



News Release

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United States Senate • Senator Orrin Hatch, Chairman

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Contact: Margarita Tapia, 202/224-

Hatch Urges Passage of Child Protection Conference Report

*Includes AMBER Alert, PROTECT Act, and Measures to
Hunt and Punish Those Who Commit Crimes Against
Children*

Washington – Sen. Orrin G. Hatch (R-Utah), Chairman of the Senate Judiciary Committee, today issued the following statement before the United States Senate in support of the Conference Report to S. 151, “Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003.”

Mr. President. I rise in support of the Conference Report to S.151, Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003,” which truly represents landmark bi-partisan legislation to protect our children. On Tuesday of this week, the House and Senate Conferees met and reached agreement on this important piece of bi-partisan legislation. Earlier this morning, the House of Representatives overwhelmingly passed the legislation by an overwhelming vote of 400– 25.

I was hoping that I could come to the floor to make a statement commending the Senate for working together, like we have on so many other occasions on many important issues, like this important piece of legislation which is needed to protect our children. Unfortunately, this is not a proud day for the Senate; it is a sad day. The spirit of bi-partisanship appears to be fading, as my Democratic colleagues seek to obstruct and delay rather than working together to solve our nation’s problems and pass this important piece of legislation. This spirit of obstructionism which the Senate has experienced all year has now reached a new low – Democrats are now willing to sacrifice the protection of our own children for momentary political advantages. I am deeply saddened by this turn of events and urge my colleagues on the other side of the aisle to rethink their strategy and approach to so many issues, but in particular when it comes to this issue of protecting our children. We need to cast aside partisan disputes and quickly pass this measure and send it to the President for his signature as soon as possible.

Let me take a moment here to commend the House of Representatives, and Judiciary Committee Chairman Sensenbrenner in particular for his tireless dedication to this legislation. Chairman Sensenbrenner has demonstrated his commitment time and time again to passing this measure quickly during this new session of Congress. Thanks to our House colleagues, we in the Senate now have an opportunity to pass not only an Amber Alert bill, but a truly comprehensive package of measures that will protect our children from vicious criminals, pornographers, sexual abusers, and kidnappers. These types of criminals who prey on our Nation’s youth are nothing less than the scum of earth, who deserve every ounce of punishment which we as a Nation can fairly and justly mete out.

The problem of child abuse and child exploitation is simply mind-boggling.

The recent wave of child abductions across our nation, including the kidnapping of Elizabeth Smart in my own home state of Utah, has highlighted the need for legislation to enhance our ability to protect our nation’s children against predators of all types. I have here a letter addressed to the Senate and the House of Representatives signed by Ed and Lois Smart, Elizabeth’s mother and father, as well as Elizabeth Smart, dated April 9, 2003. I would ask unanimous consent that a copy of the letter be included in the record.

Let me take a moment to address some of the significant components of this measure. First, the PROTECT Act of 2003, which I and Senator Leahy introduced following the Supreme Court's decision in *Ashcroft v. Free Speech Coalition*, has been my top legislative priority since last year. Congress has long recognized that child pornography produces three distinct, disturbing and lasting harms to our children. First, child pornography whets the appetites of pedophiles and prompts them to act out their perverse sexual fantasies on real children. Second, child pornography is a tool used by pedophiles to break down the inhibitions of children. Third, child pornography creates an immeasurable and indelible harm on the children who are abused to manufacture it.

It goes without saying that we have a compelling interest in protecting our children from harm. The PROTECT Act strikes a necessary balance between this goal and the First Amendment. The PROTECT Act has been carefully drafted to avoid constitutional concerns. The end result of all of our hard work is a bill that we can all be proud of: One that is tough on pedophiles and child pornographers in a measured and constitutional way.

The legislation also addresses Amber Alert, America's Missing: Broadcast Emergency Response. The bill will extend the AMBER Alert system across our nation. Our entire nation recently rejoiced with the Smart family after Elizabeth was found alive and reunited with her loved ones. Her discovery, facilitated by everyday citizens who had followed this case, demonstrates the importance of getting information about these disappearances out to the public quickly.

When a child is abducted, time is of the essence. All too often it is only a matter of hours before a kidnapper commits an act of violence against the child. Alert systems, such as the AMBER Alert system, galvanize entire communities to assist law enforcement in the timely search for and safe return of child victims.

This legislation will enhance our ability to recover abducted children by establishing a Coordinator within the Department of Justice to assist States in developing and coordinating alert plans nationwide. The Act also provides for a matching grant program through the Department of Justice and the Department of Transportation for highway signs, education and training programs, and the equipment necessary to facilitate AMBER Alert systems. I support the National AMBER Alert Network Act because it will improve our ability on a national level to combat crimes against children.

Also, I want to take a moment to highlight another very important measure. The legislation includes the Code Adam Act, which would require federal buildings to establish procedures for locating a child that is missing in the building. The provision is named after the son of John Walsh, the host of America's Most Wanted and the John Walsh Show. As everyone knows, John Walsh's son, Adam, was kidnapped from a mall in Florida and murdered in 1981. Retail stores around the country, including Wal-Mart, have initiated Code Adam systems in the memory of Adam and they have successfully recovered many missing children. This would implement the same system for building alerts in all federal buildings. It is a measure which I am proud to support in memory of John Walsh's son, Adam, and in honor of John Walsh's commitment and vigilance to fighting for crime victims and our children across this country.

On Tuesday, John Walsh attended the meeting of the Conferees to discuss this legislation, and yesterday, John Walsh issued the following statement:

"This incredible bill may be one of the most important pieces of child protection legislation passed in the last 20 years. I commend Senator Hatch's leadership on the Senate Judiciary and Chairman Sensenbrenner's leadership on the House Judiciary. Pushing this truly bipartisan legislation through is very appropriate during 'National Crime Victims' Rights week. This bill, which is a loud voice for the smallest victims-children, has sent a loud message to those who would pray upon our most vulnerable segment of society."

I also want to highlight other important measures contained in the Conference Report, which will enhance existing laws, investigative tools, criminal penalties and child crime resources in a variety of ways.

In addition to the PROTECT Act, the Amber Alert Act, and the Code Adam Act, the legislation would: (1) provide a judge with the discretion to extend the term for supervision of released sex offenders up to a maximum of life; (2) extend the statute of limitations for child abductions and sex crimes to the life of the child victim; (3) deny pretrial release for child rapists or child abductors; (4) require a mandatory sentence of life imprisonment for twice-convicted serious

child sex offenders; (5) increase penalties for kidnapping of under 18 year old victims by a non-family members; (6) add new wiretap predicates that relate to sexual exploitation crimes against children; (7) increase penalties and provide prosecutors with enhanced tools to prosecute those who lure children to porn websites using misleading domain names; (8) reauthorize and double the annual grant to the National Center for Missing and Exploited Children to \$20 million each year through 2005; (9) authorize funding for a Sex Offender Apprehension Program to allow money to be used by local law enforcement to track sex offenders that violate terms of their release; (10) create a national Internet site for information regarding registered sex offenders; (11) establish a pilot program for national criminal history background checks and a feasibility study in order to provide a background check process for volunteers working for organizations, such as the Boys and Girls Clubs of America, National Mentoring Partnership, and the National Council of Youth Sports; and (12) reauthorize grant programs to provide funding of child advocacy centers in order to train law enforcement agencies, prosecutors, and local jurisdictions to help them establish comprehensive approaches to treat and support child victims of crime.

The bill also institutes sentencing reforms so that criminals convicted of crimes against children receive the stiff sentences they deserve. This provision, which was adopted at the Conference, represents a significant compromise from the original House bill containing the so-called Feeney Amendment, which passed the House by a vote of 357-58. Indeed, the overall House bill passed the House by an overwhelming vote of 410-14.

In response to concerns raised about the Feeney Amendment, I worked with Chairman Sensenbrenner, Senator Graham, and my colleagues to develop a bi-partisan compromise, which was ultimately supported by not only all of the Republican conferees but also by Democratic conferees: Senator Biden, as well as Congressmen Frost, Matheson and Hinojosa.

The compromise proposal would: (1) limit – but not prevent – downward departures **only** to enumerated factors for crimes against children and sex offenses; (2) change the standard for review of sentencing matters for appellate courts to a *de novo* review, while factual determinations would continue to be subject to a “clearly erroneous” standard; (3) require courts to give specific and written reasons for any departure from the guidelines; and (4) require judges to report sentencing decisions to the Sentencing Commission.

It is important to note that the compromise restricts downward departures in serious crimes against children and sex crimes and does not broadly apply to other crimes. But because the problem of downward departures is acute across the board, the compromise proposal would direct the Sentencing Commission to conduct a thorough study of these issues, develop concrete measures to prevent this abuse, and report these matters back to Congress.

For those who want to oppose these needed sentencing reforms, I want to remind them that the Sentencing Reform Act of 1984 was designed “to provide *certainty and fairness* in meeting the purposes of sentencing, *avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct.*” While the United States Sentencing Commission promulgated Sentencing Guidelines to meet this laudable goal, courts unfortunately have strayed further and further from this system of fair and consistent sentencing over the past decade.

During the period of 1991 to 2001, the number of downward departures, excluding those requested by the government for substantial assistance and immigration cases along the Southwest border, has steadily climbed. In 1991, the number of downward departures was 1,241, and rose by 2001 **to a staggering total of 4,098**. This chart shows that the rate of downward departures has increased over 100% during this period, and nearly 50% over the past five years alone.

This problem is perhaps most glaring in the area of sexual crimes and kidnapping crimes.

During the last five years, trial courts granted downward departures below the mandated sentence in 19.20 percent of sexual abuse cases; 21.36 percent of pornography and prostitution cases, and 12.80 percent of kidnapping and hostage taking cases. This many departures are simply astounding, considering the magnitude of the suffering by our Nation’s youth at the hands of pedophiles, molesters and pornographers.

Let me give you just one example of the abuse that this sentencing reform will correct. In one particular case, a defendant was charged with possession of 1300 separate images of child pornography, depicting young children in graphic and violent scenes of sexual exploitation that were sickening and horrible. For example, one of the images included a young girl wearing a dog

collar while engaging in sexual intercourse with an adult male. This same defendant was engaging in online sexual communications with a 15 year old girl.

The Sentencing Guidelines for this defendant mandated a sentence in the range of 33 to 41 months. Yet the trial judge departed downward to a sentence of only 8 MONTHS, citing: (1) the defendant's height – he was just short of 6 feet tall and that would make him vulnerable to abuse in prison; (2) the defendant was naïve; and (3) the defendant's demeanor – he was meek, mild and compassionate. Now, we all have common sense but this is simply incredible and outrageous. Congress has to act and act now. The compromise sentencing reform provisions contained in the Conference Report are a reasonable and measured response to this problem.

The compromise proposal would simply require judges to sentence these vicious defendants in accordance with the law, and not seek to find new areas or new legal justifications for reducing sentences for these defendants, without specific authorization from the United States Sentencing Commission. Contrary to the oft-repeated claims of its opponents, the compromise proposal is *not* a mandatory minimum. Judges handling these important criminal cases can still exercise discretion to depart downward – but only when the Sentencing Commission specifies the factors that warrant a downward departure.

The other major reform in the compromise adopted in the Conference Report is consistent with prevailing law: requiring *de novo* review of a trial judge's application of facts to law. Indeed, this is the same standard that applies to appellate review of critical motions to suppress physical or testimonial evidence. There is no reason for appellate judges to give deference to the trial judge on such questions of law. Even after the compromise amendment, the trial judge's factual determinations would still be subject to great deference under a "clearly erroneous" standard. If a discretionary downward departure is justifiable, it is difficult to understand why anyone would be opposed to the appellate courts reviewing them under the same standard that applies to other important areas of law.

Mr. President, I want to take a moment here to remind everyone to focus on the problem that we face – an epidemic of abuse of our children. According to the National Center for Missing and Exploited Children, 3.9 million of the nation's 22.3 million children between the ages of 12 and 17 have been seriously physically assaulted, and one in three girls and one in five boys are sexually abused before the age of 18. Considered in this context, we can have an honest debate about the issues, but we have an epidemic that needs to be addressed and addressed now.

We simply have no greater resource than our children. It has been said that the benevolence of a society can be judged on how well it treats its old people and how well it treats its young. Our children represent our Nation's future. I commend my colleagues for their tireless efforts on behalf of children and families, and urge my colleagues to pass this critical legislation. Quite frankly, our nation's children deserve no less.

I urge my Democratic colleagues to stop the partisan gamesmanship and support this needed legislation. Let's not let our children and communities down. Let's pass this legislation without delay and send it to our President for his signature.

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