

PROTECT ACT

[PROSECUTORIAL REMEDIES AND OTHER TOOLS TO END
THE EXPLOITATION OF CHILDREN TODAY ACT OF 2003
(PROTECT ACT)]

[P.L. 108-21; 117 Stat. 650]

[As Amended Through P.L. 116-283, Enacted January 1, 2021]

Currency: This publication is a compilation of the text of Public Law 108-21. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>

Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).]

AN ACT to prevent child abduction and the sexual exploitation of children, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **[18 U.S.C. 1 note]** SHORT TITLE.—This Act may be cited as the “Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003” or “PROTECT Act”.

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

Sec. 1. Short title; table of contents.
Sec. 2. Severability.

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Sec. 102. First degree murder for child abuse and child torture murders.
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Sec. 106. Two strikes you’re out.
Sec. 107. Attempt liability for international parental kidnapping.
Sec. 108. Pilot program for national criminal history background checks and feasibility study.

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- Sec. 513. Miscellaneous provisions.

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- Sec. 521. Misleading domain names on the Internet.

TITLE VI—MISCELLANEOUS PROVISIONS

- Sec. 601. Penalties for use of minors in crimes of violence.
- Sec. 602. Sense of Congress.
- Sec. 603. Communications Decency Act of 1996.
- Sec. 604. Internet availability of information concerning registered sex offenders.
- Sec. 605. Registration of child pornographers in the national sex offender registry.
- Sec. 606. Grants to States for costs of compliance with new sex offender registry requirements.
- Sec. 607. Safe ID Act.
- Sec. 608. Illicit Drug Anti-Proliferation Act.
- Sec. 609. Definition of vehicle.
- Sec. 610. Authorization of John Doe DNA indictments.

Sec. 611. Transitional housing assistance grants for child victims of domestic violence, stalking, or sexual assault.

SEC. 2. [18 U.S.C. 1 note] SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected by such invalidation.

TITLE I—SANCTIONS AND OFFENSES

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SEC. 104. STRONGER PENALTIES AGAINST KIDNAPPING.

(a) **[28 U.S.C. 994 note] SENTENCING GUIDELINES.**—Notwithstanding any other provision of law regarding the amendment of Sentencing Guidelines, the United States Sentencing Commission is directed to amend the Sentencing Guidelines, to take effect on the date that is 30 days after the date of the enactment of this Act—

- (1) so that the base offense level for kidnapping in section 2A4.1(a) is increased from level 24 to level 32;
- (2) so as to delete section 2A4.1(b)(4)(C); and
- (3) so that the increase provided by section 2A4.1(b)(5) is 6 levels instead of 3.

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SEC. 108. [34 U.S.C. 40102 note] PILOT PROGRAM FOR NATIONAL CRIMINAL HISTORY BACKGROUND CHECKS AND FEASIBILITY STUDY.

(a) **ESTABLISHMENT OF PILOT PROGRAM.**—

(1) **IN GENERAL.**—Not later than 90 days after the date of the enactment of this Act, the Attorney General shall establish a pilot program for volunteer groups to obtain national and State criminal history background checks through a 10-fingerprint check to be conducted utilizing State criminal records and the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation.

(2) **STATE PILOT PROGRAM.**—

(A) **IN GENERAL.**—The Attorney General shall designate 3 States as participants in a 30-month State pilot program.

(B) **VOLUNTEER ORGANIZATION REQUESTS.**—A volunteer organization in one of the 3 States participating in the State pilot program under this paragraph that is part of the Boys and Girls Clubs of America, the National Mentoring Partnerships, or the National Council of Youth Sports may submit a request for a 10-fingerprint check from the participating State.

(C) **STATE CHECK.**—The participating State under this paragraph after receiving a request under subparagraph (B) shall conduct a State background check and submit a request that a Federal check be performed through the Integrated Automated Fingerprint Identification System of

the Federal Bureau of Investigation, to the Attorney General, in a manner to be determined by the Attorney General.

(D) INFORMATION PROVIDED.—Under procedures established by the Attorney General, any criminal history record information resulting from the State and Federal check under subparagraph (C) shall be provided to the State or National Center for Missing and Exploited Children consistent with the National Child Protection Act.

(E) COSTS.—A State may collect a fee to perform a criminal background check under this paragraph which may not exceed the actual costs to the State to perform such a check.

(F) TIMING.—For any background check performed under this paragraph, the State shall provide the State criminal record information to the Attorney General within 7 days after receiving the request from the organization, unless the Attorney General determines during the feasibility study that such a check cannot reasonably be performed within that time period. The Attorney General shall provide the criminal history records information to the National Center for Missing and Exploited Children within 7 business days after receiving the request from the State.

(3) CHILD SAFETY PILOT PROGRAM.—

(A) IN GENERAL.—The Attorney General shall establish a 104-month Child Safety Pilot Program that shall provide for the processing of 200,000 10-fingerprint check requests from organizations described in subparagraph (B) conducted through the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation.

(B) PARTICIPATING ORGANIZATIONS.—

(i) ELIGIBLE ORGANIZATIONS.—Eligible organizations include—

- (I) the Boys and Girls Clubs of America;
- (II) the MENTOR/National Mentoring Partnership;
- (III) the National Council of Youth Sports; and

(IV) any nonprofit organization that provides care, as that term is defined in section 5 of the National Child Protection Act of 1993 (42 U.S.C. 5119c), for children.

(ii) PILOT PROGRAM.—The eligibility of an organization described in clause (i)(IV) to participate in the pilot program established under this section shall be determined by the National Center for Missing and Exploited Children, with the rejection or concurrence within 30 days of the Attorney General, according to criteria established by such Center, including the potential number of applicants and suitability of the organization to the intent of this section. If the Attorney General fails to reject or concur within 30 days, the

determination of the National Center for Missing and Exploited Children shall be conclusive.

(C) APPLICANTS FROM PARTICIPATING ORGANIZATIONS.—

Participating organizations may request background checks on applicants for positions as volunteers and employees who will be working with children or supervising volunteers.

(D) PROCEDURES.—The Attorney General shall notify participating organizations of a process by which the organizations may provide fingerprint cards to the Attorney General.

(E) VOLUNTEER INFORMATION REQUIRED.—An organization authorized to request a background check under this paragraph shall—

(i) forward to the Attorney General the volunteer's fingerprints; and

(ii) obtain a statement completed and signed by the volunteer that—

(I) sets out the provider or volunteer's name, address, date of birth appearing on a valid identification document as defined in section 1028 of title 18, United States Code, and a photocopy of the valid identifying document;

(II) states whether the volunteer has a criminal record, and, if so, sets out the particulars of such record;

(III) notifies the volunteer that the Attorney General may perform a criminal history background check and that the volunteer's signature to the statement constitutes an acknowledgment that such a check may be conducted;

(IV) notifies the volunteer that prior to and after the completion of the background check, the organization may choose to deny the provider access to children; and

(V) notifies the volunteer of his right to correct an erroneous record held by the Attorney General.

(F) TIMING.—For any background checks performed under this paragraph, the Attorney General shall provide the criminal history records information to the National Center for Missing and Exploited Children within 10 business days after receiving the request from the organization.

(G) DETERMINATIONS OF FITNESS.—

(i) IN GENERAL.—Consistent with the privacy protections delineated in the National Child Protection Act (42 U.S.C. 5119), the National Center for Missing and Exploited Children may make a determination whether the criminal history record information received in response to the criminal history background checks conducted under this paragraph indicates that the provider or volunteer has a criminal history record that renders the provider or volunteer unfit to provide

care to children based upon criteria established jointly by, the National Center for Missing and Exploited Children, the Boys and Girls Clubs of America, the National Mentoring Partnership, and the National Council of Youth Sports.

(ii) CHILD SAFETY PILOT PROGRAM.—The National Center for Missing and Exploited Children shall convey that determination to the organizations making requests under this paragraph.

(4) FEES COLLECTED BY ATTORNEY GENERAL.—The Attorney General may collect a fee which may not exceed \$18 to cover the cost to the Federal Bureau of Investigation to conduct the background check under paragraph (2) or (3).

(b) RIGHTS OF VOLUNTEERS.—Each volunteer who is the subject of a criminal history background check under this section is entitled to contact the Attorney General to initiate procedures to—

(1) obtain a copy of their criminal history record report; and

(2) challenge the accuracy and completeness of the criminal history record information in the report.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated such sums as may be necessary to the National Center for Missing and Exploited Children for fiscal years 2004 through 2008 to carry out the requirements of this section.

(2) STATE PROGRAM.—There is authorized to be appropriated such sums as may be necessary to the Attorney General for the States designated in subsection (a)(1) for fiscal years 2004 and 2005 to establish and enhance fingerprint technology infrastructure of the participating State.

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

(1) STUDY REQUIRED.—The Attorney General shall conduct a feasibility study within 180 days after the date of the enactment of this Act. The study shall examine, to the extent discernible, the following:

(A) The current state of fingerprint capture and processing at the State and local level, including the current available infrastructure, State system capacities, and the time for each State to process a civil or volunteer print from the time of capture to submission to the Federal Bureau of Investigation (FBI).

(B) The intent of the States concerning participation in a nationwide system of criminal background checks to provide information to qualified entities.

(C) The number of volunteers, employees, and other individuals that would require a fingerprint-based criminal background check.

(D) The impact on the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation in terms of capacity and impact on other users of the system, including the effect on Federal Bureau of Investigation work practices and staffing levels.

(E) The current fees charged by the Federal Bureau of Investigation, States and local agencies, and private companies to process fingerprints and conduct background checks.

(F) The existence of “model” or best practice programs which could easily be expanded and duplicated in other States.

(G) The extent to which private companies are currently performing background checks and the possibility of using private companies in the future to perform any of the background check process, including, but not limited to, the capture and transmission of fingerprints and fitness determinations.

(H) The cost of development and operation of the technology and the infrastructure necessary to establish a nationwide fingerprint-based and other criminal background check system.

(I) The extent of State participation in the procedures for background checks authorized in the National Child Protection Act (Public Law 103–209), as amended by the Volunteers for Children Act (sections 221 and 222 of Public Law 105–251).

(J) The extent to which States currently provide access to nationwide criminal history background checks to organizations that serve children.

(K) The extent to which States currently permit volunteers to appeal adverse fitness determinations, and whether similar procedures are required at the Federal level.

(L) The implementation of the 2 pilot programs created in subsection (a).

(M) Any privacy concerns that may arise from nationwide criminal background checks.

(N) Any other information deemed relevant by the Department of Justice.

(O) The extent of participation by eligible organizations in the state pilot program.

(2) INTERIM REPORT.—Based on the findings of the feasibility study under paragraph (1), the Attorney General shall, not later than 180 days after the date of the enactment of this Act, submit to Congress an interim report, which may include recommendations for a pilot project to develop or improve programs to collect fingerprints and perform background checks on individuals that seek to volunteer with organizations that work with children, the elderly, or the disabled.

(3) FINAL REPORT.—Based on the findings of the pilot project, the Attorney General shall, not later than 60 days after completion of the pilot project under this section, submit to Congress a final report, including recommendations, which may include a proposal for grants to the States to develop or improve programs to collect fingerprints and perform background checks on individuals that seek to volunteer with organizations that work with children, the elderly, or the disabled, and which may include recommendations for amendments to the National Child Protection Act and the Volunteers for Children Act.

dren Act so that qualified entities can promptly and affordably conduct nationwide criminal history background checks on their employees and volunteers.

(e) **LIMITATION ON LIABILITY.**—In connection with the Pilot Programs established under this section, in reliance upon the fitness criteria established under section 108(a)(3)(G)(i), and except upon proof of actual malice or intentional misconduct, the National Center for Missing and Exploited Children, or a director, officer, employee, or agent of the Center shall not be liable in any civil action for damages—

(1) arising from any act or communication by the Center, the director, officer, employee, or agent that results in or contributes to a decision that an individual is unfit to serve as a volunteer for any volunteer organization;

(2) alleging harm arising from a decision based on the information in an individual's criminal history record that an individual is fit to serve as a volunteer for any volunteer organization unless the Center, the director, officer, employee, or agent is furnished with an individual's criminal history records which they know to be inaccurate or incomplete, or which they know reflect a lesser crime than that for which the individual was arrested; and

(3) alleging harm arising from a decision that, based on the absence of criminal history information, an individual is fit to serve as a volunteer for any volunteer organization unless the Center, the director, officer, employee, or agent knows that criminal history records exist and have not been furnished as required under this section.

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TITLE III—PUBLIC OUTREACH

Subtitle A—AMBER Alert

SEC. 301. [34 U.S.C. 20501] NATIONAL COORDINATION OF AMBER ALERT COMMUNICATIONS NETWORK.

(a) **COORDINATION WITHIN DEPARTMENT OF JUSTICE.**—The Attorney General shall assign an officer of the Department of Justice to act as the national coordinator of the AMBER Alert communications network regarding abducted children. The officer so designated shall be known as the AMBER Alert Coordinator of the Department of Justice.

(b) **DUTIES.**—In acting as the national coordinator of the AMBER Alert communications network, the Coordinator shall—

(1) seek to eliminate gaps in the network, including gaps in areas of interstate travel (including airports, maritime ports, border crossing areas and checkpoints, and ports of exit from the United States);

(2) work with States, territories of the United States, and tribal governments to encourage the development of additional elements (known as local AMBER plans) in the network;

(3) work with States, territories of the United States, and tribal governments to ensure appropriate regional coordination of various elements of the network; and

(4) act as the nationwide point of contact for—

(A) the development of the network; and

(B) regional coordination of alerts on abducted children through the network.

(c) CONSULTATION WITH FEDERAL BUREAU OF INVESTIGATION.—In carrying out duties under subsection (b), the Coordinator shall notify and consult with the Director of the Federal Bureau of Investigation concerning each child abduction for which an alert is issued through the AMBER Alert communications network.

(d) COOPERATION.—The Coordinator shall cooperate with the Secretary of Transportation, the Secretary of Homeland Security, and the Federal Communications Commission in carrying out activities under this section.

(e) REPORT.—Not later than March 1, 2005, the Coordinator shall submit to Congress a report on the activities of the Coordinator and the effectiveness and status of the AMBER plans of each State that has implemented such a plan. The Coordinator shall prepare the report in consultation with the Secretary of Transportation.

SEC. 302. [34 U.S.C. 20502] MINIMUM STANDARDS FOR ISSUANCE AND DISSEMINATION OF ALERTS THROUGH AMBER ALERT COMMUNICATIONS NETWORK.

(a) ESTABLISHMENT OF MINIMUM STANDARDS.—Subject to subsection (b), the AMBER Alert Coordinator of the Department of Justice shall establish minimum standards for—

(1) the issuance of alerts through the AMBER Alert communications network; and

(2) the extent of the dissemination of alerts issued through the network.

(b) LIMITATIONS.—(1) The minimum standards established under subsection (a) shall be adoptable on a voluntary basis only.

(2) The minimum standards shall, to the maximum extent practicable (as determined by the Coordinator in consultation with State, territorial, tribal, and local law enforcement agencies), provide that appropriate information relating to the special needs of an abducted child (including health care needs) are disseminated to the appropriate law enforcement, public health, and other public officials.

(3) The minimum standards shall, to the maximum extent practicable (as determined by the Coordinator in consultation with State, territorial, tribal, and local law enforcement agencies), provide that the dissemination of an alert through the AMBER Alert communications network be limited to the geographic areas most likely to facilitate the recovery of the abducted child concerned.

(4) In carrying out activities under subsection (a), the Coordinator may not interfere with the current system of voluntary coordination between local broadcasters and State, territorial, tribal, and local law enforcement agencies for purposes of the AMBER Alert communications network.

(c) COOPERATION.—(1) The Coordinator shall cooperate with the Secretary of Transportation, the Secretary of Homeland Secu-

rity, and the Federal Communications Commission in carrying out activities under this section.

(2) The Coordinator shall also cooperate with local broadcasters and State, territorial, tribal, and local law enforcement agencies in establishing minimum standards under this section.

SEC. 303. [34 U.S.C. 20503] GRANT PROGRAM FOR NOTIFICATION AND COMMUNICATIONS SYSTEMS ALONG HIGHWAYS AND MAJOR TRANSPORTATION ROUTES FOR RECOVERY OF ABDUCTED CHILDREN.

(a) PROGRAM REQUIRED.—The Secretary of Transportation (referred to in this section as the “Secretary”) shall carry out a program to provide grants to States for the development or enhancement of notification or communications systems along highways and at airports, maritime ports, border crossing areas and checkpoints, and ports of exit from the United States for alerts and other information for the recovery of abducted children.

(b) DEVELOPMENT GRANTS.—

(1) IN GENERAL.—The Secretary may make a grant to a State under this subsection for the development of a State program for the use of changeable message signs or other information systems to notify motorists, aircraft passengers, ship passengers, and travelers about abductions of children. The State program shall provide for the planning, coordination, and design of systems, protocols, and message sets that support the coordination and communication necessary to notify motorists, aircraft passengers, ship passengers, and travelers about abductions of children.

(2) ELIGIBLE ACTIVITIES.—A grant under this subsection may be used by a State for the following purposes:

(A) To develop general policies and procedures to guide the use of changeable message signs or other information systems to notify motorists, aircraft passengers, ship passengers, and travelers about abductions of children.

(B) To develop guidance or policies on the content and format of alert messages to be conveyed on changeable message signs or other traveler information systems.

(C) To coordinate State, regional, and local plans for the use of changeable message signs or other transportation related issues.

(D) To plan secure and reliable communications systems and protocols among public safety and transportation agencies or modify existing communications systems to support the notification of motorists, aircraft passengers, ship passengers, and travelers about abductions of children.

(E) To plan and design improved systems for communicating with motorists, aircraft passengers, ship passengers, and travelers, including the capability for issuing wide area alerts to motorists, aircraft passengers, ship passengers, and travelers.

(F) To plan systems and protocols to facilitate the efficient issuance of child abduction notification and other key information to motorists, aircraft passengers, ship passengers, and travelers during off-hours.

(G) To provide training and guidance to transportation authorities to facilitate appropriate use of changeable message signs and other traveler information systems for the notification of motorists, aircraft passengers, ship passengers, and travelers about abductions of children.

(c) **IMPLEMENTATION GRANTS.**—

(1) **IN GENERAL.**—The Secretary may make a grant to a State under this subsection for the implementation of a program for the use of changeable message signs or other information systems to notify motorists, aircraft passengers, ship passengers, and travelers about abductions of children. A State shall be eligible for a grant under this subsection if the Secretary determines that the State has developed a State program in accordance with subsection (b).

(2) **ELIGIBLE ACTIVITIES.**—A grant under this subsection may be used by a State to support the implementation of systems that use changeable message signs or other information systems to notify motorists, aircraft passengers, ship passengers, and travelers about abductions of children. Such support may include the purchase and installation of changeable message signs or other information systems to notify motorists, aircraft passengers, ship passengers, and travelers about abductions of children.

(d) **FEDERAL SHARE.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the Federal share of the cost of any activities funded by a grant under this section may not exceed 80 percent.

(2) **WAIVER.**—If the Secretary determines that American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands of the United States is unable to comply with the requirement under paragraph (1), the Secretary shall waive such requirement.

(e) **DISTRIBUTION OF GRANT AMOUNTS.**—The Secretary shall, to the maximum extent practicable, distribute grants under this section equally among the States that apply for a grant under this section within the time period prescribed by the Secretary.

(f) **ADMINISTRATION.**—The Secretary shall prescribe requirements, including application requirements, for the receipt of grants under this section.

(g) **DEFINITION.**—In this subtitle, the term “State” means any of the 50 States, the District of Columbia, American Samoa, Guam, Puerto Rico, the Northern Mariana Islands, the Virgin Islands of the United States, and any other territory of the United States.

(h) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary to carry out this section \$20,000,000 for each of fiscal years 2019 through 2023. Such amounts shall remain available until expended.

(i) **STUDY OF STATE PROGRAMS.**—

(1) **STUDY.**—The Secretary shall conduct a study to examine State barriers to the adoption and implementation of State programs for the use of communications systems along highways for alerts and other information for the recovery of abducted children.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study, together with any recommendations the Secretary determines appropriate.

SEC. 304. [34 U.S.C. 20504] GRANT PROGRAM FOR SUPPORT OF AMBER ALERT COMMUNICATIONS PLANS.

(a) PROGRAM REQUIRED.—The Attorney General shall carry out a program to provide grants to States and Indian tribes for—

(1) the development or enhancement of programs and activities for the support of AMBER Alert communications plans; and

(2) the integration of tribal AMBER Alert systems into State AMBER Alert systems.

(b) ACTIVITIES.—Activities funded by grants under the program under subsection (a) may include—

(1) the development and implementation of education and training programs, and associated materials, relating to AMBER Alert communications plans;

(2) the development and implementation of law enforcement programs, and associated equipment, relating to AMBER Alert communications plans;

(3) the development and implementation of new technologies to improve AMBER Alert communications;

(4) the integration of State or regional AMBER Alert communication plans with a territorial government or an Indian tribe; and

(5) such other activities as the Attorney General considers appropriate for supporting the AMBER Alert communications program.

(c) FEDERAL SHARE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Federal share of the cost of any activities funded by a grant under this section may not exceed 50 percent.

(2) WAIVER.—If the Attorney General determines that American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, or an Indian tribe is unable to comply with the requirement under paragraph (1), the Attorney General shall waive such requirement.

(d) DISTRIBUTION OF GRANT AMOUNTS ON GEOGRAPHIC BASIS.—

The Attorney General shall, to the maximum extent practicable, ensure the distribution of grants under the program under subsection (a) on an equitable basis throughout the various regions of the United States, including territories of the United States.

(e) ADMINISTRATION.—The Attorney General shall prescribe requirements, including application requirements, and standards to improve accountability and transparency for grants awarded under the program under subsection (a).

(f) DEFINITION OF INDIAN TRIBE.—In this section, the term “Indian tribe” means a federally recognized Indian tribe or a Native village, Regional Corporation, or Village Corporation (as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)).

(g) AUTHORIZATION OF APPROPRIATIONS.—(1) There is authorized to be appropriated for the Department of Justice \$5,000,000

for fiscal year 2019 to carry out this section and, in addition, \$5,000,000 for fiscal year 2019 to carry out paragraphs (3) and (4) of subsection (b).

(2) Amounts appropriated pursuant to the authorization of appropriations in paragraph (1) shall remain available until expended.

SEC. 305. [34 U.S.C. 20505] LIMITATION ON LIABILITY.

(a) Except as provided in subsection (b), the National Center for Missing and Exploited Children, including any of its officers, employees, or agents, shall not be liable for damages in any civil action for defamation, libel, slander, or harm to reputation arising out of any action or communication by the National Center for Missing and Exploited Children, its officers, employees, or agents, in connection with any clearinghouse, hotline or complaint intake or forwarding program or in connection with activity that is wholly or partially funded by the United States and undertaken in co-operation with, or at the direction of a Federal law enforcement agency.

(b) The limitation in subsection (a) does not apply in any action in which the plaintiff proves that the National Center for Missing and Exploited Children, its officers, employees, or agents acted with actual malice, or provided information or took action for a purpose unrelated to an activity mandated by Federal law. For purposes of this subsection, the prevention, or detection of crime, and the safety, recovery, or protection of missing or exploited children shall be deemed, *per se*, to be an activity mandated by Federal law.

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Subtitle D—Missing Children Procedures in Public Buildings

SEC. 361. [40 U.S.C. 3101 note] SHORT TITLE.

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

SEC. 362. [40 U.S.C. 3101 note] DEFINITIONS.

In this subtitle, the following definitions apply:

(1) CHILD.—The term “child” means an individual who is 17 years of age or younger.

(2) CODE ADAM ALERT.—The term “Code Adam alert” means a set of procedures used in public buildings to alert employees and other users of the building that a child is missing.

(3) DESIGNATED AUTHORITY.—The term “designated authority” means—

(A) with respect to a public building owned or leased for use by an Executive agency—

(i) except as otherwise provided in this paragraph, the Administrator of General Services;

(ii) in the case of the John F. Kennedy Center for the Performing Arts, the Board of Trustees of the John F. Kennedy Center for the Performing Arts;

(iii) in the case of buildings under the jurisdiction, custody, and control of the Smithsonian Institution,

the Board of Regents of the Smithsonian Institution; or

(iv) in the case of another public building for which an Executive agency has, by specific or general statutory authority, jurisdiction, custody, and control over the building, the head of that agency;

(B) with respect to the Supreme Court Building, the Marshal of the Supreme Court; with respect to the Thurgood Marshall Federal Judiciary Building, the Director of the Administrative Office of United States Courts; and with respect to all other public buildings owned or leased for use by an establishment in the judicial branch of government, the General Services Administration in consultation with the United States Marshals Service; and

(C) with respect to a public building owned or leased for use by an establishment in the legislative branch of government, the Capitol Police Board.

(4) EXECUTIVE AGENCY.—The term “Executive agency” has the same meaning such term has under section 105 of title 5, United States Code.

(5) FEDERAL AGENCY.—The term “Federal agency” means any Executive agency or any establishment in the legislative or judicial branches of the Government.

(6) PUBLIC BUILDING.—The term “public building” means any building (or portion thereof) owned or leased for use by a Federal agency.

SEC. 363. [40 U.S.C. 3101 note] PROCEDURES IN PUBLIC BUILDINGS REGARDING A MISSING OR LOST CHILD.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the designated authority for a public building shall establish procedures for locating a child that is missing in the building.

(b) NOTIFICATION AND SEARCH PROCEDURES.—Procedures established under this section shall provide, at a minimum, for the following:

- (1) Notifying security personnel that a child is missing.
- (2) Obtaining a detailed description of the child, including name, age, eye and hair color, height, weight, clothing, and shoes.
- (3) Issuing a Code Adam alert and providing a description of the child, using a fast and effective means of communication.
- (4) Establishing a central point of contact.
- (5) Monitoring all points of egress from the building while a Code Adam alert is in effect.
- (6) Conducting a thorough search of the building.
- (7) Contacting local law enforcement.
- (8) Documenting the incident.

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TITLE IV—SENTENCING REFORM

SEC. 401. SENTENCING REFORM.

(a)

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(j) **【28 U.S.C. 994 note】 CONFORMING AMENDMENTS.—**

(1) Upon enactment of this Act, the Sentencing Commission shall forthwith distribute to all courts of the United States and to the United States Probation System the amendments made by subsections (b), (g), and (i) of this section to the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. These amendments shall take effect upon the date of enactment of this Act, in accordance with paragraph (5).

(2) On or before May 1, 2005, the Sentencing Commission shall not promulgate any amendment to the sentencing guidelines, policy statements, or official commentary of the Sentencing Commission that is inconsistent with any amendment made by subsection (b) or that adds any new grounds of downward departure to Part K of chapter 5.

(3) With respect to cases covered by the amendments made by subsection (i) of this section, the Sentencing Commission may make further amendments to the sentencing guidelines, policy statements, or official commentary of the Sentencing Commission, except that the Commission shall not promulgate any amendments that, with respect to such cases, would result in sentencing ranges that are lower than those that would have applied under such subsection.

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

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(l) **【18 U.S.C. 3553 note】 REPORT BY ATTORNEY GENERAL.—**

(1) **DEFINED TERM.**—For purposes of this section, the term “report described in paragraph (3)” means a report, submitted by the Attorney General, which states in detail the policies and procedures that the Department of Justice has adopted subsequent to the enactment of this Act—

(A) to ensure that Department of Justice attorneys oppose sentencing adjustments, including downward departures, that are not supported by the facts and the law;

(B) to ensure that Department of Justice attorneys in such cases make a sufficient record so as to permit the possibility of an appeal;

(C) to delineate objective criteria, specified by the Attorney General, as to which such cases may warrant consideration of an appeal, either because of the nature or magnitude of the sentencing error, its prevalence in the district, or its prevalence with respect to a particular judge;

(D) to ensure that Department of Justice attorneys promptly notify the designated Department of Justice com-

ponent in Washington concerning such adverse sentencing decisions; and

(E) to ensure the vigorous pursuit of appropriate and meritorious appeals of such adverse decisions.

(2) REPORT REQUIRED.—

(A) IN GENERAL.—Not later than 15 days after a district court's grant of a downward departure in any case, other than a case involving a downward departure for substantial assistance to authorities pursuant to section 5K1.1 of the United States Sentencing Guidelines, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate containing the information described under subparagraph (B).

(B) CONTENTS.—The report submitted pursuant to subparagraph (A) shall set forth—

(i) the case;

(ii) the facts involved;

(iii) the identity of the district court judge;

(iv) the district court's stated reasons, whether or not the court provided the United States with advance notice of its intention to depart; and

(v) the position of the parties with respect to the downward departure, whether or not the United States has filed, or intends to file, a motion for reconsideration.

(C) APPEAL OF THE DEPARTURE.—Not later than 5 days after a decision by the Solicitor General regarding the authorization of an appeal of the departure, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate that describes the decision of the Solicitor General and the basis for such decision.

(3) EFFECTIVE DATE.—Paragraph (2) shall take effect on the day that is 91 days after the date of enactment of this Act, except that such paragraph shall not take effect if not more than 90 days after the date of enactment of this Act the Attorney General has submitted to the Judiciary Committees of the House of Representatives and the Senate the report described in paragraph (3).

(m) ~~【28 U.S.C. 994 note】~~ REFORM OF EXISTING PERMISSIBLE GROUNDS OF DOWNWARD DEPARTURES.—Not later than 180 days after the enactment of this Act, the United States Sentencing Commission shall—

(1) review the grounds of downward departure that are authorized by the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission; and

(2) promulgate, pursuant to section 994 of title 28, United States Code—

(A) appropriate amendments to the sentencing guidelines, policy statements, and official commentary to ensure that the incidence of downward departures are substantially reduced;

(B) a policy statement authorizing a downward departure of not more than 4 levels if the Government files a motion for such departure pursuant to an early disposition program authorized by the Attorney General and the United States Attorney; and

(C) any other conforming amendments to the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission necessitated by this Act, including a revision of paragraph 4(b) of part A of chapter 1 and a revision of section 5K2.0.

(n) COMPOSITION OF SENTENCING COMMISSION.—

(1) IN GENERAL.—Section 991(a) of title 28, United States Code, is amended by striking “At least three” and inserting “Not more than 3”.

(2) **[28 U.S.C. 991 note]** APPLICABILITY.—The amendment made under paragraph (1) shall not apply to any person who is serving, or who has been nominated to serve, as a member of the Sentencing Commission on the date of enactment of this Act.

TITLE V—OBSCENITY AND PORNOGRAPHY

Subtitle A—Child Obscenity and Pornography Prevention

SEC. 501. [18 U.S.C. 2251 note] FINDINGS.

Congress finds the following:

(1) Obscenity and child pornography are not entitled to protection under the First Amendment under *Miller v. California*, 413 U.S. 15 (1973) (obscenity), or *New York v. Ferber*, 458 U.S. 747 (1982) (child pornography) and thus may be prohibited.

(2) The Government has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers. “The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance,” *New York v. Ferber*, 458 U.S. 747, 757 (1982), and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain. *Osborne v. Ohio*, 495 U.S. 103, 110 (1990).

(3) The Government thus has a compelling interest in ensuring that the criminal prohibitions against child pornography remain enforceable and effective. “The most expeditious if not the only practical method of law enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product.” *Ferber*, 458 U.S. at 760.

(4) In 1982, when the Supreme Court decided *Ferber*, the technology did not exist to—

(A) computer generate depictions of children that are indistinguishable from depictions of real children;

(B) use parts of images of real children to create a composite image that is unidentifiable as a particular child and in a way that prevents even an expert from concluding that parts of images of real children were used; or

(C) disguise pictures of real children being abused by making the image look computer-generated.

(5) Evidence submitted to the Congress, including from the National Center for Missing and Exploited Children, demonstrates that technology already exists to disguise depictions of real children to make them unidentifiable and to make depictions of real children appear computer-generated. The technology will soon exist, if it does not already, to computer generate realistic images of children.

(6) The vast majority of child pornography prosecutions today involve images contained on computer hard drives, computer disks, and/or related media.

(7) There is no substantial evidence that any of the child pornography images being trafficked today were made other than by the abuse of real children. Nevertheless, technological advances since Ferber have led many criminal defendants to suggest that the images of child pornography they possess are not those of real children, insisting that the government prove beyond a reasonable doubt that the images are not computer-generated. Such challenges increased significantly after the decision in *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

(8) Child pornography circulating on the Internet has, by definition, been digitally uploaded or scanned into computers and has been transferred over the Internet, often in different file formats, from trafficker to trafficker. An image seized from a collector of child pornography is rarely a first-generation product, and the retransmission of images can alter the image so as to make it difficult for even an expert conclusively to opine that a particular image depicts a real child. If the original image has been scanned from a paper version into a digital format, this task can be even harder since proper forensic assessment may depend on the quality of the image scanned and the tools used to scan it.

(9) The impact of the Free Speech Coalition decision on the Government's ability to prosecute child pornography offenders is already evident. The Ninth Circuit has seen a significant adverse effect on prosecutions since the 1999 Ninth Circuit Court of Appeals decision in *Free Speech Coalition*. After that decision, prosecutions generally have been brought in the Ninth Circuit only in the most clear-cut cases in which the government can specifically identify the child in the depiction or otherwise identify the origin of the image. This is a fraction of meritorious child pornography cases. The National Center for Missing and Exploited Children testified that, in light of the Supreme Court's affirmation of the Ninth Circuit decision, prosecutors in various parts of the country have expressed concern about the continued viability of previously indicted cases as well as declined potentially meritorious prosecutions.

(10) Since the Supreme Court's decision in *Free Speech Coalition*, defendants in child pornography cases have almost universally raised the contention that the images in question could be virtual, thereby requiring the government, in nearly every child pornography prosecution, to find proof that the child is real. Some of these defense efforts have already been successful. In addition, the number of prosecutions being brought has been significantly and adversely affected as the resources required to be dedicated to each child pornography case now are significantly higher than ever before.

(11) Leading experts agree that, to the extent that the technology exists to computer generate realistic images of child pornography, the cost in terms of time, money, and expertise is—and for the foreseeable future will remain—prohibitively expensive. As a result, for the foreseeable future, it will be more cost-effective to produce child pornography using real children. It will not, however, be difficult or expensive to use readily available technology to disguise those depictions of real children to make them unidentifiable or to make them appear computer-generated.

(12) Child pornography results from the abuse of real children by sex offenders; the production of child pornography is a byproduct of, and not the primary reason for, the sexual abuse of children. There is no evidence that the future development of easy and inexpensive means of computer generating realistic images of children would stop or even reduce the sexual abuse of real children or the practice of visually recording that abuse.

(13) In the absence of congressional action, the difficulties in enforcing the child pornography laws will continue to grow increasingly worse. The mere prospect that the technology exists to create composite or computer-generated depictions that are indistinguishable from depictions of real children will allow defendants who possess images of real children to escape prosecution; for it threatens to create a reasonable doubt in every case of computer images even when a real child was abused. This threatens to render child pornography laws that protect real children unenforceable. Moreover, imposing an additional requirement that the Government prove beyond a reasonable doubt that the defendant knew that the image was in fact a real child—as some courts have done—threatens to result in the de facto legalization of the possession, receipt, and distribution of child pornography for all except the original producers of the material.

(14) To avoid this grave threat to the Government's unquestioned compelling interest in effective enforcement of the child pornography laws that protect real children, a statute must be adopted that prohibits a narrowly-defined subcategory of images.

(15) The Supreme Court's 1982 *Ferber v. New York* decision holding that child pornography was not protected drove child pornography off the shelves of adult bookstores. Congressional action is necessary now to ensure that open and noto-

rious trafficking in such materials does not reappear, and even increase, on the Internet.

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SEC. 504. OBSCENE CHILD PORNOGRAPHY.

(a)

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(c) **[18 U.S.C. 1466A note] SENTENCING GUIDELINES.—**

(1) **CATEGORY.**—Except as provided in paragraph (2), the applicable category of offense to be used in determining the sentencing range referred to in section 3553(a)(4) of title 18, United States Code, with respect to any person convicted under section 1466A of such title, shall be the category of offenses described in section 2G2.2 of the Sentencing Guidelines.

(2) **RANGES.**—The Sentencing Commission may promulgate guidelines specifically governing offenses under section 1466A of title 18, United States Code, if such guidelines do not result in sentencing ranges that are lower than those that would have applied under paragraph (1).

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SEC. 511. RECORDKEEPING REQUIREMENTS.

(a)

(b) **[18 U.S.C. 2257 note] REPORT.**—Not later than 1 year after enactment of this Act, the Attorney General shall submit to Congress a report detailing the number of times since January 1993 that the Department of Justice has inspected the records of any producer of materials regulated pursuant to section 2257 of title 18, United States Code, and section 75 of title 28 of the Code of Federal Regulations. The Attorney General shall indicate the number of violations prosecuted as a result of those inspections.

SEC. 512. [28 U.S.C. 994 note] SENTENCING ENHANCEMENTS FOR INTERSTATE TRAVEL TO ENGAGE IN SEXUAL ACT WITH A JUVENILE.

Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that guideline penalties are adequate in cases that involve interstate travel with the intent to engage in a sexual act with a juvenile in violation of section 2423 of title 18, United States Code, to deter and punish such conduct.

SEC. 513. MISCELLANEOUS PROVISIONS.

(a) **APPOINTMENT OF TRIAL ATTORNEYS.—**

(1) **IN GENERAL.**—Not later than 6 months after the date of enactment of this Act, the Attorney General shall appoint 25 additional trial attorneys to the Child Exploitation and Obscenity Section of the Criminal Division of the Department of Justice or to appropriate United States Attorney's Offices, and those trial attorneys shall have as their primary focus, the investigation and prosecution of Federal child pornography and obscenity laws.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Justice such sums as may be necessary to carry out this subsection.

(b) ~~[18 U.S.C. 1466A note]~~ REPORT TO CONGRESSIONAL COMMITTEES.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, and every 2 years thereafter, the Attorney General shall report to the Chairpersons and Ranking Members of the Committees on the Judiciary of the Senate and the House of Representatives on the Federal enforcement actions under chapter 110 or section 1466A of title 18, United States Code.

(2) CONTENTS.—The report required under paragraph (1) shall include—

(A) an evaluation of the prosecutions brought under chapter 110 or section 1466A of title 18, United States Code;

(B) an outcome-based measurement of performance; and

(C) an analysis of the technology being used by the child pornography industry.

(c) ~~[28 U.S.C. 994 note]~~ SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that the guidelines are adequate to deter and punish conduct that involves a violation of paragraph (3)(B) or (6) of section 2252A(a) of title 18, United States Code, as created by this Act. With respect to the guidelines for section 2252A(a)(3)(B), the Commission shall consider the relative culpability of promoting, presenting, describing, or distributing material in violation of that section as compared with solicitation of such material.

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TITLE VI—MISCELLANEOUS PROVISIONS

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SEC. 602. SENSE OF CONGRESS.

(a) FOCUS OF INVESTIGATION AND PROSECUTION.—It is the sense of Congress that the Child Exploitation and Obscenity Section of the Criminal Division of the Department of Justice should focus its investigative and prosecutorial efforts on major producers, distributors, and sellers of obscene material and child pornography that use misleading methods to market their material to children.

(b) VOLUNTARY LIMITATION ON WEBSITE FRONT PAGES.—It is the sense of Congress that the online commercial adult entertainment industry should voluntarily refrain from placing obscenity, child pornography, or material that is harmful to minors on the front pages of their websites to protect juveniles from material that

may negatively impact their social, moral, and psychological development.

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SEC. 604. INTERNET AVAILABILITY OF INFORMATION CONCERNING REGISTERED SEX OFFENDERS.

(a) IN GENERAL.—Section 170101(e)(2) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(e)(2)) is amended by adding at the end the following: “The release of information under this paragraph shall include the maintenance of an Internet site containing such information that is available to the public and instructions on the process for correcting information that a person alleges to be erroneous.”.

(b) **【42 U.S.C. 14071 note】 COMPLIANCE DATE.**—Each State shall implement the amendment made by this section within 3 years after the date of enactment of this Act, except that the Attorney General may grant an additional 2 years to a State that is making a good faith effort to implement the amendment made by this section.

(c) **【42 U.S.C. 14071 note】 NATIONAL INTERNET SITE.**—The Crimes Against Children Section of the Criminal Division of the Department of Justice shall create a national Internet site that links all State Internet sites established pursuant to this section.

SEC. 605. REGISTRATION OF CHILD PORNOGRAPHERS IN THE NATIONAL SEX OFFENDER REGISTRY.

(a)

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Department of Justice, for each of fiscal years 2004 through 2007, such sums as may be necessary to carry out the amendments made by this section.

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SEC. 607. SAFE ID ACT.

(a) **【18 U.S.C. 1001 note】 SHORT TITLE.**—This section may be cited as the “Secure Authentication Feature and Enhanced Identification Defense Act of 2003” or “SAFE ID Act”.

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SEC. 608. ILLICIT DRUG ANTI-PROLIFERATION ACT.

(a) **【21 U.S.C. 801 note】 SHORT TITLE.**—This section may be cited as the “Illicit Drug Anti-Proliferation Act of 2003”.

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(e) **【28 U.S.C. 994 note】 SENTENCING COMMISSION GUIDELINES.**—The United States Sentencing Commission shall—

- (1) review the Federal sentencing guidelines with respect to offenses involving gamma hydroxybutyric acid (GHB);
- (2) consider amending the Federal sentencing guidelines to provide for increased penalties such that those penalties reflect the seriousness of offenses involving GHB and the need to deter them; and
- (3) take any other action the Commission considers necessary to carry out this section.

(f) AUTHORIZATION OF APPROPRIATIONS FOR A DEMAND REDUCTION COORDINATOR.—There is authorized to be appropriated \$5,900,000 to the Drug Enforcement Administration of the Department of Justice for the hiring of a special agent in each State to serve as a Demand Reduction Coordinator.

(g) AUTHORIZATION OF APPROPRIATIONS FOR DRUG EDUCATION.—There is authorized to be appropriated such sums as necessary to the Drug Enforcement Administration of the Department of Justice to educate youth, parents, and other interested adults about club drugs.

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