

GLOBAL CHILD PROTECTION ACT OF 2017

MAY 22, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1862]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1862) to amend title 18, United States Code, to expand the scope of certain definitions pertaining to unlawful sexual conduct, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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Purpose and Summary

The Global Child Protection Act, H.R. 1862, closes loopholes in the child exploitation statutes by expanding the conduct covered involving abuse occurring abroad and the offenses covered in the recidivist enhancement provisions for sex crimes against children. The purpose of the legislation is to ensure that predators do not escape culpability for offenses committed abroad by limiting their behavior to “illicit sexual conduct” rather than “illicit sexual contact.” The legislation is also intended to include additional conduct in the definition of “Federal sex offense” under the recidivist child sex offender provision. Currently, this enhancement does not include “sexual contact” with children, which appears to be no more than an oversight in original drafting.

Background and Need for the Legislation

First, H.R. 1862 closes a loophole in the definition of “illicit sexual conduct” as defined in 18 U.S.C. § 2423(f), by adding “illicit sexual contact” to the definition.

The phrase “illicit sexual conduct” is referenced in: 18 U.S.C. § 2423(b), which prohibits someone from traveling in interstate or foreign commerce for the purpose of “engaging in illicit sexual conduct”; 18 U.S.C. § 2423(c), which prohibits U.S. citizens and permanent residents from traveling in foreign commerce and engaging in illicit sexual conduct; and 18 U.S.C. § 2423(d), which prohibits someone from arranging the travel of a person for the purpose of engaging in illicit sexual conduct.

The definition of “illicit sexual conduct” currently includes “sexual acts” with persons under 18, as defined in 18 U.S.C. § 2246. However, the definition does *not* also encompass “sexual contact” as defined in § 2246. This means that “illicit sexual conduct” includes situations where an adult defendant molests a child, but it does not include situations in which a child is caused to touch an adult defendant—for example, a scenario where a U.S. citizen travels abroad and forces a child to manually stimulate his genitals. This section closes this loophole by striking the reference to “sexual act” and instead defines illicit sexual conduct to include any conduct that would violate any child exploitation statute in Chapter 109A of title 18.

Second, H.R. 1862 closes a loophole by including sexual contact with children in 18 U.S.C. § 3559(e), a recidivist provision specifically addressing child predators. It also amends current law to add sexual abuse of children abroad as a predicate offense for an enhanced sentence under § 3559(e).

Section 3559(e)(1) currently provides that a “person who is convicted of a Federal sex offense in which a minor is the victim shall be sentenced to life imprisonment if the person has a prior sex conviction in which a minor was the victim. . . .” “Federal sex offense” is defined in section § 3559(e)(2), which enumerates several sexual offense statutes. This reference as to what constitutes a “Federal sex offense,” however, does not include sexual contact with children under the age of 12, or aggravated sexual contact with children aged 12–15, because the definition of Federal sex offense in § 3559(e)(2) refers only to § 2244(a)(1) of the Abusive Sexual Contact statute (which covers forcible sexual contact or contact

where victim is unconscious) and not § 2244(a)(5) (which covers sexual contact where the victim is under 12, and aggravated sexual contact with children between 12 and 15).

Thus, § 3559 currently does not incorporate sexual contact with children under the age of 12 or aggravated sexual contact with children aged 12–15. It makes no sense that § 3559(e), which is a recidivist provision specifically addressing sex offenders who prey upon children, would not reach all contact offenses against the youngest of children. This is especially so since federal law treats sexual contact with a child under the age of 12 or a child aged 12–15 under aggravating circumstances as a significantly more serious offense than sexual contact committed through force or threats or with an unconscious or impaired adult victim.

Paradoxically, the omission of § 2244(a)(5) in the definition of Federal sex offense means that a defendant who commits sexual contact with a victim aged 12–15 either through force or threats or when the victim is unconscious or impaired will have a qualifying predicate or prior conviction if he was charged under § 2244(a)(1), but not if he were charged under § 2244(a)(5). The only difference between the two charges is that the latter charge requires proof of the age of the victim and carries a higher penalty.

There is no way to justify the inclusion of two sex offenses that carry penalties of up to 10 years in prison as predicate and qualifying convictions under § 3559(e), but the exclusion of an offense that is specifically designed to protect children of especially tender years and that carries the maximum prison term available under the law. H.R. 1862 closes this loophole by including § 2244(a)(5) in the definition of “Federal sex offense” in § 3559(e)(2).

Finally, H.R. 1862 adds 18 U.S.C. § 2423(c), which prohibits the sexual abuse of children abroad by U.S. citizens, as a predicate offense to 18 U.S.C. § 3559(e). As currently written, § 2423(c) is the only criminal provision prohibiting the sexual abuse of children that is not referenced in § 3559(e).

Closing these technical loopholes is necessary to prevent dangerous predators from escaping liability altogether in circumstances in which they are engaging in certain uncovered conduct abroad and also to prevent recidivist offenders who have previously sexually abused a child from avoiding the sentencing enhancement provision due to mere technicalities.

Hearings

The Committee on the Judiciary held no hearings on H.R. 1862, but held a hearing on the subject of child exploitation generally on March 16, 2017.

Committee Consideration

On April 5, 2017, the Committee met in open session and ordered the bill H.R. 1862 favorably reported, without amendment, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following

roll call votes occurred during the Committee's consideration of H.R. 1862.

1. An Amendment, offered by Mr. Conyers to create a separate sentencing framework for recidivist penalties for those previously convicted of certain offenses that did not include mandatory minimum sentences. The amendment was defeated by a roll call vote of 2 to 14.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Smith (TX)			
Mr. Chabot (OH)			
Mr. Issa (CA)			
Mr. King (IA)			
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)			
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Labrador (ID)			
Mr. Farenthold (TX)			
Mr. Collins (GA)			
Mr. DeSantis (FL)			
Mr. Buck (CO)			
Mr. Ratcliffe (TX)		X	
Ms. Roby (AL)		X	
Mr. Gaetz (FL)		X	
Mr. Johnson (LA)		X	
Mr. Biggs (AZ)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)			
Ms. Lofgren (CA)			
Ms. Jackson Lee (TX)	X		
Mr. Cohen (TN)			
Mr. Johnson (GA)			
Mr. Deutch (FL)			
Mr. Gutierrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)			
Mr. Jeffries (NY)			
Mr. Cicilline (RI)			
Mr. Swalwell (CA)			
Mr. Lieu (CA)		X	
Mr. Raskin (MD)			
Ms. Jayapal (WA)			
Mr. Schneider (IL)			
Total	2	14

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1862, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 12, 2017.

Hon. BOB GOODLATTE, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1862, the Global Child Protection Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

KEITH HALL.

Enclosure

cc: Honorable John Conyers Jr.
Ranking Member

H.R. 1862—Global Child Protection Act of 2017

As ordered reported by the House Committee on the Judiciary on
April 5, 2017

H.R. 1862 would broaden the coverage of current laws relating to unlawful sexual conduct with minors. As a result, the government might be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that the bill would apply to a relatively small number of offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Enacting the bill could affect direct spending and revenues; therefore, pay-as-you-go procedures apply. Because those prosecuted and convicted under H.R. 1862 could be subject to criminal

finer, the federal government might collect additional fines if the legislation is enacted. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent without further appropriation action. CBO expects that any additional revenues and subsequent direct spending would not be significant because the legislation would probably affect only a small number of cases.

CBO estimates that enacting H.R. 1862 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1862 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

Duplication of Federal Programs

No provision of H.R. 1862 establishes or reauthorizes a program of the Federal government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that H.R. 1862 specifically directs to be completed no specific rule makings within the meaning of 5 U.S.C. 551.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1862 closes loopholes in child exploitation laws by expanding conduct that constitutes criminal offenses committed abroad and expanding conduct that qualifies a predator for recidivist sentencing enhancement provisions.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1862 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

Section 1. Short Title. This section cites the short title of the bill as the “Global Child Protection Act of 2017.”

Section 2. Expanding the Definition of Explicit Sexual Conduct. This section closes a loophole in the definition of “illicit sexual conduct” as defined in 18 U.S.C. 2423(f), by adding “illicit sexual contact” to the definition. Section 2423 of Chapter 109A covers sex offenses against minors committed abroad as well as arranging travel of a person to engage in illicit sexual conduct with a minor. The bill expands the range of conduct covered to include “illicit sexual

contact,” as opposed to merely “illicit sexual conduct,” which does not encompass behavior such as making a child touch an adult in a sexual manner.

Section 3. Expanding the Definition of Federal Sex Offense. This section closes a loophole by including sexual contact with children (18 U.S.C. 2241(a)(5)) as a federal sex offense that would trigger the recidivist sentencing enhancements provided for in 18 U.S.C. § 3559(e), which is a recidivist provision for sex offenders who victimize minors. It also amends current law to add sexual abuse of children abroad (18 U.S.C. 2423(c)) as a predicate offense under § 3559(e).

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

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PART I—CRIMES

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CHAPTER 117—TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY AND RELATED CRIMES

* * * * *

§ 2423. Transportation of minors

(a) **TRANSPORTATION WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY.**—A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title and imprisoned not less than 10 years or for life.

(b) **TRAVEL WITH INTENT TO ENGAGE IN ILLICIT SEXUAL CONDUCT.**—A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

(c) **ENGAGING IN ILLICIT SEXUAL CONDUCT IN FOREIGN PLACES.**—Any United States citizen or alien admitted for permanent residence who travels in foreign commerce or resides, either temporarily or permanently, in a foreign country, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

(d) **ANCILLARY OFFENSES.**—Whoever, for the purpose of commercial advantage or private financial gain, arranges, induces, procures, or facilitates the travel of a person knowing that such a person is traveling in interstate commerce or foreign commerce for the purpose of engaging in illicit sexual conduct shall be fined under this title, imprisoned not more than 30 years, or both.

(e) **ATTEMPT AND CONSPIRACY.**—Whoever attempts or conspires to violate subsection (a), (b), (c), or (d) shall be punishable in the same manner as a completed violation of that subsection.

(f) **DEFINITION.**—As used in this section, the term “illicit sexual conduct” means—

(1) **[a sexual act (as defined in section 2246) with] any conduct involving** a person under 18 years of age that would be in violation of chapter 109A **[if the sexual act] if the conduct** occurred in the special maritime and territorial jurisdiction of the United States;

(2) any commercial sex act (as defined in section 1591) with a person under 18 years of age; or

(3) production of child pornography (as defined in section 2256(8)).

(g) **DEFENSE.**—In a prosecution under this section based on illicit sexual conduct as defined in subsection (f)(2), it is a defense, which the defendant must establish by clear and convincing evidence, that the defendant reasonably believed that the person with whom the defendant engaged in the commercial sex act had attained the age of 18 years.

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PART II—CRIMINAL PROCEDURE

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CHAPTER 227—SENTENCES

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SUBCHAPTER A—GENERAL PROVISIONS

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§ § 3559. Sentencing classification of offenses

(a) **CLASSIFICATION.**—An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is—

(1) life imprisonment, or if the maximum penalty is death, as a Class A felony;

(2) twenty-five years or more, as a Class B felony;

(3) less than twenty-five years but ten or more years, as a Class C felony;

(4) less than ten years but five or more years, as a Class D felony;

(5) less than five years but more than one year, as a Class E felony;

(6) one year or less but more than six months, as a Class A misdemeanor;

(7) six months or less but more than thirty days, as a Class B misdemeanor;

(8) thirty days or less but more than five days, as a Class C misdemeanor; or

(9) five days or less, or if no imprisonment is authorized, as an infraction.

(b) EFFECT OF CLASSIFICATION.—Except as provided in subsection (c), an offense classified under subsection (a) carries all the incidents assigned to the applicable letter designation, except that the maximum term of imprisonment is the term authorized by the law describing the offense.

(c) IMPRISONMENT OF CERTAIN VIOLENT FELONS.—

(1) MANDATORY LIFE IMPRISONMENT.—Notwithstanding any other provision of law, a person who is convicted in a court of the United States of a serious violent felony shall be sentenced to life imprisonment if—

(A) the person has been convicted (and those convictions have become final) on separate prior occasions in a court of the United States or of a State of—

(i) 2 or more serious violent felonies; or

(ii) one or more serious violent felonies and one or more serious drug offenses; and

(B) each serious violent felony or serious drug offense used as a basis for sentencing under this subsection, other than the first, was committed after the defendant's conviction of the preceding serious violent felony or serious drug offense.

(2) DEFINITIONS.—For purposes of this subsection—

(A) the term “assault with intent to commit rape” means an offense that has as its elements engaging in physical contact with another person or using or brandishing a weapon against another person with intent to commit aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242);

(B) the term “arson” means an offense that has as its elements maliciously damaging or destroying any building, inhabited structure, vehicle, vessel, or real property by means of fire or an explosive;

(C) the term “extortion” means an offense that has as its elements the extraction of anything of value from another person by threatening or placing that person in fear of injury to any person or kidnapping of any person;

(D) the term “firearms use” means an offense that has as its elements those described in section 924(c) or 929(a), if the firearm was brandished, discharged, or otherwise used as a weapon and the crime of violence or drug trafficking crime during and relation to which the firearm was used was subject to prosecution in a court of the United States or a court of a State, or both;

(E) the term “kidnapping” means an offense that has as its elements the abduction, restraining, confining, or carrying away of another person by force or threat of force;

(F) the term “serious violent felony” means—

(i) a Federal or State offense, by whatever designation and wherever committed, consisting of murder (as

described in section 1111); manslaughter other than involuntary manslaughter (as described in section 1112); assault with intent to commit murder (as described in section 113(a)); assault with intent to commit rape; aggravated sexual abuse and sexual abuse (as described in sections 2241 and 2242); abusive sexual contact (as described in sections § 2244(a)(1) and (a)(2)); kidnapping; aircraft piracy (as described in section 46502 of Title 49); robbery (as described in section 2111, 2113, or 2118); carjacking (as described in section 2119); extortion; arson; firearms use; firearms possession (as described in section 924(c)); or attempt, conspiracy, or solicitation to commit any of the above offenses; and

(ii) any other offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the person of another or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense;

(G) the term “State” means a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States; and

(H) the term “serious drug offense” means—

(i) an offense that is punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(A)); or

(ii) an offense under State law that, had the offense been prosecuted in a court of the United States, would have been punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(A)).

(3) NONQUALIFYING FELONIES.—

(A) ROBBERY IN CERTAIN CASES.—Robbery, an attempt, conspiracy, or solicitation to commit robbery; or an offense described in paragraph (2)(F)(ii) shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that—

(i) no firearm or other dangerous weapon was used in the offense and no threat of use of a firearm or other dangerous weapon was involved in the offense; and

(ii) the offense did not result in death or serious bodily injury (as defined in section 1365) to any person.

(B) ARSON IN CERTAIN CASES.—Arson shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that—

(i) the offense posed no threat to human life; and

(ii) the defendant reasonably believed the offense posed no threat to human life.

(4) INFORMATION FILED BY UNITED STATES ATTORNEY.—The provisions of section 411(a) of the Controlled Substances Act (21 U.S.C. 851(a)) shall apply to the imposition of sentence under this subsection.

(5) RULE OF CONSTRUCTION.—This subsection shall not be construed to preclude imposition of the death penalty.

(6) SPECIAL PROVISION FOR INDIAN COUNTRY.—No person subject to the criminal jurisdiction of an Indian tribal government shall be subject to this subsection for any offense for which Federal jurisdiction is solely predicated on Indian country (as defined in section 1151) and which occurs within the boundaries of such Indian country unless the governing body of the tribe has elected that this subsection have effect over land and persons subject to the criminal jurisdiction of the tribe.

(7) RESENTENCING UPON OVERTURNING OF PRIOR CONVICTION.—If the conviction for a serious violent felony or serious drug offense that was a basis for sentencing under this subsection is found, pursuant to any appropriate State or Federal procedure, to be unconstitutional or is vitiated on the explicit basis of innocence, or if the convicted person is pardoned on the explicit basis of innocence, the person serving a sentence imposed under this subsection shall be resentenced to any sentence that was available at the time of the original sentencing.

(d) DEATH OR IMPRISONMENT FOR CRIMES AGAINST CHILDREN.—

(1) IN GENERAL.—Subject to paragraph (2) and notwithstanding any other provision of law, a person who is convicted of a Federal offense that is a serious violent felony (as defined in subsection (c)) or a violation of section 2422, 2423, or 2251 shall, unless the sentence of death is imposed, be sentenced to imprisonment for life, if—

(A) the victim of the offense has not attained the age of 14 years;

(B) the victim dies as a result of the offense; and

(C) the defendant, in the course of the offense, engages in conduct described in section 3591(a)(2).

(2) EXCEPTION.—With respect to a person convicted of a Federal offense described in paragraph (1), the court may impose any lesser sentence that is authorized by law to take into account any substantial assistance provided by the defendant in the investigation or prosecution of another person who has committed an offense, in accordance with the Federal Sentencing Guidelines and the policy statements of the Federal Sentencing Commission pursuant to section 994(p) of title 28, or for other good cause.

(e) MANDATORY LIFE IMPRISONMENT FOR REPEATED SEX OFFENSES AGAINST CHILDREN.—

(1) IN GENERAL.—A person who is convicted of a Federal sex offense in which a minor is the victim shall be sentenced to life imprisonment if the person has a prior sex conviction in which a minor was the victim, unless the sentence of death is imposed.

(2) DEFINITIONS.—For the purposes of this subsection—

(A) the term “Federal sex offense” means an offense under section 1591 (relating to sex trafficking of children),

2241 (relating to aggravated sexual abuse), 2242 (relating to sexual abuse), § 2244(a)(1) *or* § 2244(a)(5) (relating to abusive sexual contact), 2245 (relating to sexual abuse resulting in death), 2251 (relating to sexual exploitation of children), 2251A (relating to selling or buying of children), 2422(b) (relating to coercion and enticement of a minor **into prostitution**), **or** 2423(a) (relating to transportation of minors) *or* 2423(c) (*relating to illicit sexual conduct*);

(B) the term “State sex offense” means an offense under State law that is punishable by more than one year in prison and consists of conduct that would be a Federal sex offense if, to the extent or in the manner specified in the applicable provision of this title—

(i) the offense involved interstate or foreign commerce, or the use of the mails; or

(ii) the conduct occurred in any commonwealth, territory, or possession of the United States, within the special maritime and territorial jurisdiction of the United States, in a Federal prison, on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country (as defined in section 1151);

(C) the term “prior sex conviction” means a conviction for which the sentence was imposed before the conduct occurred constituting the subsequent Federal sex offense, and which was for a Federal sex offense or a State sex offense;

(D) the term “minor” means an individual who has not attained the age of 17 years; and

(E) the term “State” has the meaning given that term in subsection (c)(2).

(3) NONQUALIFYING FELONIES.—An offense described in section 2422(b) **or** 2423(a), 2423(a), *or* 2423(c) shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that—

(A) the sexual act or activity was consensual and not for the purpose of commercial or pecuniary gain;

(B) the sexual act or activity would not be punishable by more than one year in prison under the law of the State in which it occurred; or

(C) no sexual act or activity occurred.

(f) MANDATORY MINIMUM TERMS OF IMPRISONMENT FOR VIOLENT CRIMES AGAINST CHILDREN.—A person who is convicted of a Federal offense that is a crime of violence against the person of an individual who has not attained the age of 18 years shall, unless a greater mandatory minimum sentence of imprisonment is otherwise provided by law and regardless of any maximum term of imprisonment otherwise provided for the offense—

(1) if the crime of violence is murder, be imprisoned for life or for any term of years not less than 30, except that such person shall be punished by death or life imprisonment if the circumstances satisfy any of subparagraphs (A) through (D) of section 3591(a)(2) of this title;

(2) if the crime of violence is kidnapping (as defined in section 1201) or maiming (as defined in section 114), be imprisoned for life or any term of years not less than 25; and

(3) if the crime of violence results in serious bodily injury (as defined in section 1365), or if a dangerous weapon was used during and in relation to the crime of violence, be imprisoned for life or for any term of years not less than 10.

(g)(1) If a defendant who is convicted of a felony offense (other than offense of which an element is the false registration of a domain name) knowingly falsely registered a domain name and knowingly used that domain name in the course of that offense, the maximum imprisonment otherwise provided by law for that offense shall be doubled or increased by 7 years, whichever is less.

(2) As used in this section—

(A) the term “falsely registers” means registers in a manner that prevents the effective identification of or contact with the person who registers; and

(B) the term “domain name” has the meaning given that term is section 45 of the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes” approved July 5, 1946 (commonly referred to as the “Trademark Act of 1946”) (15 U.S.C. 1127).

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Dissenting Views

INTRODUCTION

H.R. 1862, the “Global Child Protection Act of 2017,” would expand the federal criminal code’s definitions pertaining to unlawful sexual conduct with a minor. Specifically, the bill would expand the definition of “illicit sexual conduct” as defined in 18 U.S.C. § 2423(f)(1) and the definition of a “Federal sex offense” as defined in 18 U.S.C. § 3559(e). As a result of these expansions, more individuals would be subject to mandatory minimum sentences, specifically life imprisonment, which is the penalty for these recidivist offenses under current law. We have long-opposed the imposition of mandatory minimum sentences because of their extraordinary injustice, role in causing prison overcrowding, and the excessive costs to taxpayers they cause. Mandatory minimum sentences have had a particularly devastating impact on minority communities across our Nation. Given the fact that H.R. 1862 would subject more individuals to mandatory minimum sentences, we must respectfully dissent and urge our colleagues to oppose this legislation when it comes to the floor.

DESCRIPTION AND BACKGROUND

DESCRIPTION

Section 2 of the bill expands the definition of “illicit sexual conduct” found in section 2423(f)(1) of title 18 of the United States Code, changing it from a sexual act with a minor as defined in section 2246 that would violate chapter 109A of title 18, to *any* conduct involving a minor that would violate chapter 109A. Section 3 expands the definition of a “Federal sex offense” to include viola-

tions of section § 2244(a)(5) (sexual abuse of a minor between the ages 12 and 15) and section 2423(c) (relating to illicit sexual conduct in foreign places). Section 3 also provides that section 2423(c) will not serve as basis for a mandatory life sentence if evidence is provided as set forth in section § 3559(e)(3).

BACKGROUND

“Illicit sexual conduct,” as defined in section 2423(f)¹ of title 18 of the United States Code, includes any “sexual act” with a minor, as defined in section 2246,² but does not include “sexual contact,” which is also defined in section 2246.³ The phrase “illicit sexual conduct” is referenced in: section 2423(b), which prohibits travel in interstate or foreign commerce for the purpose of “engaging in illicit sexual conduct;” section 2423(c), which prohibits U.S. citizens and permanent residents from traveling in foreign commerce and engaging in illicit sexual conduct; and section 2423(d), which prohibits arranging travel for the purpose engaging in illicit sexual conduct. The acts prohibited in chapter 109A⁴ (Sexual Abuse) include sexual acts and sexual contact. H.R. 1862 would remove the reference to a “sexual act” and instead define “illicit sexual conduct” as *any* conduct that would violate chapter 109A, thereby significantly expanding the types of behavior that may be prosecuted under sections 2423(b), (c), and (d). These offenses are, however, not subject to mandatory minimum sentencing.

Section 3559(e) of title 18 provides that a “person who is convicted of a Federal sex offense in which a minor is the victim shall be sentenced to life imprisonment if the person has a prior sex conviction in which a minor was the victim” Currently, the term “Federal sex offense” is defined within the statute as an offense under sections: 1591 (relating to sex trafficking of children, 2241 (relating to aggravated sexual abuse), 2242 (relating to sexual abuse), 2244(a)(1) (relating to abusive sexual contact), 2245 (relating to sexual abuse resulting in death), 2251 (relating to sexual exploitation of children), 2251A (relating to selling or buying of children), 2422(b) (relating to coercion and enticement of a minor into prostitution), or 2423(a) (relating to transportation of minors). As “Federal sex offense” presently refers only to section 2244(a)(1), the term does not include sexual contact with children under the age of 12 or aggravated sexual contact with children who are 12 to 15 years old, both of which are found in section 2244(a)(5). This bill would amend section 3559(e) to include offenses under section 2244(a)(5) and section 2423(c).

¹ 18 U.S.C. § 2423 (2017) (transportation of minors).

² 18 U.S.C. § 2426(2) (2017) defines “sexual act” as: contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

³ 18 U.S.C. § 2426(3) (2017) defines “sexual contact” as the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

⁴ Offenses included in chapter 109A: section 2241 (Aggravated Sex Abuse); section 2242 (Sexual Abuse); section 2243 (Sexual Abuse of a Minor or Ward); section § 2244 (Abusive Sexual Contact); and section 2245 (Offenses Resulting in Death).

Section 2244⁵ sets forth criminal offenses involving sexual contact, instead of sexual acts, but references categories of crimes that are sexual acts defined in section 2241. In particular, section 2244(a)(1) criminalizes sexual contact, involving conduct described in section 2241(a) and (b). Section 2244(a)(5) criminalizes sexual contact, involving conduct described in section 2241(c); section 2241(c) prohibits aggravated sexual abuse of children under the age 12 and children who are 12 to 15 years old.

The only differences between the offenses in sections 2244(a)(1) and (a)(5) are that the latter requires proof of the age of the victim and carries higher penalties. In fact, the penalty for section 2241(c) violations is significantly more severe than the penalties for sections 2241(a) and (b). Section 2241(c) violations are punishable by a mandatory prison term of at least 30 years up to life for sexual acts and a maximum of life in prison for sexual contact. Violations of sections 2241(a) and (b) are punishable by a maximum of life in prison for sexual acts and a maximum of ten years in prison for sexual contact; neither offense (section 2241(a) or (b)) is subject to mandatory minimum sentencing. As a result of the exclusion of section 2244(a)(5) offenses from the definition of “Federal offense,” the recidivist provision of section 3559(e) does not apply to offenders who commit sexual contact offenses against children under the age of 12 or children who are 12 to 15 years old.

H.R. 1862 would add section 2244(a)(5) to section 3559(e), subjecting such offenders with prior sex convictions involving minor victims to mandatory sentences of life in prison. Section 3559(e) would also be amended to include section 2423(c), which prohibits the sexual abuse of children abroad by U.S. citizens, as a predicate offense for recidivist treatment; section 2423(c) would be added to the subsection outlining “nonqualifying felonies.” Under section 3559(e)(3), an offense will not serve as a basis for the mandatory life sentence if the defendant establishes by clear and convincing evidence that the sexual act or activity was consensual and not for the purpose of commercial or pecuniary gain and the sexual act or activity would not be punishable by more than one year in prison under the law of the state in which it occurred; or no sexual act or activity occurred.⁶

CONCERNS

I. THE BILL WOULD SUBJECT MORE INDIVIDUALS TO THE IMPOSITION OF MANDATORY MINIMUM SENTENCES

Our concerns with this bill primarily stem from the expanded application of mandatory minimum sentences that would result from broadening the scope of individuals who would be subject to such penalties under the bill. H.R. 1862 amends section 3559(e) to include offenses under section 2244(a)(5) and section 2423(c) as predicates for recidivist treatment. While the predicate offenses would involve aggravated sexual abuse of children under the age of 12 and children who are 12 to 15 years old and the sexual abuse of children abroad by U.S. citizens, this amendment would add new classes of offenders subject to mandatory sentences of life in prison.

⁵ 18 U.S.C. § 2244 (2017) (Abusive Sexual Contact).

⁶ 18 U.S.C. § 3559(e)(3) (2017).

During the Committee's consideration of this bill, Ranking Member John Conyers, Jr. offered an amendment to address these concerns. Unfortunately, that amendment was defeated by a vote of 2 to 14. While we would prefer that mandatory minimum sentences be removed from federal law altogether, we believe the amendment offered by Ranking Member John Conyers, Jr. represented a reasonable compromise that would have addressed some of our concerns while not harming the goal of the bill.

The amendment would have provided that, for the offenses that the bill would add as predicates for recidivist treatment, these offenses would not be subject to the mandatory life imprisonment, but instead would be subject only to the maximum of life in prison, based on judicial discretion. In making this change, the amendment would still allow judges to impose life sentences in appropriate cases, but judges would also have the discretion to impose sentences less than life in prison if deemed more appropriate under the circumstances. The amendment did not suggest that the conduct that the bill would subject to recidivist penalties is not deserving of additional punishment, but that mandatory minimums—of life imprisonment no less—are not the right way to impose sentences.

II. H.R. 1862 WOULD ONLY EXACERBATE THE PROBLEMS CAUSED BY MANDATORY MINIMUM SENTENCES

Congress should work to eliminate mandatory minimum sentences altogether, not expand them as would be the result under H.R. 1862. Mandatory minimum sentences are the wrong way to determine punishment. They not only lead to unjust outcomes for individuals, but also have serious systemic consequences by contributing to the problem of overincarceration. Since Congress enacted harsh mandatory minimums in the 1980s, the federal prison population has exploded by over 700% to more than 188,000 inmates today.³

In addition, higher than warranted sentences resulting from mandatory minimum sentencing strain public finances. Expenditures for the federal Bureau of Prisons have risen to comprise approximately 25 percent of the total budget of the Department of Justice.⁷ Every dollar expended on lengthy mandatory minimum incarcerations is a dollar that cannot be spent on crime prevention, victim services, training, investigation, and prosecution. Absent smarter sentencing policies and reformation of mandatory minimum sentences, prison populations and their associated costs will continue to escalate. We need to take steps to ensure that sentences are appropriately severe, but are not set beyond levels that no longer serve legitimate criminal justice purposes.

While long sentences may be appropriate under the facts of a particular violation of law, Congress cannot know the facts of every case in advance. Judges are in the best position to impose sentences that are appropriate for the facts and circumstances of each

³U.S. Dep't of Justice, Bureau of Prisons, Historical Information, at <http://www.bop.gov/about/history/> (last visited May 15, 2017); U.S. Dep't of Justice, Bureau of Prisons, Inmate Statistics: Offenses, at http://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp. (Mar. 25, 2017).

⁷The Charles Colson Task Force on Federal Corrections, *Consequences of Growth in the Federal Prison Population* (May 2015), available at <http://www.urban.org/sites/default/files/publication/52636/2000221-Consequences-of-Growth-in-the-Federal-Prison-Population.pdf>.

case. Even recognizing the seriousness of these offenses, removing mandatory minimums—while still permitting the lengthy statutory maximum penalty of life imprisonment—would provide the appropriate spectrum of sentences for culpability and proportionate punishment.

CONCLUSION

Without question, crimes against children are particularly egregious. Congress must do everything it can to prevent these crimes and, when they do occur, hold offenders accountable. Expanding the scope of individuals subject to mandatory minimum sentences, however, is the wrong answer. Such offenders would still be subject to appropriately severe penalties if minimums were eliminated and judges imposed sentences based on the facts and circumstances of each case, up to the already-lengthy statutory maximum sentences. Unfortunately, H.R. 1862 fails to address this critical concern with respect to new classes of offenders who would be subject to punishment under the bill.

Accordingly, we must oppose H.R. 1862 and we urge our colleagues to join us in opposition.

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MS. JACKSON LEE.
MR. JOHNSON, JR.
MR. GUTIERREZ.
MS. BASS.
MR. RICHMOND.
MR. JEFFRIES.

