

109TH CONGRESS
1ST SESSION

H. R. 3129

To protect foster children and provide appropriate sentencing for child sex predators, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 2005

Mr. DELAY introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To protect foster children and provide appropriate sentencing for child sex predators, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. REQUIREMENT TO COMPLETE BACKGROUND**
2 **CHECKS BEFORE APPROVAL OF ANY FOSTER**
3 **OR ADOPTIVE PLACEMENT AND TO CHECK**
4 **NATIONAL CRIME INFORMATION DATABASES**
5 **AND STATE CHILD ABUSE REGISTRIES; SUS-**
6 **PENSION AND SUBSEQUENT ELIMINATION OF**
7 **OPT-OUT.**

8 (a) REQUIREMENT TO COMPLETE BACKGROUND
9 CHECKS BEFORE APPROVAL OF ANY FOSTER OR ADOPTIVE
10 TIVE PLACEMENT AND TO CHECK NATIONAL CRIME IN-
11 FORMATION DATABASES AND STATE CHILD ABUSE REG-
12 ISTRIES; SUSPENSION OF OPT-OUT.—

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

17 (A) in subparagraph (A)—

18 (i) in the matter preceding clause

19 (i)—

20 (I) by inserting “, including
21 checks of national crime information
22 databases (as defined in section
23 534(e)(3)(A) of title 28, United
24 States Code),” after “criminal records
25 checks”; and

1 (II) by striking “on whose behalf
2 foster care maintenance payments or
3 adoption assistance payments are to
4 be made” and inserting “regardless of
5 whether foster care maintenance pay-
6 ments or adoption assistance pay-
7 ments are to be made on behalf of the
8 child”; and

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

13 (B) by adding “and” at the end of sub-
14 paragraph (B); and

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

16 “(C) provides that the State shall—

17 “(i) check any child abuse and neglect
18 registry maintained by the State for infor-
19 mation on any prospective foster or adop-
20 tive parent and on any other adult living in
21 the home of such a prospective parent, and
22 request any other State in which any such
23 prospective parent or other adult has re-
24 sided in the preceding 5 years, to enable
25 the State to check any child abuse and ne-

1 neglect registry maintained by such other
2 State for such information, before the pro-
3 spective foster or adoptive parent may be
4 finally approved for placement of a child,
5 regardless of whether foster care mainte-
6 nance payments or adoption assistance
7 payments are to be made on behalf of the
8 child under the State plan under this part;

9 “(ii) comply with any request de-
10 scribed in clause (i) that is received from
11 another State; and

12 “(iii) have in place safeguards to pre-
13 vent the unauthorized disclosure of infor-
14 mation in any child abuse and neglect reg-
15 istry maintained by the State, and to pre-
16 vent any such information obtained pursu-
17 ant to this subparagraph from being used
18 for a purpose other than the conducting of
19 background checks in foster or adoptive
20 placement cases;”.

21 (2) SUSPENSION OF OPT-OUT.—Section
22 471(a)(20)(B) of such Act (42 U.S.C.
23 671(a)(20)(B)) is amended—

24 (A) by inserting “, on or before September
25 30, 2005,” after “plan if”; and

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

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

6 (1) in subparagraph (A)—

7 (A) in the matter preceding clause (i), by
8 striking “unless an election provided for in sub-
9 paragraph (B) is made with respect to the
10 State,”; and

11 (B) by adding “and” at the end of clause
12 (ii); and

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

15 (c) EFFECTIVE DATE.—

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

23 (2) ELIMINATION OF OPT-OUT.—The amend-
24 ments made by subsection (b) shall take effect on
25 October 1, 2007, and shall apply with respect to

1 payments under part E of title IV of the Social Se-
2 curity Act for calendar quarters beginning on or
3 after such date, without regard to whether regula-
4 tions to implement the amendments are promulgated
5 by such date.

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

1 **SEC. 3. ACCESS TO FEDERAL CRIME INFORMATION DATA-**
2 **BASES BY CHILD WELFARE AGENCIES FOR**
3 **CERTAIN PURPOSES.**

4 (a) **IN GENERAL.**—The Attorney General shall, upon
5 request of the chief executive of a State, ensure that ap-
6 propriate officers of child welfare agencies have the au-
7 thority for “read only” online access to the databases of
8 the national crime information databases (as defined in
9 section 534 of title 28, United States Code) to carry out
10 criminal history records checks, subject to subsection (b).

11 (b) **LIMITATION.**—An officer may use the authority
12 under subsection (a) only in furtherance of the purposes
13 of the agency and only on an individual relevant to case-
14 work of the agency.

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

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

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

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

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

10 **SEC. 4. PENALTIES FOR COERCION AND ENTICEMENT BY**
11 **SEX OFFENDERS.**

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

16 **SEC. 5. PENALTIES FOR CONDUCT RELATING TO CHILD**
17 **PROSTITUTION.**

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

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

23 (2) in subsection (b), by striking “or impris-
24 oned not more than 30 years, or both” and inserting

1 “and imprisoned for not less than 10 years and not
2 more than 30 years”;

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

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

11 **SEC. 6. PENALTIES FOR SEXUAL ABUSE.**

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

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

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

22 (b) **SEXUAL ABUSE.**—Section 2242 of title 18,
23 United States Code, is amended by striking “, imprisoned
24 not more than 20 years, or both” and inserting “and im-
25 prisoned not less than 15 years nor more than 40 years”.

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

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

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

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

15 **SEC. 7. SEX OFFENDER SUBMISSION TO SEARCH AS CONDI-**
16 **TION OF RELEASE.**

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

19 (1) in paragraph (8), by striking “and” at the
20 end;

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

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

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

13 (b) SUPERVISED RELEASE.—Section 3583(d) of title
14 18, United States Code, is amended by inserting after
15 “1994).” the following: “The court shall order, as an ex-
16 plicit condition of supervised release for a person who is
17 a felon or required to register under the Sex Offender Reg-
18 istration and Notification Act, that the person submit his
19 person, and any property, house, residence, vehicle, pa-
20 pers, computer, other electronic communications or data
21 storage devices or media, and effects to search at any
22 time, with or without a warrant, by any law enforcement
23 or probation officer with reasonable suspicion concerning
24 a violation of a condition of supervised release or unlawful

1 conduct by the person, and by any probation officer in
2 the lawful discharge of the officer’s supervision functions.”

3 **SEC. 8. KIDNAPPING PENALTIES AND JURISDICTION.**

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

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

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

15 **SEC. 9. MARITAL COMMUNICATION AND ADVERSE SPOUSAL**
16 **PRIVILEGE.**

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

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

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

1 “(1) a child of either spouse; or

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

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

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

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

8 **SEC. 10. ABUSE AND NEGLECT OF INDIAN CHILDREN.**

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

12 **SEC. 11. CIVIL COMMITMENT.**

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

15 (1) in the chapter analysis—

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

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

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

20 (2) in section 4241—

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

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

6 (C) in subsection (d)—

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

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

12 (D) in subsection (e)—

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

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

17 (3) in section 4247—

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

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

23 (C) in subsection (a)—

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

1 “(C) drug, alcohol, and sex offender treatment pro-
2 grams, and other treatment programs that will assist the
3 individual in overcoming a psychological or physical de-
4 pendence or any condition that makes the individual dan-
5 gerous to others; and”;

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

8 (iii) in paragraph (3), by striking the
9 period at the end and inserting “; and”;
10 and

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

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

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

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

23 (D) in subsection (b), by striking “4245 or
24 4246” and inserting “4245, 4246, or 4248”;
25 and

1 (E) in subsection (c)(4)—

2 (i) by redesignating subparagraphs
3 (D) and (E) as subparagraphs (E) and (F)
4 respectively; and

5 (ii) by inserting after subparagraph
6 (C) the following:

7 “(D) if the examination is ordered under
8 section 4248, whether the person is a sexually
9 dangerous person;”; and
10 (4) by inserting at the end the following:

11 **“§ 4248. Civil commitment of a sexually dangerous**
12 **person**

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

1 mitted pursuant to section 4241(d), to the clerk of the
2 court that ordered the commitment. The court shall order
3 a hearing to determine whether the person is a sexually
4 dangerous person. A certificate filed under this subsection
5 shall stay the release of the person pending completion of
6 procedures contained in this section.

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

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

15 “(d) DETERMINATION AND DISPOSITION.—If, after
16 the hearing, the court finds by clear and convincing evi-
17 dence that the person is a sexually dangerous person, the
18 court shall commit the person to the custody of the Attor-
19 ney General. The Attorney General shall release the per-
20 son to the appropriate official of the State in which the
21 person is domiciled or was tried if such State will assume
22 responsibility for his custody, care, and treatment. The
23 Attorney General shall make all reasonable efforts to
24 cause such a State to assume such responsibility. If, not-
25 withstanding such efforts, neither such State will assume

1 such responsibility, the Attorney General shall place the
2 person for treatment in a suitable facility, until—

3 “(1) such a State will assume such responsi-
4 bility; or

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

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

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

1 4247(d), to determine whether he should be released. If,
2 after the hearing, the court finds by a preponderance of
3 the evidence that the person's condition is such that—

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

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

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

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

23 The court at any time may, after a hearing employ-
24 ing the same criteria, modify or eliminate the regi-

1 men of medical, psychiatric, or psychological care or
2 treatment.

3 “(f) REVOCATION OF CONDITIONAL DISCHARGE.—

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

20 “(g) RELEASE TO STATE OF CERTAIN OTHER PER-

21 SONS.—If the director of the facility in which a person
22 is hospitalized or placed pursuant to this chapter certifies
23 to the Attorney General that a person, against him all
24 charges have been dismissed for reasons not related to the
25 mental condition of the person, is a sexually dangerous

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

10 **SEC. 12. MANDATORY PENALTIES FOR SEX-TRAFFICKING**
11 **OF CHILDREN.**

12 Section 1591(b) of title 18, United States Code, is
13 amended—

14 (1) in paragraph (1)—

15 (A) by striking “or imprisonment” and in-
16 serting “and imprisonment”;

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

19 (C) by striking “, or both”; and

20 (2) in paragraph (2)—

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

24 (B) by striking “, or both”.

1 **SEC. 13. SEXUAL ABUSE OF WARDS.**

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

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

6 (2) in section 2244(a)(4), by striking “six
7 months” and inserting “two years”;

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

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

○