program,
24 or otherwise.

1 (2) LLEBG.—The Local Government Law En-
2 forcement Block Grants program.

3 (d) DEFINITION.—In this section, the term “State
4 sex offense” means any criminal offense that is one of the
5 following:

6 (1) A specified offense against a minor.

7 (2) A serious sex offense.

8 **SEC. 132. NATIONAL CENTER FOR MISSING AND EXPLOITED**
9 **CHILDREN ACCESS TO INTERSTATE IDENTI-**
10 **FICATION INDEX.**

11 (a) IN GENERAL.—Notwithstanding any other provi-
12 sion of law, the Attorney General shall ensure that the
13 National Center for Missing and Exploited Children has
14 access to the Interstate Identification Index, to be used
15 by the Center only within the scope of its duties and re-
16 sponsibilities under Federal law. The access provided
17 under this section shall be authorized only to personnel
18 of the Center that have met all the requirements for ac-
19 cess, including training, certification, and background
20 screening.

21 (b) IMMUNITY.—Personnel of the Center shall not be
22 civilly or criminally liable for any use or misuse of infor-
23 mation in the Interstate Identification Index if in good
24 faith.

1 **SEC. 133. LIMITED IMMUNITY FOR NATIONAL CENTER FOR**
2 **MISSING AND EXPLOITED CHILDREN WITH**
3 **RESPECT TO CYBERTIPLINE.**

4 Section 227 of the Victims of Child Abuse Act of
5 1990 (42 U.S.C. 13032) is amended by adding at the end
6 the following new subsection:

7 “(g) LIMITATION ON LIABILITY.—

8 “(1) IN GENERAL.—Except as provided in para-
9 graphs (2) and (3), the National Center for Missing
10 and Exploited Children, including any of its direc-
11 tors, officers, employees, or agents, is not liable in
12 any civil or criminal action arising from the perform-
13 ance of its CyberTipline responsibilities and func-
14 tions as defined by this section.

15 “(2) INTENTIONAL, RECKLESS, OR OTHER MIS-
16 CONDUCT.—Paragraph (1) does not apply in an ac-
17 tion in which a party proves that the National Cen-
18 ter for Missing and Exploited Children, or its offi-
19 cer, employee, or agent as the case may be, engaged
20 in intentional misconduct or acted, or failed to act,
21 with actual malice, with reckless disregard to a sub-
22 stantial risk of causing injury without legal justifica-
23 tion, or for a purpose unrelated to the performance
24 of responsibilities or functions under this section.

25 “(3) ORDINARY BUSINESS ACTIVITIES.—Para-
26 graph (1) does not apply to an act or omission re-

1 lated to an ordinary business activity, such as an ac-
2 tivity involving general administration or operations,
3 the use of motor vehicles, or personnel manage-
4 ment.”.

5 **SEC. 134. TREATMENT AND MANAGEMENT OF SEX OFFEND-**
6 **ERS IN THE BUREAU OF PRISONS.**

7 Section 3621 of title 18, United States Code, is
8 amended by adding at the end the following new sub-
9 section:

10 “(f) SEX OFFENDER MANAGEMENT.—

11 “(1) IN GENERAL.—The Bureau of Prisons
12 shall make available appropriate treatment to sex of-
13 fenders who are in need of and suitable for treat-
14 ment, as follows:

15 “(A) SEX OFFENDER MANAGEMENT PRO-
16 GRAMS.—The Bureau of Prisons shall establish
17 non-residential sex offender management pro-
18 grams to provide appropriate treatment, moni-
19 toring, and supervision of sex offenders and to
20 provide aftercare during pre-release custody.

21 “(B) RESIDENTIAL SEX OFFENDER
22 TREATMENT PROGRAMS.—The Bureau of Pris-
23 ons shall establish residential sex offender
24 treatment programs to provide treatment to sex
25 offenders who volunteer for such programs and

1 are deemed by the Bureau of Prisons to be in
2 need of and suitable for residential treatment.

3 “(2) REGIONS.—At least one sex offender man-
4 agement program under paragraph (1)(A), and at
5 least one residential sex offender treatment program
6 under paragraph (1)(B), shall be established in each
7 region within the Bureau of Prisons.

8 “(3) AUTHORIZATION OF APPROPRIATIONS.—
9 There are authorized to be appropriated to the Bu-
10 reau of Prisons for each fiscal year such sums as
11 may be necessary to carry out this subsection.”.

12 **SEC. 135. ASSISTANCE IN IDENTIFICATION AND LOCATION**
13 **OF SEX OFFENDERS RELOCATED AS A RE-**
14 **SULT OF HURRICANE KATRINA.**

15 The Attorney General shall provide technical assist-
16 ance to jurisdictions to assist them in the identification
17 and location of sex offenders relocated as a result of Hur-
18 ricane Katrina.

19 **SEC. 136. GAO STUDIES ON FEASIBILITY OF USING DRIV-**
20 **ER’S LICENSE REGISTRATION PROCESSES AS**
21 **ADDITIONAL REGISTRATION REQUIREMENTS**
22 **FOR SEX OFFENDERS.**

23 For the purposes of determining the feasibility of
24 using driver’s license registration processes as additional
25 registration requirements for sex offenders to improve the

1 level of compliance with sex offender registration require-
2 ments for change of address upon relocation and other re-
3 lated updates of personal information, the Congress re-
4 quires the following studies:

5 (1) Not later than 180 days after the date of
6 the enactment of this Act, the Government Account-
7 ability Office shall complete a study for the Com-
8 mittee on the Judiciary of the House of Representa-
9 tives to survey a majority of the States to assess the
10 relative systems capabilities to comply with a Fed-
11 eral law that required all State driver's license sys-
12 tems to automatically access State and national
13 databases of registered sex offenders in a form simi-
14 lar to the requirement of the Nevada law described
15 in paragraph (2). The Government Accountability
16 Office shall use the information drawn from this
17 survey, along with other expert sources, to determine
18 what the potential costs to the States would be if
19 such a Federal law came into effect, and what level
20 of Federal grants would be required to prevent an
21 unfunded mandate. In addition, the Government Ac-
22 countability Office shall seek the views of Federal
23 and State law enforcement agencies, including in
24 particular the Federal Bureau of Investigation, with
25 regard to the anticipated effects of such a national

1 requirement, including potential for undesired side
2 effects in terms of actual compliance with this Act
3 and related laws.

4 (2) Not later than October 2006, the Govern-
5 ment Accountability Office shall complete a study to
6 evaluate the provisions of Chapter 507 of Statutes
7 of Nevada 2005 to determine—

8 (A) if those provisions are effective in in-
9 creasing the registration compliance rates of sex
10 offenders;

11 (B) the aggregate direct and indirect costs
12 for the state of Nevada to bring those provi-
13 sions into effect; and

14 (C) whether those provisions should be
15 modified to improve compliance by registered
16 sex offenders.

17 **Subtitle B—Criminal Law Enforce-**
18 **ment of Registration Require-**
19 **ments**

20 **SEC. 151. AMENDMENTS TO TITLE 18, UNITED STATES**
21 **CODE, RELATING TO SEX OFFENDER REG-**
22 **ISTRATION.**

23 (a) **CRIMINAL PENALTIES FOR NONREGISTRATION.—**
24 Part I of title 18, United States Code, is amended by in-
25 serting after chapter 109A the following:

1 **“CHAPTER 109B—SEX OFFENDER AND**
 2 **CRIMES AGAINST CHILDREN REGISTRY**

“Sec.

“2250. Failure to register.

3 **“§ 2250. Failure to register**

4 “Whoever is required to register under the Sex Of-
 5 fender Registration and Notification Act and—

6 “(1) is a sex offender as defined for the pur-
 7 poses of that Act by reason of a conviction under
 8 Federal law; or

9 “(2) thereafter travels in interstate or foreign
 10 commerce, or enters or leaves, or resides in, Indian
 11 country;

12 and knowingly fails to register as required shall be fined
 13 under this title and imprisoned not less than 5 years nor
 14 more than 20 years.”.

15 (b) CLERICAL AMENDMENT.—The table of chapters
 16 for part I of title 18, United States Code, is amended by
 17 inserting after the item relating to chapter 109A the fol-
 18 lowing new item:

“**109B. Sex offender and crimes against children registry 2250**”.

19 (c) FALSE STATEMENT OFFENSE.—Section 1001(a)
 20 of title 18, United States Code, is amended by adding at
 21 the end the following: “If the matter relates to an offense
 22 under chapter 109A, 109B, 110, or 117, or section 1591,

1 then the term of imprisonment imposed under this section
2 shall be not less than 5 years nor more than 20 years.”.

3 (d) PROBATION.—Paragraph (8) of section 3563(a)
4 of title 18, United States Code, is amended to read as
5 follows:

6 “(8) for a person required to register under the
7 Sex Offender Registration and Notification Act, that
8 the person comply with the requirements of that
9 Act; and”.

10 (e) SUPERVISED RELEASE.—Section 3583 of title 18,
11 United States Code, is amended—

12 (1) in subsection (d), in the sentence beginning
13 with “The court shall order, as an explicit condition
14 of supervised release for a person described in sec-
15 tion 4042(c)(4)”, by striking “described in section
16 4042(c)(4)” and all that follows through the end of
17 the sentence and inserting “required to register
18 under the Sex Offender Registration and Notifica-
19 tion Act that the person comply with the require-
20 ments of that Act.”.

21 (2) in subsection (k)—

22 (A) by striking “2244(a)(1), 2244(a)(2)”
23 and inserting “2243, 2244, 2245, 2250”;

24 (B) by inserting “not less than 5,” after
25 “any term of years”; and

1 (C) by adding at the end the following: “If
2 a defendant required to register under the Sex
3 Offender Registration and Notification Act vio-
4 lates the requirements of that Act or commits
5 any criminal offense for which imprisonment for
6 a term longer than one year can be imposed,
7 the court shall revoke the term of supervised re-
8 lease and require the defendant to serve a term
9 of imprisonment under subsection (e)(3) with-
10 out regard to the exception contained therein.
11 Such term shall be not less than 5 years, and
12 if the offense was an offense under chapter
13 109A, 109B, 110, or 117, or section 1591, not
14 less than 10 years.”.

15 (f) DUTIES OF BUREAU OF PRISONS.—Paragraph
16 (3) of section 4042(c) of title 18, United States Code, is
17 amended to read as follows:

18 “(3) The Director of the Bureau of Prisons shall in-
19 form a person who is released from prison and required
20 to register under the Sex Offender Registration and Noti-
21 fication Act of the requirements of that Act as they apply
22 to that person and the same information shall be provided
23 to a person sentenced to probation by the probation officer
24 responsible for supervision of that person.”.

1 (g) CONFORMING AMENDMENTS TO CROSS REF-
2 ERENCES.—Paragraphs (1) and (2) of section 4042(c) of
3 title 18, United States Code, are each amended by striking
4 “(4)” and inserting “(3)”.

5 (h) CONFORMING REPEAL OF DEADWOOD.—Para-
6 graph (4) of section 4042(c) of title 18, United States
7 Code, is repealed.

8 **SEC. 152. INVESTIGATION BY UNITED STATES MARSHALS**
9 **OF SEX OFFENDER VIOLATIONS OF REG-**
10 **ISTRATION REQUIREMENTS.**

11 (a) IN GENERAL.—The Attorney General shall use
12 the authority provided in section 566(e)(1)(B) of title 28,
13 United States Code, to assist States and other jurisdic-
14 tions in locating and apprehending sex offenders who vio-
15 late sex offender registration requirements.

16 (b) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated such sums as may be
18 necessary for fiscal years 2006 through 2008 to implement
19 this section.

20 **SEC. 153. SEX OFFENDER APPREHENSION GRANTS.**

21 Title I of the Omnibus Crime Control and Safe
22 Streets Act of 1968 is amended by adding at the end the
23 following new part:

1 **“§ 2249. Use of any controlled substance to facilitate**
2 **sex offense**

3 “(a) Whoever, knowingly uses a controlled substance
4 to substantially impair the ability of a person to appraise
5 or control conduct, in order to commit a sex offense, other
6 than an offense where such use is an element of the of-
7 fense, shall, in addition to the punishment provided for
8 the sex offense, be imprisoned for any term of years not
9 less than 10, or for life.

10 “(b) As used in this section, the term ‘sex offense’
11 means an offense under this chapter other than an offense
12 under this section.”.

13 (b) AMENDMENT TO TABLE.—The table of sections
14 at the beginning of chapter 109A of title 18, United States
15 Code, is amended by adding at the end the following new
16 item:

“2249. Use of any controlled substance to facilitate sex offense.”.

17 **SEC. 155. REPEAL OF PREDECESSOR SEX OFFENDER PRO-**
18 **GRAM.**

19 Sections 170101 (42 U.S.C. 14071) and 170102 (42
20 U.S.C. 14072) of the Violent Crime Control and Law En-
21 forcement Act of 1994, and section 8 of the Pam Lychner
22 Sexual Offender Tracking and Identification Act of 1996
23 (42 U.S.C. 14073), are repealed.

1 **SEC. 156. ASSISTANCE FOR PROSECUTIONS OF CASES**
2 **CLEARED THROUGH USE OF DNA BACKLOG**
3 **CLEARANCE FUNDS.**

4 (a) IN GENERAL.—The Attorney General may make
5 grants to train and employ personnel to help investigate
6 and prosecute cases cleared through use of funds provided
7 for DNA backlog elimination.

8 (b) AUTHORIZATION.—There are authorized to be ap-
9 propriated such sums as may be necessary for each of fis-
10 cal years 2006 through 2010 to carry out this section.

11 **SEC. 157. AUTHORIZATION OF ADDITIONAL APPROPRIA-**
12 **TIONS.**

13 In addition to any other amounts authorized by law,
14 there are authorized to be appropriated for grants to the
15 American Prosecutors Research Institute under section
16 214A of the Victims of Child Abuse Act of 1990 (42
17 U.S.C. 13003) \$7,500,000 for each of fiscal years 2006
18 through 2010.

19 **SEC. 158. GRANTS TO COMBAT SEXUAL ABUSE OF CHIL-**
20 **DREN.**

21 (a) IN GENERAL.—The Bureau of Justice Assistance
22 shall make grants to law enforcement agencies for pur-
23 poses of this section. The Bureau shall make such a
24 grant—

25 (1) to each law enforcement agency that serves
26 a jurisdiction with 50,000 or more residents; and

1 (2) to each law enforcement agency that serves
2 a jurisdiction with fewer than 50,000 residents,
3 upon a showing of need.

4 (b) USE OF GRANT AMOUNTS.—Grants under this
5 section may be used by the law enforcement agency to—

6 (1) hire additional law enforcement personnel,
7 or train existing staff to combat the sexual abuse of
8 children through community education and outreach,
9 investigation of complaints, enforcement of laws re-
10 lating to sex offender registries, and management of
11 released sex offenders;

12 (2) investigate the use of the Internet to facili-
13 tate the sexual abuse of children; and

14 (3) purchase computer hardware and software
15 necessary to investigate sexual abuse of children over
16 the Internet, access local, State, and Federal data-
17 bases needed to apprehend sex offenders, and facili-
18 tate the creation and enforcement of sex offender
19 registries.

20 (c) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated such sums as may be
22 necessary for fiscal years 2006 through 2008 to carry out
23 this section.

1 **SEC. 159. EXPANSION OF TRAINING AND TECHNOLOGY EF-**
2 **FORTS.**

3 (a) TRAINING.—The Attorney General, in consulta-
4 tion with the Office of Juvenile Justice and Delinquency
5 Prevention, shall—

6 (1) expand training efforts with Federal, State,
7 and local law enforcement officers and prosecutors
8 to effectively respond to the threat to children and
9 the public posed by sex offenders who use the inter-
10 net and technology to solicit or otherwise exploit
11 children;

12 (2) facilitate meetings, between corporations
13 that sell computer hardware and software or provide
14 services to the general public related to use of the
15 Internet, to identify problems associated with the
16 use of technology for the purpose of exploiting chil-
17 dren;

18 (3) host national conferences to train Federal,
19 State, and local law enforcement officers, probation
20 and parole officers, and prosecutors regarding pro-
21 active approaches to monitoring sex offender activity
22 on the Internet;

23 (4) develop and distribute, for personnel listed
24 in paragraph (3), information regarding multi-dis-
25 ciplinary approaches to holding offenders account-

1 able to the terms of their probation, parole, and sex
2 offender registration laws; and

3 (5) partner with other agencies to improve the
4 coordination of joint investigations among agencies
5 to effectively combat on-line solicitation of children
6 by sex offenders.

7 (b) TECHNOLOGY.—The Attorney General, in con-
8 sultation with the Office of Juvenile Justice and Delin-
9 quency Prevention, shall—

10 (1) deploy, to all Internet Crimes Against Chil-
11 dren Task Forces and their partner agencies, tech-
12 nology modeled after the Canadian Child Exploi-
13 tation Tracking System; and

14 (2) conduct training in the use of that tech-
15 nology.

16 (c) REPORT.—Not later than July 1, 2006, the Attor-
17 ney General, in consultation with the Office of Juvenile
18 Justice and Delinquency Prevention, shall submit to Con-
19 gress a report on the activities carried out under this sec-
20 tion. The report shall include any recommendations that
21 the Attorney General, in consultation with the Office, con-
22 siders appropriate.

23 (d) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated to the Attorney General,
25 for fiscal year 2006—

1 (1) \$1,000,000 to carry out subsection (a); and

2 (2) \$2,000,000 to carry out subsection (b).

3 **Subtitle C—Children’s Safety**
4 **Office**

5 **SEC. 161. ESTABLISHMENT.**

6 There is hereby established within the Department
7 of Justice, under the general authority of the Attorney
8 General, a Children’s Safety Office.

9 **SEC. 162. PURPOSE.**

10 The purpose of the Office is to administer the sex
11 offender registration program under subtitle A and to co-
12 ordinate with other departments, agencies, and offices in
13 preventing sexual abuse of children, prosecuting child sex
14 offenders, and tracking child abusers post-conviction.

15 **SEC. 163. DIRECTOR.**

16 (a) **ADVICE AND CONSENT.**—At the head of the Of-
17 fice shall be a Director, appointed by the President, by
18 and with the advice and consent of the Senate. The Direc-
19 tor shall report directly to the Attorney General.

20 (b) **QUALIFICATIONS.**—The Director shall be ap-
21 pointed from among distinguished individuals who have—

22 (1) proven academic, management, and leader-
23 ship credentials;

24 (2) a superior record of achievement; and

1 (3) training or expertise in criminal law or the
2 exploitation of children, or both.

3 (c) DUTIES.—The Director shall have the following
4 duties:

5 (1) To maintain liaison with the judicial
6 branches of the Federal and State Governments on
7 matters relating to children’s safety from sex offend-
8 ers.

9 (2) To provide information to the President, the
10 Congress, the Judiciary, State and local govern-
11 ments, and the general public on matters relating to
12 children’s safety from sex offenders.

13 (3) To serve, when requested by the Attorney
14 General, as the representative of the Department of
15 Justice on domestic task forces, committees, or com-
16 missions addressing policy or issues relating to chil-
17 dren’s safety from sex offenders.

18 (4) To provide technical assistance, coordina-
19 tion, and support to—

20 (A) other components of the Department
21 of Justice, in efforts to develop policy and to
22 enforce Federal laws relating to sexual assaults
23 against children, including the litigation of civil
24 and criminal actions relating to enforcing such
25 laws; and

1 (B) other Federal, State, and local agen-
2 cies, in efforts to develop policy, provide tech-
3 nical assistance, and improve coordination
4 among agencies carrying out efforts to elimi-
5 nate sexual assaults against children.

6 (5) To exercise such other powers and functions
7 as may be vested in the Director pursuant to this or
8 any other Act or by delegation of the Attorney Gen-
9 eral in accordance with law.

10 (6) To establish such rules, regulations, guide-
11 lines, and procedures as are necessary to carry out
12 any function of the Office.

13 (7) To oversee—

14 (A) the grant programs under subtitle A;
15 and

16 (B) any other grant programs of the De-
17 partment of Justice to the extent they relate to
18 sexual assaults against children.

19 **SEC. 164. ANNUAL REPORT.**

20 Not later than 180 days after the end of each fiscal
21 year for which grants are made under subtitle A, the At-
22 torney General shall submit to the Committee on the Judi-
23 ciary of the House of Representatives and the Committee
24 on the Judiciary of the Senate a report that includes, for
25 each State or other jurisdiction—

1 (1) the number of grants made and funds dis-
2 tributed under subtitle A;

3 (2) a summary of the purposes for which those
4 grants were provided and an evaluation of their
5 progress;

6 (3) a statistical summary of persons served, de-
7 tailing the nature of victimization, and providing
8 data on age, sex, relationship of victim to offender,
9 geographic distribution, race, ethnicity, language,
10 and disability, and the membership of persons served
11 in any underserved population; and

12 (4) an evaluation of the effectiveness of pro-
13 grams funded under subtitle A.

14 **SEC. 165. STAFF.**

15 The Attorney General shall ensure that the Director
16 has adequate staff to support the Director in carrying out
17 the responsibilities of the Director.

18 **SEC. 166. AUTHORIZATION OF APPROPRIATIONS.**

19 There are authorized to be appropriated such sums
20 as are necessary to carry out this subtitle.

21 **SEC. 167. NONMONETARY ASSISTANCE.**

22 In addition to the assistance provided under subtitle
23 A, the Attorney General may request any Federal agency
24 to use its authorities and the resources granted to it under
25 Federal law (including personnel, equipment, supplies, fa-

1 cilities, and managerial, technical, and advisory services)
2 in support of State and local assistance efforts consistent
3 with the purposes of this title.

4 **TITLE II—DNA FINGERPRINTING**

5 **SEC. 201. SHORT TITLE.**

6 This title may be cited as the “DNA Fingerprinting
7 Act of 2005”.

8 **SEC. 202. EXPANDING USE OF DNA TO IDENTIFY AND PROS-** 9 **ECUTE SEX OFFENDERS.**

10 (a) **EXPANSION OF NATIONAL DNA INDEX SYS-**
11 **TEM.**—Section 210304 of the DNA Identification Act of
12 1994 (42 U.S.C. 14132) is amended—

13 (1) in subsection (a)(1)(C), by striking “, pro-
14 vided” and all that follows through “System”; and

15 (2) by striking subsections (d) and (e).

16 (b) **DNA SAMPLE COLLECTION FROM PERSONS AR-**
17 **RESTED OR DETAINED UNDER FEDERAL AUTHORITY.**—

18 (1) **IN GENERAL.**—Section 3 of the DNA Anal-
19 ysis Backlog Elimination Act of 2000 (42 U.S.C.
20 14135a) is amended—

21 (A) in subsection (a)—

22 (i) in paragraph (1), by striking “The
23 Director” and inserting the following:

24 “(A) The Attorney General may, as pro-
25 vided by the Attorney General by regulation,

1 collect DNA samples from individuals who are
2 arrested, detained, or convicted under the au-
3 thority of the United States. The Attorney Gen-
4 eral may delegate this function within the De-
5 partment of Justice as provided in section 510
6 of title 28, United States Code, and may also
7 authorize and direct any other agency of the
8 United States that arrests or detains individ-
9 uals or supervises individuals facing charges to
10 carry out any function and exercise any power
11 of the Attorney General under this section.

12 “(B) The Director”; and

13 (ii) in paragraphs (3) and (4), by
14 striking “Director of the Bureau of Pris-
15 ons” each place it appears and inserting
16 “Attorney General, the Director of the Bu-
17 reau of Prisons,”; and

18 (B) in subsection (b), by striking “Director
19 of the Bureau of Prisons” and inserting “Attor-
20 ney General, the Director of the Bureau of
21 Prisons,”.

22 (2) CONFORMING AMENDMENT.—Subsections
23 (b) and (c)(1)(A) of section 3142 of title 18, United
24 States Code, are each amended by inserting “and
25 subject to the condition that the person cooperate in

1 the collection of a DNA sample from the person if
2 the collection of such a sample is authorized pursu-
3 ant to section 3 of the DNA Analysis Backlog Elimini-
4 nation Act of 2000 (42 U.S.C. 14135a)” after “pe-
5 riod of release”.

6 (c) TOLLING OF STATUTE OF LIMITATIONS IN SEX-
7 UAL ABUSE CASES.—Section 3297 of title 18, United
8 States Code, is amended by striking “except for a felony
9 offense under chapter 109A,”.

10 **SEC. 203. STOPPING VIOLENT PREDATORS AGAINST CHIL-**
11 **DREN.**

12 In carrying out Acts of Congress relating to DNA
13 databases, the Attorney General shall give appropriate
14 consideration to the need for the collection and testing of
15 DNA to stop violent predators against children.

16 **SEC. 204. MODEL CODE ON INVESTIGATING MISSING PER-**
17 **SONS AND DEATHS.**

18 (a) MODEL CODE REQUIRED.—Not later than 60
19 days after the date of the enactment of this Act, the Attor-
20 ney General shall publish a model code setting forth proce-
21 dures to be followed by law enforcement officers when in-
22 vestigating a missing person or a death. The procedures
23 shall include the use of DNA analysis to help locate miss-
24 ing persons and to help identify human remains.

1 (b) SENSE OF CONGRESS.—It is the sense of Con-
2 gress that each State should, not later than 1 year after
3 the date on which the Attorney General publishes the
4 model code, enact laws implementing the model code.

5 (c) GAO STUDY.—Not later than 2 years after the
6 date on which the Attorney General publishes the model
7 code, the Comptroller General shall submit to Congress
8 a report on the extent to which States have implemented
9 the model code. The report shall, for each State—

10 (1) describe the extent to which the State has
11 implemented the model code; and

12 (2) to the extent the State has not implemented
13 the model code, describe the reasons why the State
14 has not done so.

15 **TITLE III—PREVENTION AND DE-**
16 **TERRENCE OF CRIMES**
17 **AGAINST CHILDREN ACT OF**
18 **2005**

19 **SEC. 301. SHORT TITLE.**

20 This title may be cited as the “Prevention and Deter-
21 rence of Crimes Against Children Act of 2005”.

1 **SEC. 302. ASSURED PUNISHMENT FOR VIOLENT CRIMES**
2 **AGAINST CHILDREN.**

3 (a) SPECIAL SENTENCING RULE.—Subsection (d) of
4 section 3559 of title 18, United States Code, is amended
5 to read as follows:

6 “(d) MANDATORY MINIMUM TERMS OF IMPRISON-
7 MENT FOR VIOLENT CRIMES AGAINST CHILDREN.—A
8 person who is convicted of a felony crime of violence
9 against the person of an individual who has not attained
10 the age of 18 years shall, unless a greater mandatory min-
11 imum sentence of imprisonment is otherwise provided by
12 law and regardless of any maximum term of imprisonment
13 otherwise provided for the offense—

14 “(1) if the crime of violence results in the death
15 of a person who has not attained the age of 18
16 years, be sentenced to death or life in prison;

17 “(2) if the crime of violence is kidnapping, ag-
18 gravated sexual abuse, sexual abuse, or maiming, or
19 results in serious bodily injury (as defined in section
20 2119(2)) be imprisoned for life or any term of years
21 not less than 30;

22 “(3) if the crime of violence results in bodily in-
23 jury (as defined in section 1365) or is an offense
24 under paragraphs (1), (2), or (5) of section 2244(a),
25 be imprisoned for life or for any term of years not
26 less than 20;

1 “(2) This subsection applies to an application for a
2 writ of habeas corpus on behalf of a person in custody
3 pursuant to the judgment of a State court for a crime
4 that involved the killing of a individual who has not at-
5 tained the age of 18 years.

6 “(3) For an application described in paragraph (2),
7 the following requirements shall apply in the district court:

8 “(A) Any motion by either party for an evi-
9 dentiary hearing shall be filed and served not later
10 than 90 days after the State files its answer or, if
11 no timely answer is filed, the date on which such an-
12 swer is due.

13 “(B) Any motion for an evidentiary hearing
14 shall be granted or denied not later than 30 days
15 after the date on which the party opposing such mo-
16 tion files a pleading in opposition to such motion or,
17 if no timely pleading in opposition is filed, the date
18 on which such pleading in opposition is due.

19 “(C) Any evidentiary hearing shall be—

20 “(i) convened not less than 60 days after
21 the order granting such hearing; and

22 “(ii) completed not more than 150 days
23 after the order granting such hearing.

24 “(D) A district court shall enter a final order,
25 granting or denying the application for a writ of ha-

1 beas corpus, not later than 15 months after the date
2 on which the State files its answer or, if no timely
3 answer is filed, the date on which such answer is
4 due, or not later than 60 days after the case is sub-
5 mitted for decision, whichever is earlier.

6 “(E) If the district court fails to comply with
7 the requirements of this paragraph, the State may
8 petition the court of appeals for a writ of mandamus
9 to enforce the requirements. The court of appeals
10 shall grant or deny the petition for a writ of man-
11 damus not later than 30 days after such petition is
12 filed with the court.

13 “(4) For an application described in paragraph (2),
14 the following requirements shall apply in the court of ap-
15 peals:

16 “(A) A timely filed notice of appeal from an
17 order issuing a writ of habeas corpus shall operate
18 as a stay of that order pending final disposition of
19 the appeal.

20 “(B) The court of appeals shall decide the ap-
21 peal from an order granting or denying a writ of ha-
22 beas corpus—

23 “(i) not later than 120 days after the date
24 on which the brief of the appellee is filed or, if

1 no timely brief is filed, the date on which such
2 brief is due; or

3 “(ii) if a cross-appeal is filed, not later
4 than 120 days after the date on which the ap-
5 pellant files a brief in response to the issues
6 presented by the cross-appeal or, if no timely
7 brief is filed, the date on which such brief is
8 due.

9 “(C)(i) Following a decision by a panel of the
10 court of appeals under subparagraph (B), a petition
11 for panel rehearing is not allowed, but rehearing by
12 the court of appeals en banc may be requested. The
13 court of appeals shall decide whether to grant a peti-
14 tion for rehearing en banc not later than 30 days
15 after the date on which the petition is filed, unless
16 a response is required, in which case the court shall
17 decide whether to grant the petition not later than
18 30 days after the date on which the response is filed
19 or, if no timely response is filed, the date on which
20 the response is due.

21 “(ii) If rehearing en banc is granted, the court
22 of appeals shall make a final determination of the
23 appeal not later than 120 days after the date on
24 which the order granting rehearing en banc is en-
25 tered.

1 “(D) If the court of appeals fails to comply
2 with the requirements of this paragraph, the State
3 may petition the Supreme Court or a justice thereof
4 for a writ of mandamus to enforce the requirements.

5 “(5)(A) The time limitations under paragraphs (3)
6 and (4) shall apply to an initial application described in
7 paragraph (2), any second or successive application de-
8 scribed in paragraph (2), and any redetermination of an
9 application described in paragraph (2) or related appeal
10 following a remand by the court of appeals or the Supreme
11 Court for further proceedings.

12 “(B) In proceedings following remand in the district
13 court, time limits running from the time the State files
14 its answer under paragraph (3) shall run from the date
15 the remand is ordered if further briefing is not required
16 in the district court. If there is further briefing following
17 remand in the district court, such time limits shall run
18 from the date on which a responsive brief is filed or, if
19 no timely responsive brief is filed, the date on which such
20 brief is due.

21 “(C) In proceedings following remand in the court of
22 appeals, the time limit specified in paragraph (4)(B) shall
23 run from the date the remand is ordered if further briefing
24 is not required in the court of appeals. If there is further
25 briefing in the court of appeals, the time limit specified

1 in paragraph (4)(B) shall run from the date on which a
2 responsive brief is filed or, if no timely responsive brief
3 is filed, from the date on which such brief is due.

4 “(6) The failure of a court to meet or comply with
5 a time limitation under this subsection shall not be a
6 ground for granting relief from a judgment of conviction
7 or sentence, nor shall the time limitations under this sub-
8 section be construed to entitle a capital applicant to a stay
9 of execution, to which the applicant would otherwise not
10 be entitled, for the purpose of litigating any application
11 or appeal.

12 “(k) SENTENCING CLAIMS.—A court, justice, or
13 judge shall not have jurisdiction to consider an application
14 with respect to an error relating to the applicant’s sen-
15 tence or sentencing that has been found to be harmless
16 or not prejudicial in State court proceedings, or that was
17 found by a State court to be procedurally barred, unless
18 a determination that the error is not structural is contrary
19 to clearly established Federal law, as determined by the
20 Supreme Court of the United States.”.

21 (b) VICTIMS’ RIGHTS IN HABEAS CASES.—Section
22 3771(b) of title 18, United States Code, is amended by
23 adding at the end the following: “The rights established
24 for crime victims by this section shall also be extended

1 in a Federal habeas corpus proceeding arising out of a
2 State conviction to victims of the State offense at issue.”.

3 (c) APPLICATION TO PENDING CASES.—

4 (1) IN GENERAL.—The amendment made by
5 this section apply to cases pending on the date of
6 the enactment of this Act as well as to cases com-
7 menced on and after that date.

8 (2) SPECIAL RULE FOR TIME LIMITS.—In a
9 case pending on the date of the enactment of this
10 Act, if the amendment made by subsection (a) pro-
11 vides that a time limit runs from an event or time
12 that has occurred before that date, the time limit
13 shall instead run from that date.

14 **SEC. 304. STATISTICS.**

15 (a) COVERAGE.—Subsection (b)(1) of the first sec-
16 tion of the Hate Crime Statistics Act (28 U.S.C. 534 note)
17 is amended by inserting “gender,” before “or ethnicity”.

18 (b) DATA.—Subsection (b)(5) of the first section of
19 the Hate Crime Statistics Act (28 U.S.C. 534 note) is
20 amended by inserting “, including data about crimes com-
21 mitted by and directed against juveniles” after “data ac-
22 quired under this section”.

1 **SEC. 305. STUDY OF INTERSTATE TRACKING OF PERSONS**
2 **CONVICTED OF OR UNDER INVESTIGATION**
3 **FOR CHILD ABUSE.**

4 (a) STUDY.—The Attorney General, in consultation
5 with the Secretary of Health and Human Services, shall
6 study the establishment of a nationwide interstate track-
7 ing system of persons convicted of, or under investigation
8 for, child abuse. The study shall include an analysis, along
9 with the costs and benefits, of various mechanisms for es-
10 tablishing an interstate tracking system, and include the
11 extent to which existing registries could be used.

12 (b) REPORT.—Not later than 90 days after the date
13 of the enactment of this Act, the Secretary shall report
14 to the Congress the results of the study under this section.

15 **SEC. 306. ACCESS TO FEDERAL CRIME INFORMATION DATA-**
16 **BASES BY EDUCATIONAL AGENCIES FOR CER-**
17 **TAIN PURPOSES.**

18 (a) IN GENERAL.—The Attorney General of the
19 United States shall, upon request of the chief executive
20 officer of a State, conduct fingerprint-based checks of the
21 national crime information databases (as defined in sec-
22 tion 534(e)(3)(A) of title 28, United States Code), pursu-
23 ant to a request submitted by a local educational agency
24 or State educational agency in that State, on individuals
25 under consideration for employment by the agency in a
26 position in which the individual would work with or around

1 children. Where possible, the check shall include a finger-
2 print-based check of State criminal history databases. The
3 Attorney General and the States may charge any applica-
4 ble fees for these checks.

5 (b) PROTECTION OF INFORMATION.—An individual
6 having information derived as a result of a check under
7 subsection (a) may release that information only to an ap-
8 propriate officer of a local educational agency or State
9 educational agency, or to another person authorized by
10 law to receive that information.

11 (c) CRIMINAL PENALTIES.—An individual who know-
12 ingly exceeds the authority in subsection (a), or knowingly
13 releases information in violation of subsection (b), shall
14 be imprisoned not more than 10 years or fined under title
15 18, United States Code, or both.

16 (d) DEFINITION.—In this section, the terms “local
17 educational agency” and “State educational agency” have
18 the meanings given to those terms in section 9101 of the
19 Elementary and Secondary Education Act of 1965 (20
20 U.S.C. 7801).

1 **TITLE** **IV—PROTECTION**
2 **AGAINST SEXUAL EXPLOI-**
3 **TATION OF CHILDREN ACT OF**
4 **2005**

5 **SEC. 401. SHORT TITLE.**

6 This title may be cited as the “Protection Against
7 Sexual Exploitation of Children Act of 2005”.

8 **SEC. 402. INCREASED PENALTIES FOR SEXUAL OFFENSES**
9 **AGAINST CHILDREN.**

10 (a) **SEXUAL ABUSE AND CONTACT.—**

11 (1) **AGGRAVATED SEXUAL ABUSE OF CHIL-**
12 **DREN.—**Section 2241(c) of title 18, United States
13 Code, is amended by striking “, imprisoned for any
14 term of years or life, or both.” and inserting “and
15 imprisoned for not less than 30 years or for life.”.

16 (2) **ABUSIVE SEXUAL CONTACT WITH CHIL-**
17 **DREN.—**Section 2244 of chapter 109A of title 18,
18 United States Code, is amended—

19 (A) in subsection (a)—

20 (i) in paragraph (1), by inserting
21 “subsection (a) or (b) of” before “section
22 2241”;

23 (ii) by striking “or” at the end of
24 paragraph (3);

1 (iii) by striking the period at the end
2 of paragraph (4) and inserting “; or”; and
3 (iv) by inserting after paragraph (4)
4 the following:

5 “(5) subsection (c) of section 2241 of this title
6 had the sexual contact been a sexual act, shall be
7 fined under this title and imprisoned for not less
8 than 10 years and not more than 25 years.”; and

9 (B) in subsection (c), by inserting “(other
10 than subsection (a)(5))” after “violates this sec-
11 tion”.

12 (3) SEXUAL ABUSE OF CHILDREN RESULTING
13 IN DEATH.—Section 2245 of title 18, United States
14 Code, is amended—

15 (A) by inserting “, chapter 110, chapter
16 117, or section 1591” after “this chapter”;

17 (B) by striking “A person” and inserting
18 “(a) IN GENERAL.—A person”; and

19 (C) by adding at the end the following:

20 “(b) OFFENSES INVOLVING YOUNG CHILDREN.—A
21 person who, in the course of an offense under this chapter,
22 chapter 110, chapter 117, or section 1591 engages in con-
23 duct that results in the death of a person who has not
24 attained the age of 12 years, shall be punished by death
25 or imprisoned for not less than 30 years or for life.”.

1 (4) DEATH PENALTY AGGRAVATING FACTOR.—
2 Section 3592(c)(1) of title 18, United States Code,
3 is amended by inserting “section 2245 (sexual abuse
4 resulting in death),” after “(wrecking trains),”.

5 (b) SEXUAL EXPLOITATION AND OTHER ABUSE OF
6 CHILDREN.—

7 (1) SEXUAL EXPLOITATION OF CHILDREN.—
8 Section 2251(e) of title 18, United States Code, is
9 amended—

10 (A) by striking “15 years nor more than
11 30 years” and inserting “25 years or for life”;

12 (B) by inserting “section 1591,” after
13 “this chapter,” the first place it appears;

14 (C) by striking “the sexual exploitation of
15 children” the first place it appears and insert-
16 ing “aggravated sexual abuse, sexual abuse,
17 abusive sexual contact involving a minor or
18 ward, or sex trafficking of children, or the pro-
19 duction, possession, receipt, mailing, sale, dis-
20 tribution, shipment, or transportation of child
21 pornography”;

22 (D) by striking “not less than 25 years nor
23 more than 50 years, but if such person has 2
24 or more prior convictions under this chapter,
25 chapter 71, chapter 109A, or chapter 117, or

1 under section 920 of title 10 (article 120 of the
2 Uniform Code of Military Justice), or under the
3 laws of any State relating to the sexual exploi-
4 tation of children, such person shall be fined
5 under this title and imprisoned not less than 35
6 years nor more than life.” and inserting “life.”;
7 and

8 (E) by striking “any term of years or for
9 life” and inserting “not less than 30 years or
10 for life”.

11 (2) ACTIVITIES RELATING TO MATERIAL IN-
12 VOLVING THE SEXUAL EXPLOITATION OF CHIL-
13 DREN.—Section 2252(b) of title 18, United States
14 Code, is amended—

15 (A) in paragraph (1)—

16 (i) by striking “paragraphs (1)” and
17 inserting “paragraph (1)”;

18 (ii) by inserting “section 1591,” after
19 “this chapter,”;

20 (iii) by inserting “, or sex trafficking
21 of children” after “pornography”;

22 (iv) by striking “5 years and not more
23 than 20 years” and inserting “25 years or
24 for life”; and

1 (v) by striking “not less than 15 years
2 nor more than 40 years.” and inserting
3 “life.”; and

4 (B) in paragraph (2)—

5 (i) by striking “or imprisoned not
6 more than 10 years” and inserting “and
7 imprisoned for not less than 10 nor more
8 than 30 years”;

9 (ii) by striking “, or both”; and

10 (iii) by striking “10 years nor more
11 than 20 years.” and inserting “30 years or
12 for life.”.

13 (3) ACTIVITIES RELATING TO MATERIAL CON-
14 STITUTING OR CONTAINING CHILD PORNOGRAPHY.—
15 Section 2252A(b) of title 18, United States Code, is
16 amended—

17 (A) in paragraph (1)—

18 (i) by inserting “section 1591,” after
19 “this chapter.”;

20 (ii) by inserting “, or sex trafficking
21 of children” after “pornography”;

22 (iii) by striking “5 years and not more
23 than 20 years” and inserting “25 years or
24 for life”; and

1 (iv) by striking “not less than 15
2 years nor more than 40 years” and insert-
3 ing “life”; and

4 (B) in paragraph (2)—

5 (i) by striking “or imprisoned not
6 more than 10 years, or both” and inserting
7 “and imprisoned for not less than 10 nor
8 more than 30 years”; and

9 (ii) by striking “10 years nor more
10 than 20 years” and inserting “30 years or
11 for life”.

12 (4) USING MISLEADING DOMAIN NAMES TO DI-
13 RECT CHILDREN TO HARMFUL MATERIAL ON THE
14 INTERNET.—Section 2252B(b) of title 18, United
15 States Code, is amended by striking “or imprisoned
16 not more than 4 years, or both” and inserting “ and
17 imprisoned not less than 10 nor more than 30
18 years”.

19 (5) PRODUCTION OF SEXUALLY EXPLICIT DE-
20 PICTIONS OF CHILDREN.—Section 2260(c) of title
21 18, United States Code, is amended by striking
22 paragraphs (1) and (2) and inserting the following:

23 “(1) shall be fined under this title and impris-
24 oned for any term or years not less than 25 or for
25 life; and

1 “(2) if the person has a prior conviction under
2 this chapter, section 1591, chapter 71, chapter
3 109A, or chapter 117, or under section 920 of title
4 10 (article 120 of the Uniform Code of Military Jus-
5 tice), shall be fined under this title and imprisoned
6 for life.”.

7 (c) MANDATORY LIFE IMPRISONMENT FOR CERTAIN
8 REPEATED SEX OFFENSES AGAINST CHILDREN.—Sec-
9 tion 3559(e)(2)(A) of title 18, United States Code, is
10 amended—

11 (1) by striking “or 2423(a)” and inserting
12 “2423(a)”; and

13 (2) by inserting “, 2423(b) (relating to travel
14 with intent to engage in illicit sexual conduct),
15 2423(c) (relating to illicit sexual conduct in foreign
16 places), or 2425 (relating to use of interstate facili-
17 ties to transmit information about a minor)” after
18 “minors”).

19 **SEC. 403. SENSE OF CONGRESS WITH RESPECT TO PROS-**
20 **ECUTIONS UNDER SECTION 2422(b) OF TITLE**
21 **18, UNITED STATES CODE.**

22 (a) FINDINGS.—Congress finds that—

23 (1) a jury convicted Jan P. Helder, Jr., of
24 using a computer to attempt to entice an individual

1 who had not attained the age of 18 years to engage
2 in unlawful sexual activity;

3 (2) during the trial, evidence showed that Jan
4 Helder had engaged in an online chat with an indi-
5 vidual posing as a minor, who unbeknownst to him,
6 was an undercover law enforcement officer;

7 (3) notwithstanding, Dean Whipple, District
8 Judge for the Western District of Missouri, acquit-
9 ted Jan Helder, ruling that because he did not, in
10 fact, communicate with a minor, he did not commit
11 a crime;

12 (4) the 9th Circuit Court of Appeals, in United
13 States v. Jeffrey Meek, specifically addressed the
14 question facing Judge Whipple and concurred with
15 the 5th and 11th Circuit Courts in finding that “an
16 actual minor victim is not required for an attempt
17 conviction under 18 U.S.C. § 2422(b).”;

18 (5) the Department of Justice has successfully
19 used evidence obtained through undercover law en-
20 forcement to prosecute and convict perpetrators who
21 attempted to solicit children on the Internet; and

22 (6) the Department of Justice states, “Online
23 child pornography/child sexual exploitation is the
24 most significant cyber crime problem confronting the
25 FBI that involves crimes against children”.

1 (b) SENSE OF CONGRESS.—It is the sense of Con-
2 gress that—

3 (1) it is a crime under section 2422(b) of title
4 18, United States Code, to use a facility of inter-
5 state commerce to attempt to entice an individual
6 who has not attained the age of 18 years into unlaw-
7 ful sexual activity, even if the perpetrator incorrectly
8 believes that the individual has not attained the age
9 of 18 years;

10 (2) well-established caselaw has established that
11 section 2422(b) of title 18, United States Code,
12 criminalizes any attempt to entice a minor into un-
13 lawful sexual activity, even if the perpetrator incor-
14 rectly believes that the individual has not attained
15 the age of 18 years;

16 (3) the Department of Justice should appeal
17 Judge Whipple’s decision in *United States v. Helder,*
18 *Jr.* and aggressively continue to track down and
19 prosecute sex offenders on the Internet; and

20 (4) Judge Whipple’s decision in *United States*
21 *v. Helder, Jr.* should be overturned in light of the
22 law as it is written, the intent of Congress, and well-
23 established caselaw.

1 **TITLE V—FOSTER CHILD PRO-**
 2 **TECTION AND CHILD SEXUAL**
 3 **PREDATOR DETERRENCE**

4 **SEC. 501. SHORT TITLE.**

5 This title may be cited as the “Foster Child Protec-
 6 tion and Child Sexual Predator Sentencing Act of 2005”.

7 **SEC. 502. REQUIREMENT TO COMPLETE BACKGROUND**
 8 **CHECKS BEFORE APPROVAL OF ANY FOSTER**
 9 **OR ADOPTIVE PLACEMENT AND TO CHECK**
 10 **NATIONAL CRIME INFORMATION DATABASES**
 11 **AND STATE CHILD ABUSE REGISTRIES; SUS-**
 12 **PENSION AND SUBSEQUENT ELIMINATION OF**
 13 **OPT-OUT.**

14 (a) REQUIREMENT TO COMPLETE BACKGROUND
 15 CHECKS BEFORE APPROVAL OF ANY FOSTER OR ADOP-
 16 TIVE PLACEMENT AND TO CHECK NATIONAL CRIME IN-
 17 FORMATION DATABASES AND STATE CHILD ABUSE REG-
 18 ISTRIES; SUSPENSION OF OPT-OUT.—

19 (1) REQUIREMENT TO CHECK NATIONAL CRIME
 20 INFORMATION DATABASES AND STATE CHILD ABUSE
 21 REGISTRIES.—Section 471(a)(20) of the Social Se-
 22 curity Act (42 U.S.C. 671(a)(20)) is amended—

23 (A) in subparagraph (A)—

24 (i) in the matter preceding clause

25 (i)—

1 (I) by inserting “, including
2 checks of national crime information
3 databases (as defined in section
4 534(e)(3)(A) of title 28, United
5 States Code),” after “criminal records
6 checks”; and

7 (II) by striking “on whose behalf
8 foster care maintenance payments or
9 adoption assistance payments are to
10 be made” and inserting “regardless of
11 whether foster care maintenance pay-
12 ments or adoption assistance pay-
13 ments are to be made on behalf of the
14 child”; and

15 (ii) in each of clauses (i) and (ii), by
16 inserting “involving a child on whose be-
17 half such payments are to be so made”
18 after “in any case”; and

19 (B) by adding at the end the following:

20 “(C) provides that the State shall—

21 “(i) check any child abuse and neglect reg-
22 istry maintained by the State for information
23 on any prospective foster or adoptive parent
24 and on any other adult living in the home of
25 such a prospective parent, and request any

1 other State in which any such prospective par-
2 ent or other adult has resided in the preceding
3 5 years, to enable the State to check any child
4 abuse and neglect registry maintained by such
5 other State for such information, before the
6 prospective foster or adoptive parent may be fi-
7 nally approved for placement of a child, regard-
8 less of whether foster care maintenance pay-
9 ments or adoption assistance payments are to
10 be made on behalf of the child under the State
11 plan under this part;

12 “(ii) comply with any request described in
13 clause (i) that is received from another State;
14 and

15 “(iii) have in place safeguards to prevent
16 the unauthorized disclosure of information in
17 any child abuse and neglect registry maintained
18 by the State, and to prevent any such informa-
19 tion obtained pursuant to this subparagraph
20 from being used for a purpose other than the
21 conducting of background checks in foster or
22 adoptive placement cases;”.

23 (2) SUSPENSION OF OPT-OUT.—Section
24 471(a)(20)(B) of such Act (42 U.S.C.
25 671(a)(20)(B)) is amended—

1 (A) by inserting “, on or before September
2 30, 2005,” after “plan if”; and

3 (B) by inserting “, on or before such
4 date,” after “or if”.

5 (b) ELIMINATION OF OPT-OUT.—Section 471(a)(20)
6 of such Act (42 U.S.C. 671(a)(20)), as amended by sub-
7 section (a) of this section, is amended—

8 (1) in subparagraph (A), in the matter pre-
9 ceding clause (i), by striking “unless an election pro-
10 vided for in subparagraph (B) is made with respect
11 to the State,”; and

12 (2) by striking subparagraph (B) and redesignig-
13 nating subparagraph (C) as subparagraph (B).

14 (c) EFFECTIVE DATE.—

15 (1) IN GENERAL.—The amendments made by
16 subsection (a) shall take effect on October 1, 2005,
17 and shall apply with respect to payments under part
18 E of title IV of the Social Security Act for calendar
19 quarters beginning on or after such date, without re-
20 gard to whether regulations to implement the
21 amendments are promulgated by such date.

22 (2) ELIMINATION OF OPT-OUT.—The amend-
23 ments made by subsection (b) shall take effect on
24 October 1, 2007, and shall apply with respect to
25 payments under part E of title IV of the Social Se-

1 security Act for calendar quarters beginning on or
2 after such date, without regard to whether regula-
3 tions to implement the amendments are promulgated
4 by such date.

5 (3) DELAY PERMITTED IF STATE LEGISLATION
6 REQUIRED.—If the Secretary of Health and Human
7 Services determines that State legislation (other
8 than legislation appropriating funds) is required in
9 order for a State plan under section 471 of the So-
10 cial Security Act to meet the additional requirements
11 imposed by the amendments made by a subsection
12 of this section, the plan shall not be regarded as fail-
13 ing to meet any of the additional requirements be-
14 fore the first day of the first calendar quarter begin-
15 ning after the first regular session of the State legis-
16 lature that begins after the otherwise applicable ef-
17 fective date of the amendments. If the State has a
18 2-year legislative session, each year of the session is
19 deemed to be a separate regular session of the State
20 legislature.

21 **SEC. 503. ACCESS TO FEDERAL CRIME INFORMATION DATA-**
22 **BASES BY CHILD WELFARE AGENCIES FOR**
23 **CERTAIN PURPOSES.**

24 (a) IN GENERAL.—The Attorney General of the
25 United States shall, upon request of the chief executive

1 officer of a State, conduct fingerprint-based checks of the
2 national crime information databases (as defined in sec-
3 tion 534(e)(3)(A) of title 28, United States Code) sub-
4 mitted by a local child welfare agency for the purpose of
5 conducting a background check required under section
6 471(a)(20) of the Social Security Act on individuals under
7 consideration as prospective foster or adoptive parents.
8 Where possible, the check shall include a fingerprint-based
9 check of State criminal history databases. The Attorney
10 General and the States may charge any applicable fees for
11 the checks.

12 (b) LIMITATION.—An officer may use the authority
13 under subsection (a) only for the purpose of conducting
14 the background checks required under section 471(a)(20)
15 of the Social Security Act.

16 (c) PROTECTION OF INFORMATION.—An individual
17 having information derived as a result of a check under
18 subsection (a) may release that information only to appro-
19 priate officers of child welfare agencies or another person
20 authorized by law to receive that information.

21 (d) CRIMINAL PENALTIES.—An individual who know-
22 ingly exceeds the authority in subsection (a), or knowingly
23 releases information in violation of subsection (c), shall be
24 imprisoned not more than 10 years or fined under title
25 18, United States Code, or both.

1 (e) CHILD WELFARE AGENCY DEFINED.—In this
2 section, the term “child welfare agency” means—

3 (1) the State or local agency responsible for ad-
4 ministering the plan under part B or part E of title
5 IV of the Social Security Act; and

6 (2) any other public agency, or any other pri-
7 vate agency under contract with the State or local
8 agency responsible for administering the plan under
9 part B or part E of title IV of the Social Security
10 Act, that is responsible for the licensing or approval
11 of foster or adoptive parents.

12 **SEC. 504. PENALTIES FOR COERCION AND ENTICEMENT BY**
13 **SEX OFFENDERS.**

14 Section 2422(a) of title 18, United States Code, is
15 amended by striking “or imprisoned not more than 20
16 years, or both” and inserting “and imprisoned not less
17 than 10 years nor more than 30 years”.

18 **SEC. 505. PENALTIES FOR CONDUCT RELATING TO CHILD**
19 **PROSTITUTION.**

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

22 (1) in subsection (a), by striking “5 years and
23 not more than 30 years” and inserting “30 years or
24 for life”;

1 (2) in subsection (b), by striking “or impris-
2 oned not more than 30 years, or both” and inserting
3 “and imprisoned for not less than 10 years and not
4 more than 30 years”;

5 (3) in subsection (c), by striking “or imprisoned
6 not more than 30 years, or both” and inserting “and
7 imprisoned for not less than 10 years and not more
8 than 30 years”; and

9 (4) in subsection (d), by striking “imprisoned
10 not more than 30 years, or both” and inserting “and
11 imprisoned for not less than 10 nor more than 30
12 years”.

13 **SEC. 506. PENALTIES FOR SEXUAL ABUSE.**

14 (a) **AGGRAVATED SEXUAL ABUSE.**—Section 2241 of
15 title 18, United States Code, is amended—

16 (1) in subsection (a), by striking “, imprisoned
17 for any term of years or life, or both” and inserting
18 “and imprisoned for any term of years not less than
19 30 or for life”; and

20 (2) in subsection (b), by striking “, imprisoned
21 for any term of years or life, or both” and inserting
22 “and imprisoned for any term of years not less than
23 25 or for life”.

24 (b) **SEXUAL ABUSE.**—Section 2242 of title 18,
25 United States Code, is amended by striking “, imprisoned

1 not more than 20 years, or both” and inserting “and im-
2 prisoned not less than 15 years nor more than 40 years”.

3 (c) ABUSIVE SEXUAL CONTACT.—Section 2244(a) of
4 title 18, United States Code, is amended—

5 (1) in paragraph (2), by striking “, imprisoned
6 not more than three years, or both” and inserting
7 “and imprisoned not less than 5 years nor more
8 than 30 years”;

9 (2) in paragraph (3), by striking “, imprisoned
10 not more than two years, or both” and inserting
11 “and imprisoned not less than 4 years nor more
12 than 20 years”; and

13 (3) in paragraph (4), by striking “, imprisoned
14 not more than six months, or both” and inserting
15 “and imprisoned not less than 2 years nor more
16 than 10 years”.

17 **SEC. 507. SEX OFFENDER SUBMISSION TO SEARCH AS CON-**
18 **DITION OF RELEASE.**

19 (a) CONDITIONS OF PROBATION.—Section 3563(a) of
20 title 18, United States Code, is amended—

21 (1) in paragraph (9), by striking the period and
22 inserting “; and”; and

23 (2) by inserting after paragraph (9) the fol-
24 lowing:

1 “(10) for a person who is a felon or required
2 to register under the Sex Offender Registration and
3 Notification Act, that the person submit his person,
4 and any property, house, residence, vehicle, papers,
5 computer, other electronic communication or data
6 storage devices or media, and effects to search at
7 any time, with or without a warrant, by any law en-
8 forcement or probation officer with reasonable sus-
9 picion concerning a violation of a condition of proba-
10 tion or unlawful conduct by the person, and by any
11 probation officer in the lawful discharge of the offi-
12 cer’s supervision functions.”.

13 (b) SUPERVISED RELEASE.—Section 3583(d) of title
14 18, United States Code, is amended by adding at the end
15 the following: “The court may order, as an explicit condi-
16 tion of supervised release for a person who is a felon or
17 required to register under the Sex Offender Registration
18 and Notification Act, that the person submit his person,
19 and any property, house, residence, vehicle, papers, com-
20 puter, other electronic communications or data storage de-
21 vices or media, and effects to search at any time, with
22 or without a warrant, by any law enforcement or probation
23 officer with reasonable suspicion concerning a violation of
24 a condition of supervised release or unlawful conduct by

1 the person, and by any probation officer in the lawful dis-
2 charge of the officer’s supervision functions.”.

3 **SEC. 508. KIDNAPPING PENALTIES AND JURISDICTION.**

4 Section 1201 of title 18, United States Code, is
5 amended—

6 (1) in subsection (a)(1), by striking “if the per-
7 son was alive when the transportation began” and
8 inserting “, or the offender travels in interstate or
9 foreign commerce or uses the mail or any means, fa-
10 cility, or instrumentality of interstate or foreign
11 commerce in committing or in furtherance of the
12 commission of the offense”; and

13 (2) in subsection (b), by striking “to interstate”
14 and inserting “in interstate”.

15 **SEC. 509. MARITAL COMMUNICATION AND ADVERSE SPOUS-**
16 **AL PRIVILEGE.**

17 (a) IN GENERAL.—Chapter 119 of title 28, United
18 States Code, is amended by inserting after section 1826
19 the following:

20 **“§ 1826A. Marital communications and adverse spous-**
21 **al privilege**

22 “The confidential marital communication privilege
23 and the adverse spousal privilege shall be inapplicable in
24 any Federal proceeding in which a spouse is charged with
25 a crime against—

1 “(1) a child of either spouse; or

2 “(2) a child under the custody or control of ei-
3 ther spouse.”.

4 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—

5 The table of sections for chapter 119 of title 28, United
6 States Code, is amended by inserting after the item relat-
7 ing to section 1826 the following:

 “1826A. Marital communications and adverse spousal privilege.”.

8 **SEC. 510. ABUSE AND NEGLECT OF INDIAN CHILDREN.**

9 Section 1153(a) of title 18, United States Code, is
10 amended by inserting “felony child abuse or neglect,”
11 after “years,”.

12 **SEC. 511. CIVIL COMMITMENT.**

13 Chapter 313 of title 18, United States Code, is
14 amended—

15 (1) in the chapter analysis—

16 (A) in the item relating to section 4241, by
17 inserting “or to undergo postrelease pro-
18 ceedings” after “trial”; and

19 (B) by inserting at the end the following:

 “4248. Civil commitment of a sexually dangerous person.”;

20 (2) in section 4241—

21 (A) in the heading, by inserting “**OR TO**
22 **UNDERGO POSTRELEASE PROCEEDINGS**”
23 after “**TRIAL**”;

1 (B) in the first sentence of subsection (a),
2 by inserting “or at any time after the com-
3 mencement of probation or supervised release
4 and prior to the completion of the sentence,”
5 after “defendant,”;

6 (C) in subsection (d)—

7 (i) by striking “trial to proceed” each
8 place it appears and inserting “proceedings
9 to go forward”; and

10 (ii) by striking “section 4246” and in-
11 sserting “sections 4246 and 4248”; and

12 (D) in subsection (e)—

13 (i) by inserting “or other proceedings”
14 after “trial”; and

15 (ii) by striking “chapter 207” and in-
16 sserting “chapters 207 and 227”;

17 (3) in section 4247—

18 (A) by striking “, or 4246” each place it
19 appears and inserting “, 4246, or 4248”;

20 (B) in subsections (g) and (i), by striking
21 “4243 or 4246” each place it appears and in-
22 sserting “4243, 4246, or 4248”;

23 (C) in subsection (a)—

24 (i) by amending subparagraph (1)(C)
25 to read as follows:

1 “(C) drug, alcohol, and sex offender treat-
2 ment programs, and other treatment programs
3 that will assist the individual in overcoming a
4 psychological or physical dependence or any
5 condition that makes the individual dangerous
6 to others; and”;

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

9 (iii) in paragraph (3), by striking the
10 period at the end and inserting a semi-
11 colon; and

12 (iv) by inserting at the end the fol-
13 lowing:

14 “(4) ‘bodily injury’ includes sexual abuse;

15 “(5) ‘sexually dangerous person’ means a per-
16 son who has engaged or attempted to engage in sex-
17 ually violent conduct or child molestation and who is
18 sexually dangerous to others; and

19 “(6) ‘sexually dangerous to others’ means that
20 a person suffers from a serious mental illness, ab-
21 normality, or disorder as a result of which he would
22 have serious difficulty in refraining from sexually
23 violent conduct or child molestation if released.”;

1 (D) in subsection (b), by striking “4245 or
2 4246” and inserting “4245, 4246, or 4248”;
3 and

4 (E) in subsection (c)(4)—

5 (i) by redesignating subparagraphs
6 (D) and (E) as subparagraphs (E) and (F)
7 respectively; and

8 (ii) by inserting after subparagraph
9 (C) the following:

10 “(D) if the examination is ordered under
11 section 4248, whether the person is a sexually
12 dangerous person;” and

13 (4) by inserting at the end the following:

14 **“§ 4248. Civil commitment of a sexually dangerous**
15 **person**

16 “(a) INSTITUTION OF PROCEEDINGS.—In relation to
17 a person who is in the custody of the Bureau of Prisons,
18 or who has been committed to the custody of the Attorney
19 General pursuant to section 4241(d), or against whom all
20 criminal charges have been dismissed solely for reasons
21 relating to the mental condition of the person, the Attor-
22 ney General or any individual authorized by the Attorney
23 General or the Director of the Bureau of Prisons may cer-
24 tify that the person is a sexually dangerous person, and
25 transmit the certificate to the clerk of the court for the

1 district in which the person is confined. The clerk shall
2 send a copy of the certificate to the person, and to the
3 attorney for the Government, and, if the person was com-
4 mitted pursuant to section 4241(d), to the clerk of the
5 court that ordered the commitment. The court shall order
6 a hearing to determine whether the person is a sexually
7 dangerous person. A certificate filed under this subsection
8 shall stay the release of the person pending completion of
9 procedures contained in this section.

10 “(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINA-
11 TION AND REPORT.—Prior to the date of the hearing, the
12 court may order that a psychiatric or psychological exam-
13 ination of the defendant be conducted, and that a psy-
14 chiatric or psychological report be filed with the court,
15 pursuant to the provisions of section 4247(b) and (c).

16 “(c) HEARING.—The hearing shall be conducted pur-
17 suant to the provisions of section 4247(d).

18 “(d) DETERMINATION AND DISPOSITION.—If, after
19 the hearing, the court finds by clear and convincing evi-
20 dence that the person is a sexually dangerous person, the
21 court shall commit the person to the custody of the Attor-
22 ney General. The Attorney General shall release the per-
23 son to the appropriate official of the State in which the
24 person is domiciled or was tried if such State will assume
25 responsibility for his custody, care, and treatment. The

1 Attorney General shall make all reasonable efforts to
2 cause such a State to assume such responsibility. If, not-
3 withstanding such efforts, neither such State will assume
4 such responsibility, the Attorney General shall place the
5 person for treatment in a suitable facility, until—

6 “(1) such a State will assume such responsi-
7 bility; or

8 “(2) the person’s condition is such that he is no
9 longer sexually dangerous to others, or will not be
10 sexually dangerous to others if released under a pre-
11 scribed regimen of medical, psychiatric, or psycho-
12 logical care or treatment;

13 whichever is earlier. The Attorney General shall make all
14 reasonable efforts to have a State to assume such respon-
15 sibility for the person’s custody, care, and treatment.

16 “(e) DISCHARGE.—When the Director of the facility
17 in which a person is placed pursuant to subsection (d) de-
18 termines that the person’s condition is such that he is no
19 longer sexually dangerous to others, or will not be sexually
20 dangerous to others if released under a prescribed regimen
21 of medical, psychiatric, or psychological care or treatment,
22 he shall promptly file a certificate to that effect with the
23 clerk of the court that ordered the commitment. The clerk
24 shall send a copy of the certificate to the person’s counsel
25 and to the attorney for the Government. The court shall

1 order the discharge of the person or, on motion of the at-
2 torney for the Government or on its own motion, shall hold
3 a hearing, conducted pursuant to the provisions of section
4 4247(d), to determine whether he should be released. If,
5 after the hearing, the court finds by a preponderance of
6 the evidence that the person's condition is such that—

7 “(1) he will not be sexually dangerous to others
8 if released unconditionally, the court shall order that
9 he be immediately discharged; or

10 “(2) he will not be sexually dangerous to others
11 if released under a prescribed regimen of medical,
12 psychiatric, or psychological care or treatment, the
13 court shall—

14 “(A) order that he be conditionally dis-
15 charged under a prescribed regimen of medical,
16 psychiatric, or psychological care or treatment
17 that has been prepared for him, that has been
18 certified to the court as appropriate by the Di-
19 rector of the facility in which he is committed,
20 and that has been found by the court to be ap-
21 propriate; and

22 “(B) order, as an explicit condition of re-
23 lease, that he comply with the prescribed regi-
24 men of medical, psychiatric, or psychological
25 care or treatment.

1 The court at any time may, after a hearing employ-
2 ing the same criteria, modify or eliminate the regi-
3 men of medical, psychiatric, or psychological care or
4 treatment.

5 “(f) REVOCATION OF CONDITIONAL DISCHARGE.—
6 The director of a facility responsible for administering a
7 regimen imposed on a person conditionally discharged
8 under subsection (e) shall notify the Attorney General and
9 the court having jurisdiction over the person of any failure
10 of the person to comply with the regimen. Upon such no-
11 tice, or upon other probable cause to believe that the per-
12 son has failed to comply with the prescribed regimen of
13 medical, psychiatric, or psychological care or treatment,
14 the person may be arrested, and, upon arrest, shall be
15 taken without unnecessary delay before the court having
16 jurisdiction over him. The court shall, after a hearing, de-
17 termine whether the person should be remanded to a suit-
18 able facility on the ground that he is sexually dangerous
19 to others in light of his failure to comply with the pre-
20 scribed regimen of medical, psychiatric, or psychological
21 care or treatment.

22 “(g) RELEASE TO STATE OF CERTAIN OTHER PER-
23 SONS.—If the director of the facility in which a person
24 is hospitalized or placed pursuant to this chapter certifies
25 to the Attorney General that a person, against him all

1 charges have been dismissed for reasons not related to the
2 mental condition of the person, is a sexually dangerous
3 person, the Attorney General shall release the person to
4 the appropriate official of the State in which the person
5 is domiciled or was tried for the purpose of institution of
6 State proceedings for civil commitment. If neither such
7 State will assume such responsibility, the Attorney Gen-
8 eral shall release the person upon receipt of notice from
9 the State that it will not assume such responsibility, but
10 not later than 10 days after certification by the director
11 of the facility.”.

12 **SEC. 512. STATE CIVIL COMMITMENT PROGRAMS FOR SEX-**
13 **UALLY DANGEROUS PERSONS.**

14 (a) GRANTS AUTHORIZED.—The Attorney General
15 shall make grants to jurisdictions for the purpose of estab-
16 lishing, enhancing, or operating effective civil commitment
17 programs for sexually dangerous persons.

18 (b) ELIGIBILITY.—

19 (1) IN GENERAL.—To be eligible to receive a
20 grant under this section, a jurisdiction must, before
21 the expiration of the compliance period—

22 (A) have established a civil commitment
23 program for sexually dangerous persons that is
24 consistent with guidelines issued by the Attor-
25 ney General; or

1 (B) submit a plan for the establishment of
2 such a program.

3 (2) COMPLIANCE PERIOD.—The compliance pe-
4 riod referred to in paragraph (1) expires on the date
5 that is 2 years after the date of the enactment of
6 this Act. However, the Attorney General may, on a
7 case-by-case basis, extend the compliance period that
8 applies to a jurisdiction if the Attorney General con-
9 siders such an extension to be appropriate.

10 (c) ATTORNEY GENERAL REPORTS.—Not later than
11 January 31 of each year, beginning with 2008, the Attor-
12 ney General shall submit to the Committee on the Judici-
13 ary of the Senate and the Committee on the Judiciary of
14 the House of Representatives a report on the progress of
15 jurisdictions in implementing this section and the rate of
16 sexually violent offenses for each jurisdiction.

17 (d) DEFINITIONS.—As used in this section:

18 (1) The term “civil commitment program”
19 means a program that involves—

20 (A) secure civil confinement, including ap-
21 propriate control, care, and treatment during
22 such confinement; and

23 (B) appropriate supervision, care, and
24 treatment for individuals released following
25 such confinement.

1 (2) The term “sexually dangerous person”
2 means an individual who is dangerous to others be-
3 cause of a mental illness, abnormality, or disorder
4 that creates a risk that the individual will engage in
5 sexually violent conduct or child molestation.

6 (3) The term “jurisdiction” has the meaning
7 given such term in section 111.

8 (e) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated to carry out this section
10 \$10,000,000 for each of fiscal years 2006, 2007, 2008,
11 and 2009.

12 **SEC. 513. MANDATORY PENALTIES FOR SEX-TRAFFICKING**
13 **OF CHILDREN.**

14 Section 1591(b) of title 18, United States Code, is
15 amended—

16 (1) in paragraph (1)—

17 (A) by striking “or imprisonment” and in-
18 sserting “and imprisonment”;

19 (B) by inserting “not less than 20” after
20 “any term of years”; and

21 (C) by striking “, or both”; and

22 (2) in paragraph (2)—

23 (A) by striking “or imprisonment for not”
24 and inserting “and imprisonment for not less
25 than 10 years nor”; and

1 (B) by striking “, or both”.

2 **SEC. 514. SEXUAL ABUSE OF WARDS.**

3 Chapter 109A of title 18, United States Code, is
4 amended—

5 (1) in section 2243(b), by striking “one year”
6 and inserting “five years”;

7 (2) in section 2244(b), by striking “six months”
8 and inserting “two years”; and

9 (3) by inserting after “Federal prison,” each
10 place it appears, other than the second sentence of
11 section 2241(c), the following: “or being in the cus-
12 tody of the Attorney General or the Bureau of Pris-
13 ons or confined in any institution or facility by di-
14 rection of the Attorney General or the Bureau of
15 Prisons,”.

16 **SEC. 515. NO LIMITATION FOR PROSECUTION OF FELONY**
17 **SEX OFFENSES.**

18 Chapter 213 of title 18, United States Code, is
19 amended—

20 (1) by adding at the end the following:

21 **“§ 3298. Child abduction and sex offenses**

22 “Notwithstanding any other law, an indictment may
23 be found or an information instituted at any time without
24 limitation for any offense under section 1201 involving a

1 minor victim, and for any felony under chapter 109A, 110,
2 or 117, or section 1591.”; and

3 (2) by adding at the end of the table of sections
4 at the beginning of the chapter the following new
5 item:

“3298. Child abduction and sex offenses.”.

6 **SEC. 516. CHILD ABUSE REPORTING.**

7 Section 2258 of title 18, United States Code, is
8 amended by striking “Class B misdemeanor” and insert-
9 ing “Class A misdemeanor”.

10 **SEC. 517. SENSE OF CONGRESS.**

11 It is the sense of Congress that background checks
12 conducted as a precondition to approval of any foster or
13 adoptive placement of children affected by a natural dis-
14 aster or terrorist attack should be expedited in order to
15 ensure that such children do not become subjected to the
16 offenses enumerated in this Act.

17 **SEC. 518. DEFENDANTS IN CERTAIN CRIMINAL CASES TO**
18 **BE TESTED FOR HIV.**

19 (a) IN GENERAL.—A jurisdiction shall have in effect
20 laws or regulations with respect to a defendant against
21 whom an information or indictment is presented for a
22 crime in which by force or threat of force the perpetrator
23 compels the victim to engage in sexual activity that require
24 as follows:

1 (1) That the defendant be tested for HIV dis-
2 ease if—

3 (A) the nature of the alleged crime is such
4 that the sexual activity would have placed the
5 victim at risk of becoming infected with HIV;
6 or

7 (B) the victim requests that the defendant
8 be so tested.

9 (2) That if the conditions specified in para-
10 graph (1) are met, the defendant undergo the test
11 not later than 48 hours after the date on which the
12 information or indictment is presented, and that as
13 soon thereafter as is practicable the results of the
14 test be made available to—

15 (A) the victim;

16 (B) the defendant (or if the defendant is
17 a minor, to the legal guardian of the defend-
18 ant);

19 (C) the attorneys of the victim;

20 (D) the attorneys of the defendant;

21 (E) the prosecuting attorneys; and

22 (F) the judge presiding at the trial, if any.

23 (3) That if the defendant has been tested pur-
24 suant to paragraph (2), the defendant, upon request
25 of the victim, undergo such follow-up tests for HIV

1 as may be medically appropriate, and that as soon
2 as is practicable after each such test the results of
3 the test be made available in accordance with para-
4 graph (1) (except that this paragraph applies only to
5 the extent that the individual involved continues to
6 be a defendant in the judicial proceedings involved,
7 or is convicted in the proceedings).

8 (4) That, if the results of a test conducted pur-
9 suant to paragraph (2) or (3) indicate that the de-
10 fendant has HIV disease, such fact may, as relevant,
11 be considered in the judicial proceedings conducted
12 with respect to the alleged crime.

13 (b) FAILURE TO COMPLY.—

14 (1) IN GENERAL.—For any fiscal year begin-
15 ning 2 or more years after the date of the enactment
16 of this Act, a jurisdiction that fails to implement
17 this section shall not receive 10 percent of the funds
18 that would otherwise be allocated for that fiscal year
19 to the jurisdiction under each of the following pro-
20 grams:

21 (A) BYRNE.—Subpart 1 of part E of title
22 I of the Omnibus Crime Control and Safe
23 Streets Act of 1968 (42 U.S.C. 3750 et seq.),
24 whether characterized as the Edward Byrne
25 Memorial State and Local Law Enforcement

1 Assistance Programs, the Edward Byrne Me-
2 morial Justice Assistance Grant Program, or
3 otherwise.

4 (B) LLEBG.—The Local Government
5 Law Enforcement Block Grants program.

6 (2) REALLOCATION.—Amounts not allocated
7 under a program referred to in paragraph (1) to a
8 jurisdiction for failure to fully implement this section
9 shall be reallocated under that program to jurisdic-
10 tions that have not failed to implement this section.

11 **TITLE VI—MISCELLANEOUS**
12 **PROVISION**

13 **SEC. 601. BAN ON FIREARM FOR PERSON CONVICTED OF A**
14 **MISDEMEANOR SEX OFFENSE AGAINST A**
15 **MINOR.**

16 (a) DISPOSITION OF FIREARM.—Section 922(d) of
17 title 18, United States Code, is amended—

18 (1) by striking “or” at the end of paragraph
19 (8);

20 (2) by striking the period at the end of para-
21 graph (9) and inserting “; or”; and

22 (3) by inserting after paragraph (9) the fol-
23 lowing:

24 “(10) has been convicted in any court of a mis-
25 demeanor sex offense against a minor.”.

1 (b) POSSESSION OF FIREARM.—Section 922(g) of
2 title 18, United States Code, is amended—

3 (1) by striking “or” at the end of paragraph
4 (8);

5 (2) by striking the comma at the end of para-
6 graph (9) and inserting “; or”; and

7 (3) by inserting after paragraph (9) the fol-
8 lowing:

9 “(10) who has been convicted in any court of
10 a misdemeanor sex offense against a minor,”.

11 (c) MISDEMEANOR SEX OFFENSE AGAINST A MINOR
12 DEFINED.—Section 921(a) of such title is amended by
13 adding at the end the following:

14 “(36)(A) The term ‘misdemeanor sex offense
15 against a minor’ means a sex offense against a
16 minor punishable by imprisonment for not more
17 than one year.

18 “(B) The term ‘sex offense’ means a criminal
19 offense that has, as an element, a sexual act or sex-
20 ual contact with another, or an attempt or con-
21 spiracy to commit such an offense.

22 “(C) The term ‘minor’ means an individual who
23 has not attained 18 years of age.”.

1 **TITLE VII—NATIONAL REGISTER**
2 **OF CASES OF CHILD ABUSE**
3 **OR NEGLECT**

4 **SEC. 701. NATIONAL REGISTER OF CASES OF CHILD ABUSE**
5 **OR NEGLECT.**

6 (a) IN GENERAL.—The Attorney General, in con-
7 sultation with the Secretary of Health and Human Serv-
8 ices, shall create a national register of cases of child abuse
9 or neglect. The information in such register shall be sup-
10 plied by States, or, at the option of a State, by political
11 subdivisions of such State.

12 (b) INFORMATION.—The register described in sub-
13 section (a) shall collect in a central electronic database in-
14 formation on children reported to a State, or a political
15 subdivision of a State, as abused or neglected.

16 (c) SCOPE OF INFORMATION.—

17 (1) IN GENERAL.—

18 (A) TREATMENT OF REPORTS.—The infor-
19 mation to be provided to the Secretary of
20 Health and Human Services under this section
21 shall relate to substantiated reports of child
22 abuse or neglect. Except as provided in sub-
23 paragraph (B), each State, or, at the option of
24 a State, each political subdivision of such State,
25 shall determine whether the information to be

1 provided to the Secretary of Health and Human
2 Services under this section shall also relate to
3 reports of suspected instances of child abuse or
4 neglect that were unsubstantiated or deter-
5 mined to be unfounded.

6 (B) EXCEPTION.—If a State or political
7 subdivision of a State has an equivalent elec-
8 tronic register of cases of child abuse or neglect
9 that it maintains pursuant to a requirement or
10 authorization under any other provision of law,
11 the information provided to the Secretary of
12 Health and Human Services under this section
13 shall be coextensive with that in such register.

14 (2) FORM.—Information provided to the Sec-
15 retary of Health and Human Services under this
16 section—

17 (A) shall be in a standardized electronic
18 form determined by the Secretary of Health
19 and Human Services; and

20 (B) shall contain case-specific identifying
21 information, except that, at the option of the
22 entity supplying the information, the confiden-
23 tiality of identifying information concerning an
24 individual initiating a report or complaint re-

1 guarding a suspected or known instance of child
2 abuse or neglect may be maintained.

3 (d) CONSTRUCTION.—This section shall not be con-
4 strued to require a State or political subdivision of a State
5 to modify—

6 (1) an equivalent register of cases of child
7 abuse or neglect that it maintains pursuant to a re-
8 quirement or authorization under any other provi-
9 sion of law; or

10 (2) any other record relating to child abuse or
11 neglect, regardless of whether the report of abuse or
12 neglect was substantiated, unsubstantiated, or deter-
13 mined to be unfounded.

14 (e) DISSEMINATION.—The Attorney General, in con-
15 sultation with the Secretary of Health and Human Serv-
16 ices, shall establish standards for the dissemination of in-
17 formation in the national register of cases of child abuse
18 or neglect. Such standards shall preserve the confiden-
19 tiality of records in order to protect the rights of the child
20 and the child’s parents or guardians while also ensuring
21 that Federal, State, and local government entities have ac-
22 cess to such information in order to carry out their respon-
23 sibilities under law to protect children from abuse and ne-
24 glect.

1 (f) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to carry out this section
3 such sums as may be necessary for fiscal year 2006 and
4 succeeding fiscal years.

5 **TITLE VIII—CHILD PORNOG-**
6 **RAPHY PREVENTION ACT OF**
7 **2005**

8 **SEC. 801. SHORT TITLE.**

9 This title may be cited as the “Child Pornography
10 Prevention Act of 2005”.

11 **SEC. 802. FINDINGS.**

12 Congress makes the following findings:

13 (1) The effect of the intrastate production,
14 transportation, distribution, receipt, advertising, and
15 possession of child pornography on interstate market
16 in child pornography.

17 (A) The illegal production, transportation,
18 distribution, receipt, advertising and possession
19 of child pornography, as defined in section
20 2256(8) of title 18, United States Code, as well
21 as the transfer of custody of children for the
22 production of child pornography, is harmful to
23 the physiological, emotional, and mental health
24 of the children depicted in child pornography

1 and has a substantial and detrimental effect on
2 society as a whole.

3 (B) A substantial interstate market in
4 child pornography exists, including not only a
5 multimillion dollar industry, but also a nation-
6 wide network of individuals openly advertising
7 their desire to exploit children and to traffic in
8 child pornography. Many of these individuals
9 distribute child pornography with the expecta-
10 tion of receiving other child pornography in re-
11 turn.

12 (C) The interstate market in child pornog-
13 raphy is carried on to a substantial extent
14 through the mails and other instrumentalities
15 of interstate and foreign commerce, such as the
16 Internet. The advent of the Internet has greatly
17 increased the ease of transporting, distributing,
18 receiving, and advertising child pornography in
19 interstate commerce. The advent of digital cam-
20 eras and digital video cameras, as well as video-
21 tape cameras, has greatly increased the ease of
22 producing child pornography. The advent of in-
23 expensive computer equipment with the capacity
24 to store large numbers of digital images of child
25 pornography has greatly increased the ease of

1 possessing child pornography. Taken together,
2 these technological advances have had the un-
3 fortunate result of greatly increasing the inter-
4 state market in child pornography.

5 (D) Intrastate incidents of production,
6 transportation, distribution, receipt, advertising,
7 and possession of child pornography, as well as
8 the transfer of custody of children for the pro-
9 duction of child pornography, have a substantial
10 and direct effect upon interstate commerce be-
11 cause:

12 (i) Some persons engaged in the pro-
13 duction, transportation, distribution, re-
14 ceipt, advertising, and possession of child
15 pornography conduct such activities en-
16 tirely within the boundaries of one state.
17 These persons are unlikely to be content
18 with the amount of child pornography they
19 produce, transport, distribute, receive, ad-
20 vertise, or possess. These persons are
21 therefore likely to enter the interstate mar-
22 ket in child pornography in search of addi-
23 tional child pornography, thereby stimu-
24 lating demand in the interstate market in
25 child pornography.

1 (ii) When the persons described in
2 subparagraph (D)(i) enter the interstate
3 market in search of additional child por-
4 nography, they are likely to distribute the
5 child pornography they already produce,
6 transport, distribute, receive, advertise, or
7 possess to persons who will distribute addi-
8 tional child pornography to them, thereby
9 stimulating supply in the interstate market
10 in child pornography.

11 (iii) Much of the child pornography
12 that supplies the interstate market in child
13 pornography is produced entirely within
14 the boundaries of one state, is not trace-
15 able, and enters the interstate market sur-
16 reptitiously. This child pornography sup-
17 ports demand in the interstate market in
18 child pornography and is essential to its
19 existence.

20 (E) Prohibiting the intrastate production,
21 transportation, distribution, receipt, advertising,
22 and possession of child pornography, as well as
23 the intrastate transfer of custody of children for
24 the production of child pornography, will cause
25 some persons engaged in such intrastate activi-

1 ties to cease all such activities, thereby reducing
2 both supply and demand in the interstate mar-
3 ket for child pornography.

4 (F) Federal control of the intrastate inci-
5 dents of the production, transportation, dis-
6 tribution, receipt, advertising, and possession of
7 child pornography, as well as the intrastate
8 transfer of children for the production of child
9 pornography, is essential to the effective control
10 of the interstate market in child pornography.

11 (2) The importance of protecting children from
12 repeat exploitation in child pornography:

13 (A) The vast majority of child pornography
14 prosecutions today involve images contained on
15 computer hard drives, computer disks, and re-
16 lated media.

17 (B) Child pornography is not entitled to
18 protection under the First Amendment and
19 thus may be prohibited.

20 (C) The government has a compelling state
21 interest in protecting children from those who
22 sexually exploit them, and this interest extends
23 to stamping out the vice of child pornography
24 at all levels in the distribution chain.

1 (D) Every instance of viewing images of
2 child pornography represents a renewed viola-
3 tion of the privacy of the victims and a repeti-
4 tion of their abuse.

5 (E) Child pornography constitutes prima
6 facie contraband, and as such should not be dis-
7 tributed to, or copied by, child pornography de-
8 fendants or their attorneys.

9 (F) It is imperative to prohibit the repro-
10 duction of child pornography in criminal cases
11 so as to avoid repeated violation and abuse of
12 victims, so long as the government makes rea-
13 sonable accommodations for the inspection,
14 viewing, and examination of such material for
15 the purposes of mounting a criminal defense.

16 **SEC. 803. STRENGTHENING SECTION 2257 TO ENSURE THAT**
17 **CHILDREN ARE NOT EXPLOITED IN THE PRO-**
18 **DUCTION OF PORNOGRAPHY.**

19 Section 2257 of title 18 of the United States Code
20 is amended—

- 21 (1) in subsection (a)(1), by striking “actual”;
22 (2) in subsection (b), by striking “actual”;
23 (3) in subsection (f)(4)(A), by striking “ac-
24 tual”;

1 (4) by amending paragraph (1) of subsection
2 (h) to read as follows:

3 “(1) the term ‘sexually explicit conduct’ has the
4 meaning set forth in subparagraphs (A)(i) through
5 (v) of paragraph (2) of section 2256 of this title;”;

6 (5) in subsection (h)(4), by striking “actual.”;

7 (6) in subsection (f)—

8 (A) at the end of paragraph (3), by strik-
9 ing “and”;

10 (B) at the end of paragraph (4)(B), by
11 striking the period and inserting “; and”; and

12 (C) by inserting after paragraph (4)(B)
13 the following new paragraph:

14 “(5) for any person to whom subsection (a) ap-
15 plies to refuse to permit the Attorney General or his
16 or her delegee to conduct an inspection under sub-
17 section (c).”.

18 (7) in subsection (h)(3), by striking “to
19 produce, manufacture, or publish any book, maga-
20 zine, periodical, film, video tape, computer generated
21 image, digital image, or picture, or other similar
22 matter and includes the duplication, reproduction, or
23 reissuing of any such matter, but does not include
24 mere distribution or any other activity which does
25 not involve hiring, contracting for managing or oth-

1 erwise arranging for the participation of the per-
2 formers depicted” and inserting “actually filming,
3 videotaping, photographing; creating a picture, dig-
4 ital image, or digitally- or computer-manipulated
5 image of an actual human being; or digitizing an
6 image, of a visual depiction of sexually explicit con-
7 duct; or, assembling, manufacturing, publishing, du-
8 plicating, reproducing, or reissuing a book, maga-
9 zine, periodical, film, videotape, digital image, or pic-
10 ture, or other matter intended for commercial dis-
11 tribution, that contains a visual depiction of sexually
12 explicit conduct; or, inserting on a computer site or
13 service a digital image of, or otherwise managing the
14 sexually explicit content, of a computer site or serv-
15 ice that contains a visual depiction of, sexually ex-
16 plicit conduct”;

17 (8) in subsection (a), by inserting after “video-
18 tape,” the following: “digital image, digitally- or
19 computer-manipulated image of an actual human
20 being, or picture,”; and

21 (9) in subsection (f)(4), by inserting after
22 “video” the following: “digital image, digitally- or
23 computer-manipulated image of an actual human
24 being, or picture,”.

1 **SEC. 804. PREVENTION OF DISTRIBUTION OF CHILD POR-**
2 **NOGRAPHY USED AS EVIDENCE IN PROSECU-**
3 **TIONS.**

4 Section 3509 of title 18, United States Code, is
5 amended by adding at the end the following:

6 “(m) PROHIBITION ON REPRODUCTION OF CHILD
7 PORNOGRAPHY.—

8 “(1) In any criminal proceeding, any property
9 or material that constitutes child pornography (as
10 defined by section 2256 of this title) must remain in
11 the care, custody, and control of either the Govern-
12 ment or the court.

13 “(2)(A) Notwithstanding Rule 16 of the Fed-
14 eral Rules of Criminal Procedure, a court shall deny,
15 in any criminal proceeding, any request by the de-
16 fendant to copy, photograph, duplicate, or otherwise
17 reproduce any property or material that constitutes
18 child pornography (as defined by section 2256 of
19 this title), so long as the Government makes the
20 property or material reasonably available to the de-
21 fendant.

22 “(B) For the purposes of subparagraph (A),
23 property or material shall be deemed to be reason-
24 ably available to the defendant if the Government
25 provides ample opportunity for inspection, viewing,
26 and examination at a Government facility of the

1 property or material by the defendant, his or her at-
2 torney, aid any individual the defendant may seek to
3 qualify to furnish expert testimony at trial.”.

4 **SEC. 805. AUTHORIZING CIVIL AND CRIMINAL ASSET FOR-**
5 **FEITURE IN CHILD EXPLOITATION AND OB-**
6 **SCENITY CASES.**

7 (a) CONFORMING FORFEITURE PROCEDURES FOR
8 OBSCENITY OFFENSES.—Section 1467 of title 18, United
9 States Code, is amended—

10 (1) in subsection (a)(3), by inserting a period
11 after “of such offense” and striking all that follows;
12 and

13 (2) by striking subsections (b) through (n) and
14 inserting the following:

15 “(b) The provisions of section 413 of the Controlled
16 Substance Act (21 U.S.C. 853) with the exception of sub-
17 section (d), shall apply to the criminal forfeiture of prop-
18 erty pursuant to subsection (a).

19 “(c) Any property subject to forfeiture pursuant to
20 subsection (a) may be forfeited to the United States in
21 a civil case in accordance with the procedures set forth
22 in chapter 46 of this title.”.

23 (b) AMENDMENTS TO CHILD EXPLOITATION FOR-
24 FEITURE PROVISIONS.—

1 (1) CRIMINAL FORFEITURE.—Section 2253(a)
2 of title 18, United States Code, is amended—

3 (A) in the matter preceding paragraph (1)

4 by—

5 (i) inserting “or who is convicted of
6 an offense under sections 2252B or 2257
7 of this chapter,” after “2260 of this chap-
8 ter”;

9 (ii) inserting “, or 2425” after
10 “2423” and striking “or” before “2423”;

11 and

12 (iii) inserting “or an offense under
13 chapter 109A” after “of chapter 117”; and

14 (B) in paragraph (I), by inserting “,
15 2252A, 2252B or 2257” after “2252”.

16 (2) CIVIL FORFEITURE.—Section 2254(a) of
17 title 18, United States Code, is amended—

18 (A) in paragraph (1), by inserting “,
19 2252A, 2252B, or 2257” after “2252”;

20 (B) in paragraph (2) —

21 (i) by striking “or” and inserting “of”
22 before “chapter 117”;

23 (ii) by inserting “, or an offense under
24 section 2252B or 2257 of this chapter,”
25 after “Chapter 117,” and

1 (iii) by inserting “, or an offense
2 under chapter 109A” before the period;
3 and

4 (C) in paragraph (3) by—

5 (i) inserting “, or 2425” after “2423”
6 and striking “or” before “2423”; and

7 (ii) inserting “, a violation of section
8 2252B or 2257 of this chapter, or a viola-
9 tion of chapter 109A” before the period.

10 (c) AMENDMENTS TO RICO.—Section 1961(1)(B) of
11 title 18, United States Code, is amended by inserting
12 “2252A, 2252B,” after “2252”.

13 **SEC. 806. PROHIBITING THE PRODUCTION OF OBSCENITY**
14 **AS WELL AS TRANSPORTATION, DISTRIBUTION,**
15 **AND SALE.**

16 (a) SECTION 1465.—Section 1465 of title 18 of the
17 United States Code is amended—

18 (1) by inserting “**Production and**” before
19 “**Transportation**” in the heading of the section;

20 (2) by inserting “produces with the intent to
21 transport, distribute, or transmit in interstate or
22 foreign commerce, or whoever knowingly” after
23 “whoever knowingly” and before “transports or trav-
24 els in”; and

1 of 18 years shall be fined under this title or imprisoned
2 not more than 10 years, or both.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 at the beginning of chapter 88 of title 18, United States
5 Code, is amended by adding at the end the following new
6 item:

“1802. Misappropriation of personal data of children.”.

7 **TITLE X—LOCAL LAW ENFORCE-**
8 **MENT HATE CRIMES PREVEN-**
9 **TION**

10 **SEC. 1001. SHORT TITLE.**

11 This title may be cited as the “Local Law Enforce-
12 ment Hate Crimes Prevention Act of 2005”.

13 **SEC. 1002. FINDINGS.**

14 Congress makes the following findings:

15 (1) The incidence of violence motivated by the
16 actual or perceived race, color, religion, national ori-
17 gin, gender, sexual orientation, gender identity, or
18 disability of the victim poses a serious national prob-
19 lem.

20 (2) Such violence disrupts the tranquility and
21 safety of communities and is deeply divisive.

22 (3) State and local authorities are now and will
23 continue to be responsible for prosecuting the over-
24 whelming majority of violent crimes in the United
25 States, including violent crimes motivated by bias.

1 These authorities can carry out their responsibilities
2 more effectively with greater Federal assistance.

3 (4) Existing Federal law is inadequate to ad-
4 dress this problem.

5 (5) The prominent characteristic of a violent
6 crime motivated by bias is that it devastates not just
7 the actual victim and the family and friends of the
8 victim, but frequently savages the community shar-
9 ing the traits that caused the victim to be selected.

10 (6) Such violence substantially affects interstate
11 commerce in many ways, including—

12 (A) by impeding the movement of members
13 of targeted groups and forcing such members to
14 move across State lines to escape the incidence
15 or risk of such violence; and

16 (B) by preventing members of targeted
17 groups from purchasing goods and services, ob-
18 taining or sustaining employment, or partici-
19 pating in other commercial activity.

20 (7) Perpetrators cross State lines to commit
21 such violence.

22 (8) Channels, facilities, and instrumentalities of
23 interstate commerce are used to facilitate the com-
24 mission of such violence.

1 (9) Such violence is committed using articles
2 that have traveled in interstate commerce.

3 (10) For generations, the institutions of slavery
4 and involuntary servitude were defined by the race,
5 color, and ancestry of those held in bondage. Slavery
6 and involuntary servitude were enforced, both prior
7 to and after the adoption of the 13th amendment to
8 the Constitution of the United States, through wide-
9 spread public and private violence directed at per-
10 sons because of their race, color, or ancestry, or per-
11 ceived race, color, or ancestry. Accordingly, elimi-
12 nating racially motivated violence is an important
13 means of eliminating, to the extent possible, the
14 badges, incidents, and relics of slavery and involun-
15 tary servitude.

16 (11) Both at the time when the 13th, 14th, and
17 15th amendments to the Constitution of the United
18 States were adopted, and continuing to date, mem-
19 bers of certain religious and national origin groups
20 were and are perceived to be distinct “races”. Thus,
21 in order to eliminate, to the extent possible, the
22 badges, incidents, and relics of slavery, it is nec-
23 essary to prohibit assaults on the basis of real or
24 perceived religions or national origins, at least to the
25 extent such religions or national origins were re-

1 garded as races at the time of the adoption of the
2 13th, 14th, and 15th amendments to the Constitu-
3 tion of the United States.

4 (12) Federal jurisdiction over certain violent
5 crimes motivated by bias enables Federal, State, and
6 local authorities to work together as partners in the
7 investigation and prosecution of such crimes.

8 (13) The problem of crimes motivated by bias
9 is sufficiently serious, widespread, and interstate in
10 nature as to warrant Federal assistance to States
11 and local jurisdictions.

12 **SEC. 1003. DEFINITION OF HATE CRIME.**

13 In this title, the term “hate crime” has the same
14 meaning as in section 280003(a) of the Violent Crime
15 Control and Law Enforcement Act of 1994 (28 U.S.C.
16 994 note).

17 **SEC. 1004. SUPPORT FOR CRIMINAL INVESTIGATIONS AND**
18 **PROSECUTIONS BY STATE AND LOCAL LAW**
19 **ENFORCEMENT OFFICIALS.**

20 (a) ASSISTANCE OTHER THAN FINANCIAL ASSIST-
21 ANCE.—

22 (1) IN GENERAL.—At the request of a law en-
23 forcement official of a State or Indian tribe, the At-
24 torney General may provide technical, forensic, pros-
25 ecutorial, or any other form of assistance in the

1 criminal investigation or prosecution of any crime
2 that—

3 (A) constitutes a crime of violence (as de-
4 fined in section 16 of title 18, United States
5 Code);

6 (B) constitutes a felony under the laws of
7 the State or Indian tribe; and

8 (C) is motivated by prejudice based on the
9 actual or perceived race, color, religion, national
10 origin, gender, sexual orientation, gender iden-
11 tity, or disability of the victim, or is a violation
12 of the hate crime laws of the State or Indian
13 tribe.

14 (2) PRIORITY.—In providing assistance under
15 paragraph (1), the Attorney General shall give pri-
16 ority to crimes committed by offenders who have
17 committed crimes in more than 1 State and to rural
18 jurisdictions that have difficulty covering the ex-
19 traordinary expenses relating to the investigation or
20 prosecution of the crime.

21 (b) GRANTS.—

22 (1) IN GENERAL.—The Attorney General may
23 award grants to assist State, local, and Indian law
24 enforcement officials with the extraordinary expenses

1 associated with the investigation and prosecution of
2 hate crimes.

3 (2) OFFICE OF JUSTICE PROGRAMS.—In imple-
4 menting the grant program, the Office of Justice
5 Programs shall work closely with the funded juris-
6 dictions to ensure that the concerns and needs of all
7 affected parties, including community groups and
8 schools, colleges, and universities, are addressed
9 through the local infrastructure developed under the
10 grants.

11 (3) APPLICATION.—

12 (A) IN GENERAL.—Each State that desires
13 a grant under this subsection shall submit an
14 application to the Attorney General at such
15 time, in such manner, and accompanied by or
16 containing such information as the Attorney
17 General shall reasonably require.

18 (B) DATE FOR SUBMISSION.—Applications
19 submitted pursuant to subparagraph (A) shall
20 be submitted during the 60-day period begin-
21 ning on a date that the Attorney General shall
22 prescribe.

23 (C) REQUIREMENTS.—A State or political
24 subdivision of a State or tribal official applying
25 for assistance under this subsection shall—

1 (i) describe the extraordinary pur-
2 poses for which the grant is needed;

3 (ii) certify that the State, political
4 subdivision, or Indian tribe lacks the re-
5 sources necessary to investigate or pros-
6 ecute the hate crime;

7 (iii) demonstrate that, in developing a
8 plan to implement the grant, the State, po-
9 litical subdivision, or tribal official has con-
10 sulted and coordinated with nonprofit, non-
11 governmental victim services programs
12 that have experience in providing services
13 to victims of hate crimes; and

14 (iv) certify that any Federal funds re-
15 ceived under this subsection will be used to
16 supplement, not supplant, non-Federal
17 funds that would otherwise be available for
18 activities funded under this subsection.

19 (4) DEADLINE.—An application for a grant
20 under this subsection shall be approved or dis-
21 approved by the Attorney General not later than 30
22 business days after the date on which the Attorney
23 General receives the application.

1 (5) GRANT AMOUNT.—A grant under this sub-
2 section shall not exceed \$100,000 for any single ju-
3 risdiction within a 1 year period.

4 (6) REPORT.—Not later than December 31,
5 2006, the Attorney General shall submit to Congress
6 a report describing the applications submitted for
7 grants under this subsection, the award of such
8 grants, and the purposes for which the grant
9 amounts were expended.

10 (7) AUTHORIZATION OF APPROPRIATIONS.—
11 There is authorized to be appropriated to carry out
12 this subsection \$5,000,000 for each of fiscal years
13 2006 and 2007.

14 **SEC. 1005. GRANT PROGRAM.**

15 (a) AUTHORITY TO MAKE GRANTS.—The Office of
16 Justice Programs of the Department of Justice shall
17 award grants, in accordance with such regulations as the
18 Attorney General may prescribe, to State and local pro-
19 grams designed to combat hate crimes committed by juve-
20 niles, including programs to train local law enforcement
21 officers in identifying, investigating, prosecuting, and pre-
22 venting hate crimes.

23 (b) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated such sums as may be
25 necessary to carry out this section.

1 **SEC. 1006. AUTHORIZATION FOR ADDITIONAL PERSONNEL**
2 **TO ASSIST STATE AND LOCAL LAW ENFORCE-**
3 **MENT.**

4 There are authorized to be appropriated to the De-
5 partment of Justice, including the Community Relations
6 Service, for fiscal years 2006, 2007, and 2008 such sums
7 as are necessary to increase the number of personnel to
8 prevent and respond to alleged violations of section 249
9 of title 18, United States Code, as added by section 1007.

10 **SEC. 1007. PROHIBITION OF CERTAIN HATE CRIME ACTS.**

11 (a) IN GENERAL.—Chapter 13 of title 18, United
12 States Code, is amended by adding at the end the fol-
13 lowing:

14 **“§ 249. Hate crime acts**

15 “(a) IN GENERAL.—

16 “(1) OFFENSES INVOLVING ACTUAL OR PER-
17 CEIVED RACE, COLOR, RELIGION, OR NATIONAL ORI-
18 GIN.—Whoever, whether or not acting under color of
19 law, willfully causes bodily injury to any person or,
20 through the use of fire, a firearm, or an explosive or
21 incendiary device, attempts to cause bodily injury to
22 any person, because of the actual or perceived race,
23 color, religion, or national origin of any person—

24 “(A) shall be imprisoned not more than 10
25 years, fined in accordance with this title, or
26 both; and

1 “(B) shall be imprisoned for any term of
2 years or for life, fined in accordance with this
3 title, or both, if—

4 “(i) death results from the offense; or

5 “(ii) the offense includes kidnaping or
6 an attempt to kidnap, aggravated sexual
7 abuse or an attempt to commit aggravated
8 sexual abuse, or an attempt to kill.

9 “(2) OFFENSES INVOLVING ACTUAL OR PER-
10 CEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEX-
11 UAL ORIENTATION, GENDER IDENTITY, OR DIS-
12 ABILITY.—

13 “(A) IN GENERAL.—Whoever, whether or
14 not acting under color of law, in any cir-
15 cumstance described in subparagraph (B), will-
16 fully causes bodily injury to any person or,
17 through the use of fire, a firearm, or an explo-
18 sive or incendiary device, attempts to cause
19 bodily injury to any person, because of the ac-
20 tual or perceived religion, national origin, gen-
21 der, sexual orientation, gender identity or dis-
22 ability of any person—

23 “(i) shall be imprisoned not more
24 than 10 years, fined in accordance with
25 this title, or both; and

1 “(ii) shall be imprisoned for any term
2 of years or for life, fined in accordance
3 with this title, or both, if—

4 “(I) death results from the of-
5 fense; or

6 “(II) the offense includes kid-
7 naping or an attempt to kidnap, ag-
8 gravated sexual abuse or an attempt
9 to commit aggravated sexual abuse, or
10 an attempt to kill.

11 “(B) CIRCUMSTANCES DESCRIBED.—For
12 purposes of subparagraph (A), the cir-
13 cumstances described in this subparagraph are
14 that—

15 “(i) the conduct described in subpara-
16 graph (A) occurs during the course of, or
17 as the result of, the travel of the defendant
18 or the victim—

19 “(I) across a State line or na-
20 tional border; or

21 “(II) using a channel, facility, or
22 instrumentality of interstate or for-
23 eign commerce;

24 “(ii) the defendant uses a channel, fa-
25 cility, or instrumentality of interstate or

1 foreign commerce in connection with the
2 conduct described in subparagraph (A);

3 “(iii) in connection with the conduct
4 described in subparagraph (A), the defend-
5 ant employs a firearm, explosive or incen-
6 diary device, or other weapon that has
7 traveled in interstate or foreign commerce;
8 or

9 “(iv) the conduct described in sub-
10 paragraph (A)—

11 “(I) interferes with commercial
12 or other economic activity in which
13 the victim is engaged at the time of
14 the conduct; or

15 “(II) otherwise affects interstate
16 or foreign commerce.

17 “(b) CERTIFICATION REQUIREMENT.—No prosecu-
18 tion of any offense described in this subsection may be
19 undertaken by the United States, except under the certifi-
20 cation in writing of the Attorney General, the Deputy At-
21 torney General, the Associate Attorney General, or any
22 Assistant Attorney General specially designated by the At-
23 torney General that—

24 “(1) he or she has reasonable cause to believe
25 that the actual or perceived race, color, religion, na-

1 tional origin, gender, sexual orientation, gender iden-
2 tity, or disability of any person was a motivating
3 factor underlying the alleged conduct of the defend-
4 ant; and

5 “(2) he or his designee or she or her designee
6 has consulted with State or local law enforcement of-
7 ficials regarding the prosecution and determined
8 that—

9 “(A) the State does not have jurisdiction
10 or does not intend to exercise jurisdiction;

11 “(B) the State has requested that the Fed-
12 eral Government assume jurisdiction;

13 “(C) the State does not object to the Fed-
14 eral Government assuming jurisdiction; or

15 “(D) the verdict or sentence obtained pur-
16 suant to State charges left demonstratively
17 unvindicated the Federal interest in eradicating
18 bias-motivated violence.

19 “(c) DEFINITIONS.—In this section—

20 “(1) the term ‘explosive or incendiary device’
21 has the meaning given the term in section 232 of
22 this title;

23 “(2) the term ‘firearm’ has the meaning given
24 the term in section 921(a) of this title; and

1 “(3) the term ‘gender identity’ for the purposes
2 of this chapter means actual or perceived gender-re-
3 lated characteristics.

4 “(d) **RULE OF EVIDENCE.**—In a prosecution for an
5 offense under this section, evidence of expression or asso-
6 ciations of the defendant may not be introduced as sub-
7 stantive evidence at trial, unless the evidence specifically
8 relates to that offense. However, nothing in this section
9 affects the rules of evidence governing impeachment of a
10 witness.”.

11 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—
12 The analysis for chapter 13 of title 18, United States
13 Code, is amended by adding at the end the following:

 “249. Hate crime acts.”.

14 **SEC. 1008. STATISTICS.**

15 Subsection (b)(1) of the first section of the Hate
16 Crimes Statistics Act (28 U.S.C. 534 note) is amended
17 by inserting “gender and gender identity,” after “race,”.

18 **SEC. 1009. SEVERABILITY.**

19 If any provision of this title, an amendment made by
20 this title, or the application of such provision or amend-
21 ment to any person or circumstance is held to be unconsti-
22 tutional, the remainder of this Act, the amendments made
23 by this Act, and the application of the provisions of such

1 to any person or circumstance shall not be affected there-
2 by.

Passed the House of Representatives September 14,
2005.

Attest:

Clerk.

109TH CONGRESS
1ST SESSION

H. R. 3132

AN ACT

To make improvements to the national sex offender registration program, and for other purposes.