

the threat of violence against women, and demonstrates that again today.

I also want to thank Representative JOHN CONYERS, the ranking member of the House Judiciary Committee, who brought this matter to my attention, and has led the effort in the House for passage of this legislation.

This correction to the law is necessitated by the fact that at least one court has held that under the Federal carjacking statute, rape would not constitute a "serious bodily injury." Few crimes are as brutal, vicious, and harmful to the victim than rape by an armed thug. Yet, under this interpretation, the sentencing enhancement for such injury may not be applied to a carjacker who brutally rapes his victim.

In my view, Congress should act now to clarify the law in this regard. The bill I introduced this year, S. 2006, would do this, by specifically including rape as serious bodily injury under the statute.

I urge my colleagues to support this bill, and anticipate its swift passage.

The bill (S. 2006) was ordered to be engrossed for a third reading, was read the third time, and passed; as follows:

S. 2006

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Carjacking Correction Act of 1996".

SEC. 2. CLARIFICATION OF INTENT OF CONGRESS WITH RESPECT TO THE FEDERAL CARJACKING PROHIBITION.

Section 2119(2) of title 18, United States Code, is amended by inserting "including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title" after "(as defined in section 1365 of this title)".

CARJACKING CORRECTION ACT OF 1996

A bill (S. 2007) to clarify the intent of Congress with respect to the Federal carjacking prohibition, was considered.

Mr. BIDEN. Mr. President, I am very pleased that this bill will soon become law. I commend my cosponsor, Senator HATCH. And I also commend Representative CONYERS, who championed this bill over in the House, and with whom I was proud to work on it.

A few months ago, the first circuit court of appeals made a mistake. It made, in my view, a very big mistake: It said that the term "serious bodily injury" in one of our federal statutes does not include rape.

Let me tell you about the case. One night near midnight, a woman went to her car after work. While she was getting something out of the back seat, a man with a knife came up from behind and forced her back into the car. He drove her to a remote beach, ordered her to take off her clothes, and made her squat down on her hands-and-knees.

Then he raped her. After the rape, he drove off in her car, leaving her alone on the side of the road.

This man was convicted under the federal carjacking statute. That statute provides an enhanced sentence of up to 25 years if the defendant inflicts serious bodily injury in the course of a carjacking.

When it got time to sentence the defendant, the prosecutor asked the court to enhance the sentence because of the rape. Mind you, there was no dispute that the defendant had, in fact, raped the victim.

The trial judge agreed with the prosecutor, and gave the defendant the statutory 25 years maximum, finding that the rape constituted serious bodily injury.

But when the case went up to the first circuit, that court said "no"—rape is not serious bodily injury. To support its ruling, and I'm now quoting the opinion, the court said that "there was no evidence of any cuts or bruises in her vaginal area."

That, in my view, is absolutely outrageous—and Senator HATCH and I proposed this bill to set matters straight.

Under the code, "seriously bodily injury" has several definitions. It includes: a substantial risk of death; protracted and obvious disfigurement; protracted loss or impairment of a bodily part or mental faculty; and it also includes extreme physical pain.

It takes no great leap of logic to see that a rape involves extreme physical pain. And I would go so far as to say that only a panel of male judges could fail to make that leap and even think—let alone rule—that rape does not involve extreme pain.

Rape is one of the most brutal and serious crimes any woman can experience. It is a violation of the first order, but it has all too often been treated like a second-class crime. According to a report I issued a few years ago, a robber is 30 percent more likely to be convicted than a rapist; a rape prosecution is more than twice as likely as a murder prosecution to be dismissed; a convicted rapist is 50 percent more likely to receive probation than a convicted robber.

No crime carries a perfect record of arrest, prosecution, and incarceration—but the record for rape is especially wanting.

And this first circuit decision helps explain why: too often, our criminal justice system just doesn't get it.

If the first circuit decision were allowed to stand, it would mean that a criminal would spend more time behind bars for breaking a man's arm than for raping a woman.

For 5 long years, I worked to pass a piece of legislation that I have cared about like no other: The Violence Against Women Act. The act does a great many practical things:

It funds more police and prosecutors specially trained and devoted to combating rape and family violence.

It trains police, prosecutors, and judges in the ways of rape and family violence—so they can better understand and respond to the problem;

It provides shelters for more than 60,000 battered women and their children;

It provides extra lighting and emergency phones in subways, bus stops and parks;

It provides for more rape crises centers;

It set up a national hotline that battered women can call around the clock—to get advice and counseling when they are in the throes of a crisis;

And we're getting rape education efforts going with our young people—so we can break the cycle of violence before it gets started.

But the Violence Against Women Act also meant to do something else, beyond these concrete measures: it also sent a clarion call across our land that crimes against women will no longer be treated as second class crimes.

For too long, the victims of these crimes have been seen not as innocent targets of brutality, but as participants who somehow bear shame or even some responsibility for the violence.

This is especially true when it comes to victims who know their assailants. For too long, we have been quick to call theirs a private misfortune rather than a public disgrace. We have viewed the crime as less than criminal, the abuser less than culpable, and the victim less than worthy of justice.

We must remain ever vigilant in our efforts to make our streets and our neighborhoods and our homes safe for women.

And we need to make sure—right now—that no judge ever misreads the carjacking statute again. With this bill, we are telling them that we intend, that we always intended, for those words "serious bodily injury" to mean rape—no if's, and's or but's.

I thank my colleagues for their support.

The bill (S. 2007) was ordered to be engrossed for a third reading, was read the third time, and passed; as follows:

S. 2007

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Carjacking Correction Act of 1996".

SEC. 2. CLARIFICATION OF INTENT OF CONGRESS WITH RESPECT TO THE FEDERAL CARJACKING PROHIBITION.

Section 2119(2) of title 18, United States Code, is amended by inserting "including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title" after "(as defined in section 1365 of this title)".

NATIONAL TRANSPORTATION SAFETY BOARD AMENDMENTS OF 1996

The text of the bill (H.R. 3159) to amend title 49, United States Code, to authorize appropriations for fiscal years 1997, 1998, and 1999 for the National Transportation Safety Board, and for other purposes, as passed by the

Senate on September 18, 1996, is as follows:

H.R. 3159

Resolved, That the bill from the House of Representatives (H.R. 3159) entitled "An Act to amend title 49, United States Code, to authorize appropriations for fiscal years 1997, 1998, and 1999 for the National Transportation Safety Board, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

TITLE I—NTSB AMENDMENTS

SEC. 101. SHORT TITLE.

This title may be cited as the "National Transportation Safety Board Amendments of 1996".

SEC. 102. FOREIGN INVESTIGATIONS.

Section 1114 of title 49, United States Code, is amended—

(1) by striking "(b) and (c)" in subsection (a) and inserting "(b), (c), and (e)"; and

(2) by adding at the end the following:

"(e) FOREIGN INVESTIGATIONS.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, shall disclose records or information relating to its participation in foreign aircraft accident investigations; except that—

"(A) the Board shall release records pertaining to such an investigation when the country conducting the investigation issues its final report or 2 years following the date of the accident, whichever occurs first; and

"(B) the Board may disclose records and information when authorized to do so by the country conducting the investigation.

"(2) SAFETY RECOMMENDATIONS.—Nothing in this subsection shall restrict the Board at any time from referring to foreign accident investigation information in making safety recommendations."

SEC. 103. PROTECTION OF VOLUNTARY SUBMISSION OF INFORMATION.

Section 1114(b) of title 49, United States Code, is amended by adding at the end the following:

"(3) PROTECTION OF VOLUNTARY SUBMISSION OF INFORMATION.—Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, shall disclose voluntarily provided safety-related information if that information is not related to the exercise of the Board's accident or incident investigation authority under this chapter and if the Board finds that the disclosure of the information would inhibit the voluntary provision of that type of information."

SEC. 104. TRAINING.

Section 1115 of title 49, United States Code, is amended by adding at the end the following:

"(d) TRAINING OF BOARD EMPLOYEES AND OTHERS.—The Board may conduct training of its employees in those subjects necessary for the proper performance of accident investigation. The Board may also authorize attendance at courses given under this subsection by other government personnel, personnel of foreign governments, and personnel from industry or otherwise who have a requirement for accident investigation training. The Board may require non-Board personnel to reimburse some or all of the training costs, and amounts so reimbursed shall be credited to the appropriation of the 'National Transportation Safety Board, Salaries and Expenses' as offsetting collections."

SEC. 105. AUTHORIZATION OF APPROPRIATIONS.

Section 1118(a) of title 49, United States Code, is amended—

(1) by striking "and"; and

(2) by inserting before the period at the end of the first sentence the following: ", \$42,400,00 for fiscal year 1997, \$44,400,000 for fiscal year 1998, and \$46,600,000 for fiscal year 1999."

TITLE II—INTERMODAL TRANSPORTATION

SEC. 201. SHORT TITLE.

This title may be cited as the "Intermodal Safe Container Transportation Amendments Act of 1996".

SEC. 202. AMENDMENT OF TITLE 49, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49 of the United States Code.

SEC. 203. DEFINITIONS.

Section 5901 (relating to definitions) is amended—

(1) by striking paragraph (1) and inserting the following:

"(1) except as otherwise provided in this chapter, the definitions in sections 10102 and 13102 of this title apply.";

(2) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(3) by inserting after paragraph (5) the following:

"(6) 'gross cargo weight' means the weight of the cargo, packaging materials (including ice), pallets, and dunnage."

SEC. 204. NOTIFICATION AND CERTIFICATION.

(a) PRIOR NOTIFICATION.—Subsection (a) of section 5902 (relating to prior notification) is amended—

(1) by striking "Before a person tenders to a first carrier for intermodal transportation a" and inserting "If the first carrier to which any";

(2) by striking "10,000 pounds (including packing material and pallets), the person shall give the carrier a written" and inserting "29,000 pounds is tendered for intermodal transportation is a motor carrier, the person tendering the container or trailer shall give the motor carrier a";

(3) by striking "trailer." and inserting "trailer before the tendering of the container or trailer."

(4) by striking "electronically." and inserting "electronically or by telephone."; and

(5) by adding at the end thereof the following: "This subsection applies to any person within the United States who tenders a container or trailer subject to this chapter for intermodal transportation if the first carrier is a motor carrier."

(b) CERTIFICATION.—Subsection (b) of section 5902 (relating to certification) is amended to read as follows:

"(b) CERTIFICATION.—

"(1) IN GENERAL.—A person who tenders a loaded container or trailer with an actual gross cargo weight of more than 29,000 pounds to a first carrier for intermodal transportation shall provide a certification of the contents of the container or trailer in writing, or electronically, before or when the container or trailer is so tendered.

"(2) CONTENTS OF CERTIFICATION.—The certification required by paragraph (1) shall include—

"(A) the actual gross cargo weight;

"(B) a reasonable description of the contents of the container or trailer;

"(C) the identity of the certifying party;

"(D) the container or trailer number; and

"(E) the date of certification or transfer of data to another document, as provided for in paragraph (3).

"(3) TRANSFER OF CERTIFICATION DATA.—A carrier who receives a certification may transfer the information contained in the certification to another document or to electric format for forwarding to a subsequent carrier. The person transferring the information shall state on the forwarded document the date on which the data was transferred and the identity of the party who performed the transfer.

"(4) SHIPPING DOCUMENTS.—For purposes of this chapter, a shipping document, prepared by the person who tenders a container or trailer to a first carrier, that contains the information required by paragraph (2) meets the requirements of paragraph (1).

"(5) USE OF 'FREIGHT ALL KINDS' TERM.—The term 'Freight All Kinds' or 'FAK' may not be used for the purpose of certification under section 5902(b) after December 31, 2000, as a commodity description for a trailer or container if the weight of any commodity in the trailer or container equals or exceeds 20 percent of the total weight of the contents of the trailer or container. This subsection does not prohibit the use of the term after that date for rating purposes.

"(6) SEPARATE DOCUMENT MARKING.—If a separate document is used to meet the requirements of paragraph (1), it shall be conspicuously marked 'INTERMODAL CERTIFICATION'.

"(7) APPLICABILITY.—This subsection applies to any person, domestic or foreign, who first tenders a container or trailer subject to this chapter for intermodal transportation within the United States."

(c) FORWARDING CERTIFICATIONS.—Subsection (c) of section 5902 (relating to forwarding certifications to subsequent carriers) is amended—

(1) by striking "transportation." and inserting "transportation before or when the loaded intermodal container or trailer is tendered to the subsequent carrier. If no certification is received by the subsequent carrier before or when the container or trailer is tendered to it, the subsequent carrier may presume that no certification is required."; and

(2) by adding at the end thereof the following: "If a person inaccurately transfers the information on the certification, or fails to forward the certification to a subsequent carrier, then that person is liable to any person who incurs any bond, fine, penalty, cost (including storage), or interest for any such fine, penalty, cost (including storage), or interest incurred as a result of the inaccurate transfer of information or failure to forward the certification. A subsequent carrier who incurs a bond, fine, penalty, or cost (including storage), or interest as a result of the inaccurate transfer of the information, or the failure to forward the certification, shall have a lien against the contents of the container or trailer under section 5905 in the amount of the bond, fine, penalty, or cost (including storage), or interest and all court costs and legal fees incurred by the carrier as a result of such inaccurate transfer or failure."

(d) LIABILITY.—Section 5902 is amended by redesignating subsection (d) as subsection (e), and by inserting after subsection (c) the following:

"(d) LIABILITY TO OWNER OR BENEFICIAL OWNER.—If—

"(1) a person inaccurately transfers information on a certification required by subsection (b)(1), or fails to forward a certification to the subsequent carrier;

"(2) as a result of the inaccurate transfer of such information or a failure to forward a certification, the subsequent carrier incurs a bond, fine, penalty, or cost (including storage), or interest; and

"(3) that subsequent carrier exercises its rights to a lien under section 5905,

then that person is liable to the owner or beneficial owner, or to any other person paying the amount of the lien to the subsequent carrier, for the amount of the lien and all costs related to the imposition of the lien, including court costs and legal fees incurred in connection with it."

(e) NONAPPLICATION.—Subsection (e) of section 5902, as redesignated, is amended—

(1) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively; and

(2) by inserting before paragraph (2), as redesignated, the following:

"(1) The notification and certification requirements of subsections (a) and (b) of this section do not apply to any intermodal container or

trailer containing consolidated shipments loaded by a motor carrier if that motor carrier—

“(A) performs the highway portion of the intermodal movement; or

“(B) assumes the responsibility for any weight-related fine or penalty incurred by any other motor carrier that performs a part of the highway transportation.”.

SEC. 205. PROHIBITIONS.

Section 5903 (relating to prohibitions) is amended—

(1) by inserting after “person” a comma and the following: “To whom section 5902(b) applies.”;

(2) by striking subsection (b) and inserting the following:

“(b) TRANSPORTING PRIOR TO RECEIVING CERTIFICATION.—

“(1) PRESUMPTION.—If no certification is received by a motor carrier before or when a loaded intermodal container or trailer is tendered to it, the motor carrier may presume that the gross cargo weight of the container or trailer is less than 29,001 pounds.

“(2) COPY OF CERTIFICATION NOT REQUIRED TO ACCOMPANY CONTAINER OR TRAILER.—Notwithstanding any other provision of this chapter to the contrary, a copy of the certification required by section 5902(b) is not required to accompany the intermodal container or trailer.”;

(3) by striking “10,000 pounds (including packing materials and pallets)” in subsection (c)(1) and inserting “29,000 pounds”; and

(4) by adding at the end the following:

“(d) NOTICE TO LEASED OPERATORS.—

“(1) IN GENERAL.—If a motor carrier knows that the gross cargo weight of an intermodal container or trailer subject to the certification requirements of section 5902(b) would result in a violation of applicable State gross vehicle weight laws, then—

“(A) the motor carrier shall give notice to the operator of a vehicle which is leased by the vehicle operator to a motor carrier that transports an intermodal container or trailer of the gross cargo weight of the container or trailer as certified to the motor carrier under section 5902(b);

“(B) the notice shall be provided to the operator prior to the operator being tendered the container or trailer;

“(C) the notice required by this subsection shall be in writing, but may be transmitted electronically; and

“(D) the motor carrier shall bear the burden of proof to establish that it tendered the required notice to the operator.

“(2) REIMBURSEMENT.—If the operator of a leased vehicle transporting a container or trailer subject to this chapter is fined because of a violation of a State's gross vehicle weight laws or regulations and the lessee motor carrier cannot establish that it tendered to the operator the notice required by paragraph (1) of this subsection, then the operator shall be entitled to reimbursement from the motor carrier in the amount of any fine and court costs resulting from the failure of the motor carrier to tender the notice to the operator.”.

SEC. 206. LIENS.

Section 5905 (relating to liens) is amended—

(1) by striking subsection (a) and inserting the following:

“(a) GENERAL.—If a person involved in the intermodal transportation of a loaded container or trailer for which a certification is required by section 5902(b) of this title is required, because of a violation of a State's gross vehicle weight laws or regulations, to post a bond or pay a fine, penalty, cost (including storage), or interest resulting from—

“(1) erroneous information provided by the certifying party in the certification to the first carrier in violation of section 5903(a) of this title;

“(2) the failure of the party required to provide the certification to the first carrier to provide it;

“(3) the failure of a person required under section 5902(c) to forward the certification to forward it; or

“(4) an error occurring in the transfer of information on the certification to another document under section 5902(b)(3) or (c), then the person posting the bond, or paying the fine, penalty, costs (including storage), or interest has a lien against the contents equal to the amount of the bond, fine, penalty, cost (including storage), or interest incurred, until the person receives a payment of that amount from the owner or beneficial owner of the contents, or from the person responsible for making or forwarding the certification, or transferring the information from the certification to another document.”;

(2) by inserting a comma and “or the owner or beneficial owner of the contents,” after “first carrier” in subsection 9(b)(1); and

(3) by striking “cost, or interest.” in subsection (b)(1) and inserting “cost (including storage), or interest. The lien shall remain in effect until the lien holder has received payment for all costs and expenses described in subsection (a) of this section.”.

SEC. 207. PERISHABLE AGRICULTURAL COMMODITIES.

Section 5906 (relating to perishable agricultural commodities) is amended by striking “Sections 5904(a)(2) and 5905 of this title do” and inserting “Section 5905 of this title does”.

SEC. 208. EFFECTIVE DATE.

(a) IN GENERAL.—Section 5907 (relating to regulations and effective date) is amended to read as follows:

“§5907. Effective date

“This chapter shall take effect 180 days after the date of enactment of the Intermodal Safe Container Transportation Amendments Act of 1996.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 59 is amended by striking the item relating to section 5907 and inserting the following:

“5907. Effective date”.

SEC. 209. RELATIONSHIP TO OTHER LAWS.

(a) IN GENERAL.—Chapter 59 is amended by adding at the end thereof the following:

“§5908. Relationship to other laws

“Nothing in this chapter affects—

“(1) chapter 51 (relating to transportation of hazardous material) or the regulations promulgated under that chapter; or

“(2) any State highway weight or size law or regulation applicable to tractor-trailer combinations.”.

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is amended by adding at the end thereof the following:

“5908. Relationship to other laws”.

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT CONCERNING THE NATIONAL EMERGENCY WITH RESPECT TO ANGOLA—MESSAGE FROM THE PRESIDENT—PM 170

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

I hereby report to the Congress on the developments since March 25, 1996, concerning the national emergency with respect to Angola that was declared in Executive Order 12865 of September 26, 1993. This report is submitted pursuant to section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c).

On September 26, 1993, I declared a national emergency with respect to Angola, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and the United Nations Participation Act of 1945 (22 U.S.C. 287c). Consistent with United Nations Security Council Resolution 864, dated September 15, 1993, the order prohibited the sale or supply by United States persons or from the United States, or using U.S.-registered vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles, equipment and spare parts, and petroleum and petroleum products to the territory of Angola other than through designated points of entry. The order also prohibited such sale or supply to the National Union for the Total Independence of Angola (“UNITA”). United States persons are prohibited from activities that promote or are calculated to promote such sales or supplies, or from attempted violations, or from evasion or avoidance or transactions that have the purpose of evasion or avoidance, of the stated prohibitions. The order authorized the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as might be necessary to carry out the purposes of the order.

1. On December 10, 1993, the Department of the Treasury's Office of Foreign Assets Control (OFAC) issued the UNITA (Angola) Sanctions Regulations (the “Regulations”) (58 *Fed. Reg.* 64904) to implement the President's declaration of a national emergency and imposition of sanctions against Angola (UNITA). There have been no amendments to the Regulations since my report of March 25, 1996.

The Regulations prohibit the sale or supply by United States persons or from the United States, or using U.S.-registered vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles, equipment and spare