

TWO STRIKES AND YOU'RE OUT CHILD PROTECTION ACT

MARCH 12, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2146]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2146) to amend title 18 of the United States Code to provide life imprisonment for repeat offenders who commit sex offenses against children, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Two Strikes and You’re Out Child Protection Act”.

SEC. 2. MANDATORY LIFE IMPRISONMENT FOR REPEAT SEX OFFENDERS AGAINST CHILDREN.

Section 3559 of title 18, United States Code, is amended by adding at the end the following new subsection:

“(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—

“(i) an offense under section 2241 (relating to aggravated sexual abuse), 2242 (relating to sexual abuse), 2243(a) (relating to sexual abuse of a minor), 2244(a)(1) or (2) (relating to abusive sexual contact), 2245 (relating to sexual abuse resulting in death), or 2251A (relating to selling or buying of children); or

“(ii) an offense under section 2423(a) (relating to transportation of minors) involving prostitution or sexual activity constituting a State sex offense;

“(B) the term ‘State sex offense’ means an offense under State law that 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).”.

SEC. 3. CONFORMING AMENDMENT.

Sections 2247 and 2426 of title 18, United States Code, are each amended by inserting “, unless section 3559(e) applies” before the final period.

PURPOSE AND SUMMARY

H.R. 2146, the “Two Strikes and You’re Out Child Protection Act,” would establish a mandatory sentence of life imprisonment for twice-convicted child sex offenders. H.R. 2146 amends 18 U.S.C. § 3559 of the Federal criminal code to provide for a mandatory minimum sentence of life imprisonment for any person convicted of a “Federal sex offense” if they had previously been convicted of a similar offense under either Federal or State law. The bill defines Federal sex offense to include offenses committed against a person under the age of 17 and involving the crimes of sexual abuse, aggravated sexual abuse, sexual abuse of a minor, abusive sexual contact, and the interstate transportation of minors for sexual purposes.

BACKGROUND AND NEED FOR THE LEGISLATION

According to the United States Department of Justice's Bureau of Justice Statistics, since 1980, the number of prisoners sentenced for violent sexual assault other than rape increased by an annual average of nearly 15 percent—faster than any other category of violent crime. Of the estimated 95,000 sex offenders in State prisons today, well over 60,000 most likely committed their crime against a child under 17.

Compounding this growing problem is the high rate of recidivism among sex offenders. A review of frequently cited studies of sex offender recidivism indicates that offenders who molest young girls repeat their crimes at rates up to 25 percent, and offenders who molest young boys, at rates up to 40 percent. Moreover, the recidivism rates do not appreciably decline as offenders age.

Another factor that makes these numbers disturbing is that many serious sex crimes are never even reported to authorities. National data and criminal justice experts indicate that sex offenders are apprehended for a fraction of the crimes they actually commit. By some estimates, only one in every three to five serious sex offenses are reported to authorities and only 3 percent of such crimes ever result in the apprehension of an offender.

Studies confirm that a single child molester can abuse hundreds of children. It goes without saying that any attack is devastatingly tragic for the victim and will leave a scar that will be carried throughout life. Victims experience severe mental and physical health problems as a result of these crimes. These problems include increased rates of depression and suicide, as well as reproductive problems. The effects of sexual abuse resonate from victim, to family, and continues to weave its way through the fabric of our communities.

Children have the right to grow up protected from sexual predators and free from abuse. H. R. 2146 will protect America's children by permanently removing the worst offenders from our society—those who repeatedly victimize children.

HEARINGS

The Committee's Subcommittee on Crime held a legislative hearing on H.R. 2146 on July 31, 2001. Testimony was received from four witnesses. The witnesses were: Marc Klaas, founder of Klaas Kids Foundation and advocate for victim's and children's rights; Mr. Robert Fusfeld, Probation and Parole Agent for the Wisconsin Department of Corrections Sex Offender Intensive Supervision Team; Ms. Polly Sweeney, mother of two victims of a sex offender; and Phyllis Turner Lawrence, J.D., a Victim Assistance and Restorative Justice Consultant.

COMMITTEE CONSIDERATION

On August 2, 2001, the Subcommittee on Crime met in open session and ordered favorably reported the bill H.R. 2146 with amendment, by a voice vote, a quorum being present. On February 27, 2002, the Committee held a markup on H.R. 2146 which was continued on March 6, 2002 when the Committee met in open session and ordered favorably reported the bill H.R. 2146 with amendment, by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

1. An amendment in the nature of a substitute was offered by Mr. Smith. The amendment removes references to 18 U.S.C. § 2243(b) (Sexual abuse of a ward) and 18 U.S.C. §§ 2244(a)(3) and (4) (Abusive sexual contact of a minor or ward) from the definition of “Federal sex offense.” The amendment also changes the definition of the term “minor” from “an individual who has not attained the age of 18 years” to “an individual who has not attained the age of 17 years.” The amendment in the nature of a substitute was agreed to by voice vote.

2. An amendment was offered by Mr. Scott to amend 18 U.S.C. § 3559(c)(6) so that no person subject to the criminal jurisdiction of an Indian tribal government would be subject to the provisions of H.R. 2146. The amendment was defeated by voice vote.

3. An amendment was offered by Mr. Scott to strike the reference to 18 U.S.C. § 2243(a) (Sexual abuse of a minor) from the definition of the term “Federal sex offense.” The amendment was defeated by voice vote.

4. Final Passage. The motion to report favorably the bill, H.R. 2146, as amended by the amendment in the nature of a substitute, was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports 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.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 2146 does not authorize funding. Therefore, clause 3(c) of rule XIII of the Rules of the House of Representatives is inapplicable.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII 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. 2146, 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, March 12, 2002.

Hon. F. JAMES SENSENBRENNER, Jr., *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. 2146, the Two Strikes and You're Out Child Protection Act.

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,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 2146—Two Strikes and You're Out Child Protection Act

CBO estimates that enacting H.R. 2146 would result in additional costs to the Federal Government to accommodate prisoners for longer periods of time. CBO estimates that the cost to support these additional prisoners would be about \$3 million over the 2003-2007 period, subject to the availability of appropriations. Enacting H.R. 2146 could affect direct spending and receipts, so pay-as-you-go procedures would apply to the bill; however, CBO estimates that the amounts involved would be less than \$500,000 annually. H.R. 2146 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

H.R. 2146 would provide for mandatory life imprisonment for most Federal sex offenders whose victims are minors, if such offenders previously have been convicted of Federal or State sex crimes involving a minor. Under current law, such offenders typically serve prison sentences of about 3 years. According to the U.S. Sentencing Commission, the longer sentences required by H.R. 2146 would apply to no more than 50 cases in most years. At an annual cost per prisoner of about \$8,000 (in 2002 dollars), CBO estimates that the cost to support additional prisoners would be less than \$500,000 a year for the next few years, but would total about \$3 million over the 2003-2007 period, subject to the availability of appropriated funds.

Increasing prison sentences for offenders also would increase the maximum amount of fines that could be levied in some cases. Thus, enacting H.R. 2146 could increase governmental receipts through greater collections of criminal fines. However, CBO does not expect any such increase to exceed \$500,000 a year. Criminal fines are recorded as receipts and deposited in the Crime Victims Fund, and later spent without further appropriation action.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226-2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

SECTION 1. SHORT TITLE

The short title of the bill is the “Two Strikes and You’re Out Child Protection Act.”

SECTION 2. MANDATORY LIFE IMPRISONMENT FOR REPEAT SEX OFFENDERS AGAINST CHILDREN

Section 2 of the bill amends 18 U.S.C. § 3559 to require a mandatory life sentence for a person who is convicted of a Federal sex offense in which a minor is the victim and the person has a prior sex conviction in which a minor was also the victim, unless a sentence of death is imposed.

Defines “Federal sex offense” as an offense under section 2241 (relating to aggravated sexual abuse), section 2242 (relating to sexual abuse), section 2243(a) (relating to sexual abuse of a minor), section 2244(a)(1) or (2) (relating to abusive sexual contact), section 2245 (relating to sexual abuse resulting in death), section 2251A (relating to selling or buying of children), or an offense under section 2423(a) (relating to transportation of minors and involving prostitution or sexual activity).

Defines “State sex offense” as an offense under State law that consists of conduct that would have been a Federal sex offense if it involved interstate or foreign commerce, the use of mail, or if the offense occurred in any commonwealth, territory, or possession of the U.S., within the special maritime and territorial jurisdiction of the U.S., in a Federal prison, on any land or building owned by, leased to, or otherwise used by or under the control of the Federal Government, or in the Indian country as defined in section 1151.

Defines “prior sex conviction” as a conviction for which the sentence was imposed before the conduct occurred constituting the subsequent Federal sex offense and was for a Federal sex offense or a State sex offense.

Defines “minor” as an individual who has not attained the age of 17 years.

SECTION 3. TITLE 18 CONFORMING AND TECHNICAL AMENDMENTS

Makes the necessary conforming and technical amendments to title 18.

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, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 109A—SEXUAL ABUSE

* * * * *

§ 2247. Repeat offenders

(a) * * *

(b) PRIOR SEX OFFENSE CONVICTION DEFINED.—In this section, the term “prior sex offense conviction” has the meaning given that term in section 2426(b), unless section 3559(e) applies.

* * * * *

CHAPTER 117—TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY AND RELATED CRIMES

* * * * *

§ 2426. Repeat offenders

(a) * * *

(b) DEFINITIONS.—In this section—

(1) * * *

(2) the term “State” means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States, unless section 3559(e) applies.

* * * * *

PART II—CRIMINAL PROCEDURE

* * * * *

CHAPTER 227—SENTENCES

SUBCHAPTER A—GENERAL PROVISIONS

* * * * *

§ 3559. Sentencing classification of offenses

(a) * * *

* * * * *

(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—

(i) an offense under section 2241 (relating to aggravated sexual abuse), 2242 (relating to sexual abuse), 2243(a) (relating to sexual abuse of a minor), 2244(a)(1) or (2) (relating to abusive sexual contact), 2245 (relating to sexual abuse resulting in death), or 2251A (relating to selling or buying of children); or

(ii) an offense under section 2423(a) (relating to transportation of minors) involving prostitution or sexual activity constituting a State sex offense;

(B) the term “State sex offense” means an offense under State law that 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).

* * * * *

MARKUP TRANSCRIPT
BUSINESS MEETING
WEDNESDAY, FEBRUARY 27, 2002

HOUSE OF REPRESENTATIVES,
 COMMITTEE ON THE JUDICIARY,
 Washington, DC.

The Committee met, pursuant to notice, at 10:44 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order.

[Intervening business.]

The next item on the agenda is H.R. 2146, the Two Strikes and You're Out Child Protection Act.

The Chair recognizes the gentleman from Texas, Mr. Smith, the Chairman of the Subcommittee on Crime.

Mr. SMITH. Mr. Chairman, the Subcommittee on Crime reports favorably the bill H.R. 2146 with a single amendment in the nature of a substitute and moves its favorable recommendation to the full House.

[The bill, H.R. 2146, follows:]

107TH CONGRESS
1ST SESSION

H. R. 2146

To amend title 18 of the United States Code to provide life imprisonment for repeat offenders who commit sex offenses against children.

IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 2001

Mr. GREEN of Wisconsin (for himself, Mr. SHIMKUS, Mr. SHOWS, Mr. FROST, Mr. DUNCAN, Mr. LIPINSKI, Mr. CRAMER, Mr. SMITH of New Jersey, Mr. TERRY, Mr. CALVERT, Ms. HART, Mr. OXLEY, Mr. HAYWORTH, Mr. SESSIONS, Mr. NETHERCUTT, Mr. GILCREST, Mrs. KELLY, Mr. PITTS, Mr. NEY, Mr. GARY G. MILLER of California, Mr. PETRI, Mr. ENGLISH, Mr. JONES of North Carolina, Mr. ROYCE, Mr. WATKINS of Oklahoma, and Mr. SWEENEY) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18 of the United States Code to provide life imprisonment for repeat offenders who commit sex offenses against children.

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 Act may be cited as the “Two Strikes and
5 You’re Out Child Protection Act”.

1 **SEC. 2. MANDATORY LIFE IMPRISONMENT FOR REPEAT**
2 **SEX OFFENDERS AGAINST CHILDREN.**

3 Section 3559 of title 18, United States Code, is
4 amended by adding at the end the following new sub-
5 section:

6 “(c) MANDATORY LIFE IMPRISONMENT FOR RE-
7 PEATED SEX OFFENSES AGAINST CHILDREN.—

8 “(1) IN GENERAL.—A person who is convicted
9 of a Federal sex offense in which a minor is the vic-
10 tim shall be sentenced to life imprisonment if the
11 person has a prior sex conviction in which a minor
12 was the victim, unless the sentence of death is im-
13 posed.

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

16 “(A) the term ‘Federal sex offense’
17 means—

18 “(i) an offense under section 2241
19 (relating to aggravated sexual abuse),
20 2242 (relating to sexual abuse), 2243 (re-
21 lating to sexual abuse of a minor or ward),
22 2244 (relating to abusive sexual contact),
23 2245 (relating to sexual abuse resulting in
24 death), or 2251A (relating to selling or
25 buying of children); or

1 by or under the control of the Govern-
2 ment of the United States, or in the
3 Indian country as defined in section
4 1151;

5 “(C) the term ‘minor’ means an individual
6 who has not attained the age of 18 years; and

7 “(D) the term ‘State’ means a State of the
8 United States, the District of Columbia, and
9 any commonwealth, territory, or possession of
10 the United States.”.

11 **SEC. 3. TITLE 18 CONFORMING AND TECHNICAL AMEND-**
12 **MENTS.**

13 (a) SECTION 2247.—Section 2247 of title 18, United
14 States Code, is amended by inserting “, unless section
15 3559(e) applies” before the final period.

16 (b) SECTION 2426.—Section 2426 of title 18, United
17 States Code, is amended by inserting “, unless section
18 3559(e) applies” before the final period.

19 (c) TECHNICAL AMENDMENTS.—Sections 2252(c)(1)
20 and 2252A(d)(1) of title 18, United States Code, are each
21 amended by striking “less than three” and inserting
22 “fewer than 3”.

○

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point. The Subcommittee amendment in the nature of a substitute, which the

members have before them, will be considered as read as considered as the original text for purposes of amendment.
[The amendment follows:]

**SUBCOMMITTEE AMENDMENT IN THE NATURE OF
A SUBSTITUTE TO H.R. 2146**

S6301

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Two Strikes and
3 You’re Out Child Protection Act”.

4 **SEC. 2. MANDATORY LIFE IMPRISONMENT FOR REPEAT
5 SEX OFFENDERS AGAINST CHILDREN.**

6 Section 3559 of title 18, United States Code, is
7 amended by adding at the end the following new sub-
8 section:

9 “(e) MANDATORY LIFE IMPRISONMENT FOR RE-
10 PEATED SEX OFFENSES AGAINST CHILDREN.—

11 “(1) IN GENERAL.—A person who is convicted
12 of a Federal sex offense in which a minor is the vic-
13 tim shall be sentenced to life imprisonment if the
14 person has a prior sex conviction in which a minor
15 was the victim, unless the sentence of death is im-
16 posed.

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

1 “(A) the term ‘Federal sex offense’
2 means—

3 “(i) an offense under section 2241
4 (relating to aggravated sexual abuse),
5 2242 (relating to sexual abuse), 2243(a)
6 (relating to sexual abuse of a minor),
7 2244(a)(1) or (2) (relating to abusive sex-
8 ual contact), 2245 (relating to sexual
9 abuse resulting in death), or 2251A (relat-
10 ing to selling or buying of children); or

11 “(ii) an offense under section 2423(a)
12 (relating to transportation of minors) in-
13 volving prostitution or sexual activity con-
14 stituting a State sex offense;

15 “(B) the term ‘State sex offense’ means an
16 offense under State law that consists of conduct
17 that would be a Federal sex offense if, to the
18 extent or in the manner specified in the applica-
19 ble provision of this title—

20 “(i) the offense involved interstate or
21 foreign commerce, or the use of the mails;
22 or

23 “(ii) the conduct occurred in any com-
24 monwealth, territory, or possession of the
25 United States, within the special maritime

1 and territorial jurisdiction of the United
2 States, in a Federal prison, on any land or
3 building owned by, leased to, or otherwise
4 used by or under the control of the Gov-
5 ernment of the United States, or in the In-
6 dian country (as defined in section 1151);
7 “(C) the term ‘prior sex conviction’ means
8 a conviction for which the sentence was imposed
9 before the conduct occurred constituting the
10 subsequent Federal sex offense, and which was
11 for a Federal sex offense or a State sex offense;
12 “(D) the term ‘minor’ means an individual
13 who has not attained the age of 17 years; and
14 “(E) the term ‘State’ has the meaning
15 given that term in subsection (c)(2).”.

16 **SEC. 3. CONFORMING AMENDMENT.**

17 Sections 2247 and 2426 of title 18, United States
18 Code, are each amended by inserting “, unless section
19 3559(e) applies” before the final period.

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Texas to strike the last word.

And before beginning, let me say that we’re told by the floor that they expect a vote on the rule on Tauzin-Dingell about noon, and I think everybody would like to see if we can get done with this bill by then.

The gentleman from Texas is recognized.

Mr. SMITH. Mr. Chairman, I ask unanimous consent to have my statement be made a part of the record.

Chairman SENSENBRENNER. Without objection.

[The statement of Mr. Smith follows:]

PREPARED STATEMENT OF THE HONORABLE LAMAR SMITH, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TEXAS

H.R. 2146, the “Two Strikes and You’re Out Child Protection Act”, introduced by Rep. Mark Green, would establish a mandatory sentence of life imprisonment for twice-convicted child sex offenders.

Any person convicted of a “Federal sex offense” against a person under the age of 17 who has been previously convicted of a similar offense would be subject to a mandatory minimum sentence of life imprisonment.

The term “Federal sex offense,” as defined in the bill, includes various crimes of sexual abuse committed against children, and the interstate transportation of minors for sexual purposes.

According to the United States Department of Justice’s Bureau of Justice Statistics, since 1980 the number of prisoners sentenced for violent sexual assault other than rape increased by an annual average of nearly 15 percent—faster than any other category of violent crime. Of the estimated 95,000 sex offenders in state prisons today, well over 60,000 most likely committed their crime against a child under 17.

Compounding this growing problem is the high rate of recidivism among sex offenders. A review of frequently cited studies of sex offender recidivism indicates that offenders who molest young girls repeat their crimes at rates up to 25 percent, and offenders who molest young boys, at rates up to 40 percent. Moreover, the recidivism rates do not appreciably decline as offenders age.

Another factor that makes these numbers disturbing is that many serious sex crimes are never even reported to authorities. National data and criminal justice experts indicate that only a fraction of sex offenders are apprehended for the crimes they commit. By some estimates, only one in every three to five serious sex offenses are reported to authorities and only 3 percent of such crimes ever result in the apprehension of an offender.

Children have the right to grow up protected from sexual predators and free from abuse. H. R. 2146 would protect America’s children by permanently removing the worst offenders from our society—those who repeatedly victimize children.

I would like to thank Mr. Green for sponsoring this legislation, and I urge my colleagues to support the bill.

Mr. SMITH. And I’ll yield the rest of my time to the gentleman from Wisconsin, Mr. Green, to speak on behalf of his bill.

Chairman SENSENBRENNER. The gentleman from Wisconsin.

Mr. GREEN. Let me begin by thanking both Chairman Sensenbrenner and Chairman Smith for help in bringing this bill forward to markup.

The Two Strikes and You’re Out Child Protection Act has already passed the House on a voice vote on two separate occasions, once as an amendment to last session’s juvenile crime bill and a second time as a standalone bill on the suspension calendar. The co-sponsorship of this bill is clearly bipartisan.

I think, Mr. Chairman, as we can all agree, sex crimes against children are among the most heinous and destructive crimes in our society. They’re also different in another crucial respect: They have a much higher recidivism rate than most other types of crime. And that’s what this bill focuses on squarely.

The idea of this bill is to intervene and remove repeat child molesters before they can unleash an unending string of destruction. This legislation was developed in cooperation with Mark Klaas of the KlassKids foundation. A State version of this is already law in Wisconsin, and other States are considering similar legislation.

Here’s what the bill says, very simply: If a person is arrested, charged and convicted of one of seven serious sex crimes against kids, and then after he serves his time he sexually assaults yet another kid, another victim, then he has shown that he is unable or unwilling to stop. And he should, under this bill—or, he will, under this bill, go to prison for the rest of his life, so that he can’t destroy any more families and any more lives.

The seven crimes covered under this bill represent serious sex crimes against kids. All of these are felonies. Nearly every one of these is subject to a major penalty enhancer upon its second offense. Most are already covered by the Federal three strikes law. One of these is already subject to a two strikes law of sorts, thanks to the good work of Representative Martin Frost of Texas some years ago.

Congressman Frost is a co-author, I'm quick to point out, of our legislation.

Finally, let me briefly explain the substitute amendment. This substitute represents an effort to address a few of the concerns that were raised by my colleague and friend, Congressman Scott, and others, before the Subcommittee markup. It narrows and clarifies the original bill by deleting from its coverage certain lesser sex crimes, those that are misdemeanors.

It also changes, for the purpose of this bill alone, the definition of a minor from 17 and younger, as it is in current law, to 16 and under, for the purposes of this bill.

And we finally point out, it doesn't change the definition of a minor with respect to section 2243 sub (a), sexual abuse of a minor, because that law already provides that a minor is someone between the ages of 12 and 15.

Mr. Chairman, this legislation is bipartisan. As has been shown by the previous voice votes, it's noncontroversial. I urge its passage.

And I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Texas yield back his time?

Mr. SMITH. Yes.

Chairman SENSENBRENNER. Okay. The gentleman from Virginia, Mr. Scott, do you have an opening statement?

Mr. SCOTT. Yes, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, thank you.

While I want to acknowledge the effort of my colleagues, Mr. Green and Chairman Smith, it is—in greatly limiting the application of the bill from its original broad coverage, which, I may say, mandated life sentences for even misdemeanor convictions, I still remain unable to support the bill.

The bill still provides for mandatory penalty of life in prison for offenses which would otherwise call for considerably less harsh results. For example, by including section 2243(a) of the criminal code, the bill requires that if a 19-year-old high school senior with a 15-year-old high school student girlfriend or boyfriend, regardless of their parents' position on the relationship, if the 19-year-old is convicted of a second sexual offense, which includes touching, the 19-year-old will be sentenced to life in prison—mandatory.

Now, if they are married, of course, that would be a defense to the prosecution. We've heard of shotgun weddings, but this is the first time that we have had this kind of incentive for a marriage.

I'm sure that we can all think of instances where we wouldn't want to hesitate to conclude that a life sentence is appropriate for a second sexual offense involving a minor. And, indeed, the Federal code already designates several such offenses for which—mandatory life sentence for a second offense.

But a mandatory life sentence for any second offense, no matter the circumstances or the first or second, is not called for. This is not to say that offenses we're talking about don't already allow for harsh penalties.

For consensual petting, in circumstances I've described above, the penalty right now is a maximum of 15 years in the penitentiary. The Sentencing Commission has already increased guidelines significantly, such that most average citizens—sentences actually doubled.

The problem is that if 15 years is not sufficient, then maybe we should look at the statutory maximum penalties so that the commission can differentiate such cases. But the answer is not to sweep minor as well as major offenses into one catchy sound bite, "two strikes and you're out." That might be good politics, but it's not good sentencing policy.

The problem with the bill is the problem with mandatory sentences in general. They eliminate reason and discretion to promote the politics of tough on crime. There's no study or data or other reasoned, rational basis for this bill, other than its tittle, the baseball phrase "two strikes and you're out."

Now, that's not even good baseball policy, so we shouldn't include that as crime policy.

The other problem with the mandatory minimum sentences is they're discriminatory in their application. The Sentencing Commission's data indicates that almost all of the people affected by this bill will be Native Americans.

That's why, Mr. Chairman, I'll offer an amendment to allow tribal governments to opt out of the application of the bill in the same manner that they're allowed to opt out of the three strikes and you're out provision already in law.

So, Mr. Chairman, while I commend the gentleman on the limitations he's put in the bill, I'm still unconvinced that there is any evidence of need or productive purpose of the bill and, therefore, will oppose it.

And I will have amendments to address the concerns I have regarding consensual sexual activity between unmarried teens, who we would imprison for life.

Thank you, Mr. Chairman.

Mr. COBLE. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina.

Mr. COBLE. Mr. Chairman, I move to strike the last word. And I will not take the required 5 minutes.

I probably will vote for this bill, but not unlike much legislation that comes before us, Mr. Chairman, it's flawed. And I don't disagree with a lot of what the gentleman Virginia said. I just am concerned about slamming the door with finality on that second offense.

Is that to say that I'm promoting sexual predators? Indeed not. But I just have problems about this, keeping in mind I probably will end up voting for it. But I did want to air my concern.

I yield back, Mr. Chairman.

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. Without objection, further opening statements will be placed in the record.

Are there any amendments?

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman—

Ms. LOFGREN. I'd like to move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. I do not have an amendment today to this bill. I did have a chance to talk briefly with Mr. Green about the concern I have relative to the age differential that I hope can be addressed at some point, either between here and the floor or, failing that, on the Senate side, because I do believe that, in the case of child sexual abuse, we do need to have mandatory sentencing.

I'm someone who did not support California's three strike laws. It includes petty theft as a third strike. I'm someone who has some skepticism about mandatory sentencing.

But in the case of the sexual abuse of children, I really do believe that there is some need to move in the mandatory direction.

When I was in local government, I had occasion to review the sentencing of—by State judges, in this case, of child molesters. And I was shocked to see that the sentences for child molesters were considerably less than for property crimes. And the damage done to young people is simply immense.

So I do think there is an issue that's going to deter and prevent this bill from becoming law, because—because of the age differential, you could have a relationship between a 19-year-old and a 15-year-old that should not be sanctioned. And I think we just need to address that aspect of this bill.

I'm not going to vote against it, because we have not yet addressed that issue, but I do hope that we, as we proceed, will be able to address that issue.

And I thank the Chairman for recognizing me for these few comments. And I yield back the balance of my time.

Chairman SENSENBRENNER. Are there amendments?

The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. SCOTT. Amendment number 2. Number 2.

Chairman SENSENBRENNER. Number 2.

Mr. SCOTT. Excuse me. Number 15. Thank you.

The CLERK. Amendment offered by Mr. Scott to the amendment in the in the nature of a substitute to H.R. 2146. Page 3 after line—

Chairman SENSENBRENNER. Without objection, the amendment as considered as read and open for amendment at any point.

[The amendment follows:]

**AMENDMENT OFFERED BY MR. SCOTT TO THE
AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2146**

Page 3, after line 19, insert the following:

1 SEC. 4. SPECIAL PROVISION FOR INDIAN COUNTRY.

2 Section 3559(c)(6) of title 18, United States Code,
3 is amended by inserting “or subsection (e)” after “this
4 subsection” each place it occurs.

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, this is one of the amendments I mentioned in my opening statement. Since a vast majority of cases affected by this bill would be Native Americans, to ease some the unintended racial impact of the bill, this amendment would allow tribal governments to opt out of coverage of the bill in the Administration of their systems of justice in exactly the same way that we allowed to opt out of the application of the three strikes and you're out law that we passed several years ago.

I yield back.

Chairman SENSENBRENNER. The gentleman from Wisconsin, Mr. Green.

Mr. GREEN. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I rise in opposition to this amendment.

Let me state up front, for the record, I have six Indian tribes in my district. I represent a large number of Native Americans and non-Native Americans.

I believe this amendment is very bad public policy and, quite frankly, would send a terrible message to States like Wisconsin that have many tribes and many reservations.

Child molesters do not abide by boundaries, be it State, local, or reservation boundaries. Carving out reservations would suggest that Native American children are somehow less deserving of protection than others. I think that's terrible.

In the alternative, it suggests that reservations can be safe harbors for child molesters, that if they go to a reservation, if they carry someone, a victim, onto a reservation, that somehow they should be treated less harshly. I think that's terrible public policy.

In a State like Wisconsin, I think it would be a disaster. It would send the wrong kind of message.

Mr. Scott's statistics make the case for this bill, not watering it down or creating safe zones for molesters. The monsters who are covered by this bill are just that. And we should not look the other way if it's on a reservation.

I think that sends a dangerous signal.

I yield back.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Frank.

Mr. FRANK. Mr. Chairman, I want to support the amendment. And I want to differ very strongly with the argument just made that passage of this amendment would show that we don't value Native American children. Absolutely the contrary is the case.

This amendment would show that we regard Native Americans as being equally capable of protecting either own children as are others. This does not in any way expose these children to risk. And I think that's a very poor argument to make.

What it says is that the tribes, the societies in which these children have been raised and are being raised, are as protective of their interests as others in this society are.

As to the notion that the reservations would then be safe haven, presumably there would be a kidnapping that would have occurred off reservation and there would still be a capacity in the State to enforce its laws.

But I particularly want to take very vigorous exception to the suggestion that recognizing the capacity of the Native American tribes for self-government somehow devalues them.

And I would yield now to the gentleman from Virginia.

Mr. SCOTT. Thank you, Mr. Chairman.

Actually, we're not carving out anything for Native Americans. What the—this is a Federal criminal law and it only applies on maritime and territorial jurisdiction of the United States. And so, in Wisconsin, it doesn't apply. In most of Wisconsin, it wouldn't apply, except on the reservations.

And what we're saying is that, since Wisconsin can pass such a law, if it wants, the fact that it's a reservation means that the only thing they got is a Federal law, so we're actually acting not only as the Federal Government but as a city council for the Native Americans. And we're saying we're going to be tough on crime, and the way we're going to be tough on crime is to put Native Americans in jail for life.

We're not going to do that—we're not going to impose that on other citizens in Wisconsin, unless they're on a military base or on a national park, but we're going to be tough on crime by locking up Native Americans.

What this does is, if Native Americans don't want to be equal to everybody else, that they would have the opportunity to opt out of this particular provision just like we did under the three strikes law.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Virginia, Mr. Scott.

Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments?

Mr. SCOTT. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Well, we will suspend consideration of this bill at this time. It will be the first bill up at the next markup.

There being no further business coming before the Committee, the Committee stands adjourned.

[Whereupon, at 11:53 a.m., the Committee was adjourned.]

* * * * *

The Committee met, pursuant to notice, at 10:54 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order.

When the Committee adjourned last week, pending was the bill H.R. 2146, the Two Strikes and You're Out Child Protection Act, for which a motion to report the bill favorably had been made and amendments had been offered and disposed of.

Are there further amendments?

The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment offered by Mr. Scott to the amendment in the nature of a substitute to H.R. 2146. Page 2, beginning on line 5, strike 2243(a), relating to sexual abuse of a minor.

[The amendment follows:]

**AMENDMENT OFFERED BY MR. SCOTT TO THE
AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2146**

Page 2, beginning on line 5, strike "2243(a) (relating to sexual abuse of a minor),".

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, this would remove section 2243(a) of title 18 from the list of so-called Federal sex offenses under the bill, which would trigger a mandatory life sentence for a second offense. While we can imagine the kinds of cases for which life imprisonment may be appropriate for a second offense, we don't want to have a manda-

tory life sentence for cases which clearly do not warrant such treatment in order to get those that do.

We could simply, for example, increase the maximum term for a second offense to life and leave it the Sentencing Commission and the courts to determine which ones are appropriate for life sentences.

This section involves consensual sexual acts for minors, both of which could conceivably be in high school. It does not—it could involve touching, for example, as part of the offense under 2243(a).

Now, the bill will have—already has an unintended racial impact, which affects overwhelmingly Native Americans, because those are the ones that have a disproportionate Federal jurisdiction.

Under the bill, you have to have Federal jurisdiction before the bill even kicks in, and Native Americans, all of their offenses are tried in the Federal system.

So not only will it have the impact there, where an overwhelming portion of the people affected will be Native Americans, it also has another adverse effect, and that is it may have a chilling effect on a victim who, in some cases—on the victim who, in some cases, may be reluctant to come forward if the perpetrator is an older brother, another relative, or a respected member of the community. Sometimes the victim would like the person dealt with, but not if it's going to require a mandated life imprisonment.

If we believe that the purpose of the bill is to send a message to repeat child sex offenses, it's going to send the wrong message.

At a hearing at the last Congress on a earlier version of the bill, a law professor and renowned criminologist testified that a repeat sex offender who knows that if caught he'll be sentenced to life in prison may be more disposed to kill his victim to eliminate the primary witness against him.

Mr. Chairman, unfortunately, the bill is unfortunately aimed at Native Americans. We would not impose this kind of bill on the overall community. Otherwise, we would require States to set up such a sentencing scheme, so that everybody will be subject to life without parole, not just Native Americans. This amendment would at least require that the offense leading to life without parole will be a serious offense, not just the consensual touching which already has a 15-year possible maximum sentence.

Mr. Chairman, I yield back the balance of my time.

Mr. GREEN. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Wisconsin, Mr. Green.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

I'll basically ignore what Mr. Scott has said about the racial implications of this. Quite frankly, I think that's borderline a slur.

This is already in the State of Wisconsin, Mr. Scott, just so you remember that point.

But let me focus on the substance of his amendment, which I oppose for three reasons.

First off, do not forget, this bill changes the penalties for repeat offenders; it does not change the terms of the underlying criminal justice law. The section to which Mr. Scott refers is already a fel-

ony under Federal law. It is already considered to be very serious by this Congress. It is already subject to a 15-year imprisonment. It is already subject to doubling for a second offense. This is not merely the so-called casual statutory rape provision that Mr. Scott suggests.

Secondly, those who would be caught up by this provision, as affected by Two Strikes, are not merely guilty of "statutory rape," as serious as I view that offense to be. The victim must be 12 to 15 years old and at least 4 years younger than the attacker. Furthermore, the attacker must have been arrested, tried, convicted, served his time, been released, and then do it yet again.

Third, as a simple argument of logic and common sense—and I think we sometimes lose sight of logic and common sense here—it is nearly impossible for the so-called casual statutory rape scenario Mr. Scott raises to lead to two separate strikes. If the victim were 14 or 15 and the attacker 18 or 19, as Mr. Scott points to, then by the time that attacker were arrested, tried, convicted, imprisoned, then released, basically there's no way that the casual statutory rape scenario could reoccur. Certainly, it couldn't reoccur with the same victim. That victim would be, at a minimum, an adult. So it's not possible for it to occur twice in that regard.

This is a crime punishable by 15 years in prison. It is a felony. If in fact we have an attacker who, again, after serving his time for a very serious sex crime against kids, if he picks another victim, then I would argue that's the very type of person that we're trying to get at, a serial molester, someone with multiple victims. We do want the person to go to prison.

And then, finally, the purpose of this bill is not, as Mr. Scott suggests, to send a message. I'm not here to send a message. I'm here to remove bad guys from the streets. These are people who, by all statistical studies, have shown an unwillingness or an inability to cure themselves of attacking children sexually. And if they are not put behind bars for the rest of their lives, statistics tell us they will do it yet again and again and again and again. It is time to break that cycle. It is time to put them behind bars. If they, after their release from doing one of these terrible sex crimes, if they don't get a message, if they are unwilling or unable to stop themselves, then, yes, I do believe they should go to prison for the rest of their lives.

I yield back the balance of my time.

Chairman SENSENBRENNER. Further discussion on the Scott amendment?

The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Mr. Chairman, I rise in support of Mr. Scott's amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. I yield to Mr. Scott.

Mr. SCOTT. Mr. Chairman, in reference to the so-called slur, I would just point out that the fact is that an overwhelming of the portion of the people who will be charged under this kind of sentence, according the Sentencing Commission, an overwhelming portion will be, in act, Native Americans. I mean, that's just arithmetic. That's not anything else.

In terms of the kind of offenses that could be caught up in this, it says that it is a sexual act, and that is defined to include the

intentional toughing, not through the clothing, of the genitalia of another person who has not obtained the age of 16 with the intent to—and it includes gratify the sexual desire of any person.

Touching. Consensual. And that would get you, if it's a second offense—and the first offense, you don't have to serve a long time in prison. You can get probation and you're talking about life imprisonment without parole. The sentence is already 15 years. And there's serious question as to whether each and every case, mandatory, ought to be life in prison.

I yield back.

Mr. WATT. I yield back, Mr. Chairman.

Chairman SENSENBRENNER. The question is—

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Florida, Mr. Keller, seek recognition?

Mr. KELLER. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. KELLER. I yield to Mr. Green.

Mr. GREEN. Mr. Chairman, very briefly, it sounds as though Mr. Scott is making an argument to change the underlying law of this section, Section 2243(a), and maybe that is something that the Committee would like to take up at a later date.

But as a final point, I absolutely dispute that this would disproportionately hurt Native Americans. Again, I represent a number of Native American tribes. I believe just the opposite. If anything, it disproportionately benefits Native Americans. It says that reservations and Federal areas will not be safe harbors for child molesters.

I yield back my time.

Chairman SENSENBRENNER. Further discussion on the Scott amendment?

If not—the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Mr. Chairman, I just rise—

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CONYERS.—in support of the amendment.

But didn't we—didn't the courts just knock out Three Strikes and You're Out in California? And now here we're back with Two Strikes.

Mr. SCOTT. If the gentleman would yield?

Mr. CONYERS. I yield to Mr. Scott.

Mr. SCOTT. Thank you. I appreciate the gentleman yielding.

Three Strikes was thrown out because a third strike was considered an offense for which life without parole was inappropriate, totally inappropriate and woefully in excess of anything that was appropriate.

In this case, you have a second strike, which could generate life without parole, for a consensual act between two young people. It seems to me that life without parole under those circumstances is—borders on unconstitutionality. But we'll let the courts decide that. The question is the appropriate punishment.

That's why you have the Sentencing Commission. The Sentencing Commission right now has—can assign penalties up to 15 years in prison for appropriate offenses. If that's not enough, we

could increase the penalty so that they would have more flexibility, maybe even life as a possible sentence, but not mandatory life for all things that come under the legislation.

I yield back.

Mr. CONYERS. Well, let me ask, has there been some findings that judges are not doing their jobs or that people are getting away with multiple offenses of this kind? I mean, is there something motivating this legislation that I've not studied carefully enough to know why we are here changing the law in such a drastic fashion?

Mr. SCOTT. The evidence that we heard—well, I didn't hear any. I mean, we hear of sex abuses cases all over the country. This bill would not address most of those because they would be tried in State court.

Mr. CONYERS. So these are for—these would be Federal offenses, and that's why the gentleman suggests that the Native Americans on the reservations would be more directly affected.

Mr. SCOTT. Because all of their offenses are tried in the Federal system.

Mr. CONYERS. But the author of the bill suggests this is going to be good for the Indians. This is what they need. This will—what will it do? Punish them more or encourage them—to be more careful? Is there some wave of crime of this kind going on on Indian reservations?

Mr. SCOTT. I'm not aware—if the gentleman would yield? I'm not aware of reports focusing on Native American reservations. I have heard reports in the news elsewhere.

Mr. CONYERS. Well, now, maybe there was some single outrageous case that offended every normal person's sensibility that gave rise to this kind of legislation. Could that have been the case?

Mr. SCOTT. Such a case was not brought to our attention.

Mr. CONYERS. Well, could I ask the author, has he got any suggestions about any of these issues that I've raised?

Mr. GREEN. Sure. First off, with respect to the cases, Mr. Scott must have left the room when Marc Klaas testified about his daughter, Polly Klaas, who was kidnapped from her home, brutally assaulted and murdered. And her body was discovered 6 weeks later.

She was attacked by someone who was a repeat child molester. That must have escaped some of the members who were there.

Mr. CONYERS. Does the gentleman—

Mr. GREEN. Secondly—

Mr. CONYERS. Pardon for me interrupting—

Mr. GREEN. Can I respond to your question?

Mr. CONYERS. Just a minute. Relax.

Could I remind the gentleman there have been laws passed that cover that kind of situation? Or does he know about them?

Mr. GREEN. I'm very much aware of them. I don't believe that they go far enough or they're adequate enough. That's why, in the State of Wisconsin, we did pass a Two Strikes law to cover the State. And here what we're trying to do—

Mr. CONYERS. Let me ask my friend—

Mr. GREEN.—is cover the Federal land.

Mr. CONYERS. Let me ask my friend this: What is it about the laws that were passed to cover that crime additionally that doesn't go far enough?

Mr. GREEN. As I indicated, I definitely supported what Congressman Martin Frost had authored and was passed a couple of sessions ago. But that only dealt with a single offense; it did not cover, in my view and in the view of people like Marc Klaas and many who have written in support of this legislation, did not cover other crimes that it should have.

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. ISSA. Mr. Chairman? Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from California, Mr. Issa, seek recognition?

Mr. ISSA. I rise to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. ISSA. Mr. Chairman, I think I'm very confused, because, if I understand correctly, we're talking about making a decision in advance on somebody who has, in fact, been found to be a pedophile, not an innocent, accidental touching, but somebody who has gone through the process and been convicted, who then makes the same, if I understand the opposition to this bill, innocent mistake a second time. And I'm a little confused on, are we, in fact, if we oppose this, trying to defend a pedophile being given the option to have indiscriminate accidental sex with someone that they didn't know was 12 to 15? Because, to me, I'm trying to understand if this, in fact, is anything other than saying, if you've made this—and I won't call it a heinous act; I'll call it a Native American—and I have over seven tribes in my district—having this accident, are we then going to defend the ability for a tribal member to do, probably to another tribal member, the same thing a second time because it isn't serious enough to send an absolute lifetime message? I'm just—I'm surprised that the opposition can say that that's possible.

Mr. SCOTT. Will the gentleman yield?

Mr. ISSA. No, actually, I have to yield the balance of my time to Mr. Green.

Mr. GREEN. I thank the gentleman for yielding.

I would just focus everybody once again that we are talking about someone who has committed one of seven very serious sex crimes against kids. They've committed this crime. They've been tried. They've been convicted. They've been sentenced. They've served their time. And after they're released, they do it yet again.

So as Mr. Issa points out, the innocent—"innocent mistakes" scenario is just not one that I can buy.

And with that, I yield back my—

Mr. ISSA. I yield back.

Chairman SENSENBRENNER. The question is on the Scott amendment.

Those in favor will say aye.

Opposed, no.

In the opinion of the Chair, the noes have it. The noes have it, and the amendment is not agreed to.

Are there further amendments? If not, the question occurs on the amendment in the nature of a substitute.

All those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment in the nature of a substitute is agreed to.

The question occurs on the motion to report the bill H.R. 2146 as amended by the amendment in the nature of a substitute.

All in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the motion to report favorably is agreed to.

Without objection, the Chair is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes. And all members will be given 2 days as provided by the House rules in which to submit additional dissenting, supplemental, or minority views.

DISSENTING VIEWS

These views dissent from the Committee Report on H.R. 2146. The bill would mandate life imprisonment for a second sex crime involving a child. While it would include crimes committed by sexual predators who may deserve such harsh punishment, it would also include consensual “petting” between high school students who are 18 and 14 years old. Since the bill is limited to cases falling under Federal jurisdiction, which covers Native American reservations, national parks and forests, and U.S. territorial waters, it will apply primarily to Native Americans on reservations. Sentencing Commission data reflected that about 75% of the cases arising under sections of the U.S. Code covered by the bill involved Native Americans.

BACKGROUND

On March 7, 2002, the full Judiciary Committee marked up H.R. 2146, the “Two Strikes and You’re Out Child Protection Act” and voted to report the bill. During the markup, Rep. Green, the sponsor of the bill, introduced an amendment in the nature of a substitute which had been adopted by the Subcommittee on Crime at its markup following a hearing on the bill on Tuesday, July 31, 2001. The substitute eliminated some of the more egregious sections of the bill as filed, such as those sections mandating a life sentence for a second misdemeanor offense. However, the substitute still mandates a life sentence for relatively minor offenses such as a second offense involving an attempted improper touching (under 18 U.S.C. 2243(a)) of a 14 year old high school sophomore by her 18 year old high school boyfriend, even though it was consensual. It is not unheard of for determined parents to institute charges in such a case and for a just as determined young couple to defy the parents by continuing to see each other. The current law provides for a sentence of up to 15 years for even a first offense under 18 U.S.C. 2243(a), although a first offense of this nature, if prosecuted, would not likely provoke a long prison sentence, if any at all.

Mr. Scott, Ranking Member on the Subcommittee on Crime, offered two amendments during both the Subcommittee and the full Committee markups. The first one would have eliminated the mandatory requirement of a life sentence for a second offense. The second Scott amendment would have allowed tribal governments to opt out of the application of the bill in the same manner as the “three strikes, you’re out” law allows such opt out. Both amendments were defeated by voice votes at both markups, with several Democratic Members speaking in favor of the amendments.

Prior marriage is a defense to prosecutions under 18 U.S.C. 2243(a). In light of this, H.R. 2146 could be considered the ultimate “shotgun wedding” inducement. Interestingly, Under most state

laws, parents are allowed to give their 15 year older, for example, consent to marry even a 40 year older, or any age person. However, this bill, regardless of the consent of parents or any other circumstances, mandates a life sentence if a 19 year old teen even attempts to engage in what teens consider “petting” with a 15 year old teen as a second such offense, if they are not married.

Also, H.R. 2146 would have an unintended racial impact, since it would affect primarily Native Americans. It would have no effect on the type cases referred to as justification for the bill, such as the Polly Klaus case. That was a state case which this bill would not effect.

In the 106th Congress, H.R. 4047, the “Two Strikes and You’re Out Child Protection Act of 2000” was introduced by Rep. Mark Green. H.R. 2146, the “Two Strikes and You’re Out Child Protection Act” was introduced in the 107th Congress also by Rep. Mark Green on June 13, 2001, and referred to the House Judiciary Committee’s Crime Subcommittee. H.R. 4047 and H.R. 2146, as introduced, are virtually identical, although H.R. 4047 was slightly broader since it included additional items which constituted a “Federal sex offense.” H.R. 4047 was considered by the Crime Subcommittee in a hearing held on May 11, 2000 and on July 25, 2000, passed the House by voice vote, under suspension of the rules. The bill also passed the House as an amendment added to H.R. 1501, the ill-fated Juvenile Justice Reform Act of 1999.

CONCERNS RAISED BY H.R. 2146

1. Judicial Sentencing Flexibility Eliminated

H.R. 2146 also raises concerns because it eliminates any flexibility in sentencing, even where flexibility may be needed. For example, in cases where family members are involved, treatment and counseling may effectively address the offending behavior in a family context, but H.R. 2146 eliminates the prospect for treatment. Further, in close knit communities such as Indian Reservations, which are subject to U.S. Federal court jurisdiction, the prospect for treatments would be a significant choice that the bill eliminates..

2. Proportionality

The Sentencing Commission has also raised serious proportionality concerns about “two strikes” legislation such as H.R. 2146, because it would require a mandatory life sentence for any person who is convicted of a Federal sex offense in which a minor is the victim if the person has a prior sex conviction in which a minor was the victim.¹ According to the Sentencing Commission, a risk of this type of legislation is that a life sentence could be “mandatory for two defendants convicted of vastly dissimilar crimes.”² The Sentencing Commission cites the example that a defendant convicted of raping a child under the age of 12 using force, who has a prior conviction for a similar offense, currently is subject to a

¹Letter from Diana E. Murphy, Chair, United States Sentencing Commission, to the Hon. Bill McCollum, Chairman of the Crime Subcommittee and the Hon. Robert C. Scott, Ranking Member of the Crime Subcommittee (May 1, 2000).

²Id.

mandatory life sentence under title 18, United States Code, Section 2241(c).³ However, under H.R. 2146, and similar “two strikes” legislation, “a 19 year old defendant who engaged in consensual sex with a 15 year old would be subject to the same life imprisonment if he had a prior statutory rape conviction, or conviction for some other prior sex offense in which a minor was the victim,” even though the “seriousness of these two offenses and the harm to the victims could be very different.”⁴

3. *H.R. 2146 Could Have a Chilling Effect on Victims Coming Forward*

H.R. 2146 could also have a chilling effect on victims coming forward to report crimes if the victim knows the result will be that the perpetrator will be sentenced to life in prison. For example, a family member may be reluctant to turn in another family member if they know that the offender faces a mandatory life sentence. In addition, fear of prosecution under H.R. 2146 could lead to the killing of more victims, since an offender may be aware that the prosecution for such act would result in a mandatory life sentence and since murder would carry a lesser penalty than even “touching” the victim.

Professor Zimring, who testified before the Subcommittee last year in relation to H.R. 4047, pointed out in his testimony how detrimental the imposition of mandatory life sentences could be.⁵ Specifically, Professor Zimring stated (referring to H.R. 894, the “No Second Chance For Murderers, Rapists, or Child Molesters Act of 1999,”): “It [the bill] might also be dangerous. If the bill actually provoked life without parole penalties in the states, and if offenders are highly sensitive to deterrent threats at the margin, a rapist or child sex offender would have little further to lose by eliminating the victim who is often an important witness against the offender.”⁶ Another related issue is that H.R. 2146 might encourage false accusations against previously convicted child sex offenders. This issue was even raised in the Majority’s Memorandum to Members of the Subcommittee on Crime in preparation for the hearing and mark-up of H.R. 2146.⁷

4. *H.R. 2146 Is Not Needed*

Federal and State courts are already handing down life sentences in certain cases involving sex offenses committed against minors, and title 18 United States Code Section 2241 “Aggravated sexual abuse,” already includes a mandatory life sentence if a defendant is convicted under 2241(c) (With children) for a crime against a minor, and the defendant has previously been convicted of another Federal offense under 2241(c), or of a State offense that would

³Id.

⁴Id.

⁵Hearing on H.R. 894, the “No Second Chance For Murderers, Rapists, or Child Molesters Act of 1999,” H.R. 4047, the “Two Strikes and You’re Out Child Protection Act,” and H.R. 4147, the “Stop Material Unsuited For Teens Act,” May 11, 2000, Before the Committee on the Judiciary, Subcommittee on Crime, 106th Cong. (Statement submitted by Franklin E. Zimring, William G. Simon Professor of Law and Director, Earl Warren Legal Institute, University of California at Berkeley).

⁶Id.

⁷Memorandum to Members of the Subcommittee on Crime from Lamar Smith, Chairman, Subcommittee on Crime, dated June 26, 2001.

qualify as a crime under 18 United States Code Section 2241. In addition, the Sentencing Commission's amendments, which took effect on November 1, 2001, make it clear that the sentencing guidelines are currently addressing the problem of sex offenses committed against minors, and sentences have increased dramatically for these types of crimes. In fact, according to the U.S. Sentencing Commission, the length of time for sentences currently given by courts for crimes which would fall under H.R. 2146, have almost doubled in recent years.

In a letter from Timothy B. McGrath, Staff Director of the U.S. Sentencing Commission, dated June 26, 2001, written to Chairman Smith and Ranking Member Scott of the Crime Subcommittee, the U.S. Sentencing Commission raised several concerns about H.R. 2146.⁸ Specifically, the Sentencing Commission's main concern is that H.R. 2146 would create unfair disparities in sentences.⁹ The letter also reaffirmed the Sentencing Commission's concerns about the "two strikes" provision as articulated by Chair Murphy in her letter to Representatives McCollum and Scott dated May 1, 2000, concerning H.R. 4047 from the 106th Congress.¹⁰ The letter also served to update the Subcommittee regarding recent actions by the Sentencing Commission that may affect the Subcommittee's consideration of H.R. 2146.

In 2000, the Commission passed a multi-part amendment to the sentencing guidelines covering sexual offenses that provided new sentencing enhancements in several sentencing guidelines.¹¹ Specifically, the new sentencing guidelines provided sentencing enhancements for criminal sexual abuse, criminal sexual abuse of a minor (statutory rape), criminal sexual abuse of a ward, abusive sexual contact, promoting prostitution or prohibited sexual conduct, and sexually exploiting a minor by production of sexually explicit material.¹² These newly enhanced sentencing guidelines each represent at least a 25% increase in guideline punishment levels.¹³ The amendments also increase the base offense levels in the sentencing guidelines for criminal sexual abuse of a minor if the offense involved the transportation of minors for illegal sexual activity.¹⁴

The guidelines amendments discussed above completed the Sentencing Commission's response to the Protection of Children from Sexual Predators Act of 1998, Pub. L. 105-314.¹⁵ In addition, the Sentencing Commission formally submitted an additional amend-

⁸Letter from Timothy B. McGrath, Staff Director, United States Sentencing Commission, to the Hon. Lamar Smith, Chairman of the Crime Subcommittee and the Hon. Robert C. Scott, Ranking Member of the Crime Subcommittee (June 26, 2001).

⁹Id.

¹⁰Letter from Diana E. Murphy, Chair, United States Sentencing Commission, to the Hon. Bill McCollum, Chairman of the Crime Subcommittee and the Hon. Robert C. Scott, Ranking Member of the Crime Subcommittee (May 1, 2000).

¹¹Letter from Timothy B. McGrath, Staff Director, United States Sentencing Commission, to the Hon. Lamar Smith, Chairman of the Crime Subcommittee and the Hon. Robert C. Scott, Ranking Member of the Crime Subcommittee (June 26, 2001).

¹²Letter from Diana E. Murphy, Chair, United States Sentencing Commission, to the Hon. Bill McCollum, Chairman of the Crime Subcommittee and the Hon. Robert C. Scott, Ranking Member of the Crime Subcommittee (May 1, 2000).

¹³Id.

¹⁴Id.

¹⁵Letter from Timothy B. McGrath, Staff Director, United States Sentencing Commission, to the Hon. Lamar Smith, Chairman of the Crime Subcommittee and the Hon. Robert C. Scott, Ranking Member of the Crime Subcommittee (June 26, 2001).

ment to Congress on May 1, 2001, which became effective on November 1, 2001.¹⁶ The new amendment creates a new guideline, Section 4B1.5, which specifically targets repeat sex offenders for significantly increased punishment in proportion to the sentencing guidelines.¹⁷

The first tier of the new amendment, Section 4B1.5(a), is most closely analogous to H.R. 2146 in that it applies to child sex offenders who have an instant offense of conviction for sexual abuse of a minor and a prior felony conviction for sexual abuse of a minor.¹⁸ The Sentencing Commission expects that this new provision will increase sentences significantly for those defendants for whom it will apply.¹⁹ Commission data indicate that there were 24 defendants sentenced in fiscal year 1999 for whom this provision would have applied, and the average sentence of imprisonment will increase by 93.6 percent from 110 months to 213 months.²⁰

The new guideline also contains a “second tier of punishment that in many ways applies more broadly than H.R. 2146 would if it were enacted.”²¹ Specifically, “this second tier, Section 4B1.5(b) provides a five-level increase in the offense level and a minimum offense level of 22 for child sex offenders who engage in a ‘pattern of activity’ involving prohibited sexual conduct with a minor.”²² In addition, “this second tier is broader in applicability than H.R. 2146 because a conviction for the prior prohibited sexual conduct is not needed to trigger these increased penalties.”²³ The Sentencing Commission expects that this new provision “will increase sentences significantly for those defendants for whom it will apply.”²⁴ “Commission data indicate that there were 57 defendants sentenced in fiscal year 1999 for whom this provision would have applied, and the average sentence of imprisonment will increase by 71.3 percent from 87 months to 149 months.”²⁵

The Sentencing Commission’s amendments from 2000 and 2001, taken together, significantly increase penalties for a variety of sex offenses. In addition, title 18, United States Code, Section 2241 “Aggravated sexual abuse,” already includes a mandatory life sentence if a defendant is convicted under 2241(c) for a crime against a minor, and the defendant has previously been convicted of another Federal offense under 2241(c), or of a State offense that would have been an offense under either such provision had the offense occurred under Federal law. Under these circumstances, the defendant shall receive a mandatory sentence of life in prison.

5. Mandatory Minimums

The premise underlying H.R. 2146 is that tough Federal mandatory sentences will solve the problem of sex crimes against minors. The empirical evidence however does not support this premise. Professor Franklin Zimring testified last Congress regarding the evi-

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id.

²³ Id.

²⁴ Id.

²⁵ Id.

dence in this area and stated that there was none to even suggest that this was true, since Federal cases represent such an insignificantly small portion of the child sex crimes in the U.S.

CONCLUSION

Unlike the “Three Strikes” Federal law, H.R. 2146 does not allow tribal governments to opt out of the provisions and apply their laws for handling such matters. This is true despite the fact that there has been no evidence of a failure of the tribes to address the problem appropriately on reservations or other tribal lands. Nor is there any evidence that the problem of sexual assaults against children is particularly rampant in Indian Country or that tribal governments have asked for such a provision as H.R. 2146. This bill is a reflection of a sentencing policy gone haywire. We have messed the policy up so badly with sound byte legislation such as “Aimee’s Law” and “Meagan’s law” that now we see nothing wrong with mandating a heavier penalty for consensual touching between teenagers than we mandate for killing a person.

JOHN CONYERS, JR.
ROBERT C. SCOTT.
MELVIN L. WATT.
SHEILA JACKSON LEE.

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