

**Statement of  
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**Before the  
Committee on the Judiciary  
House of Representatives**

**Concerning  
Sexual Crimes Against Children and H.R. 2388 and H.R. 2318**

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**INTRODUCTION**

Mr. Chairman, Ranking Member Scott, and distinguished Members of the Subcommittee, thank you for inviting me to testify before you today on sexual crimes against children and two legislative proposals to address this critical topic, H.R. 2388, the “Prevention and Deterrence of Crimes Against Children Act of 2005,” and H.R. 2318, the “Protection Against Sexual Exploitation of Children Act of 2005.” Generally, H.R. 2388 would mandate minimum sentences in all cases involving violent crimes against children, while H.R. 2318 would mandate minimum sentences in cases involving the sexual abuse and sexual exploitation of children.

As we all know, such crimes against children are terrible and reprehensible acts. In addition to the tragedy of violent crimes against children, the sexual abuse and exploitation of children is particularly horrific, and this horror is often exacerbated by child molesters who memorialize their repugnant crimes in photographs and videos. We all, as a nation, must stand together to fight against these crimes and must explore every avenue for strengthening federal laws in this area; therefore, I commend you for holding this hearing.

One of the most prevalent manifestations of the growing problem of child exploitation and sexual abuse crimes is the escalating presence of child pornography. There has been explosive growth in the trade of child pornography due to the ease and speed of distribution, and the relative anonymity, afforded by the Internet. The distribution of child pornography has progressed beyond exchanges between individuals and now includes commercial ventures. We should be ever mindful that each image of what we call child pornography graphically depicts the sexual abuse of an innocent child. Further, once on the Internet, the images are passed endlessly from offender to offender and perhaps used to whet the appetite of a pedophile to act out the deviant fantasies of the image on yet another child, thereby continuing the cycle of abuse.

Child pornography offenses, as well as other child exploitation offenses involving enticement of minors to engage in illegal sexual activity, travel to engage in illegal sexual activity with a minor, or transportation of a minor to engage in illegal sexual activity often implicate interstate or foreign commerce. Accordingly, these offenses are often prosecuted under federal law. On the other hand, sexual abuse of children is typically prosecuted under state law. When a child is sexually abused on federal land such as a military base or in Indian territory, depending on the circumstances, the offense may be prosecuted under federal law. Accordingly, federal laws prohibiting sexual abuse have an important role in combating these devastating crimes, even though most sexual abuse cases are prosecuted under state statutes.

#### CRIMES AGAINST CHILDREN ARE A GROWING PROBLEM

Crimes against children such as child exploitation and sexual abuse are unfortunately a growing problem. For example, according to the Executive Office for United States Attorneys, in Fiscal Year 1997, 352 cases were filed by the Department of Justice charging child

pornography crimes (18 U.S.C. Sections 2251-2260), and 299 convictions were obtained. In Fiscal Year 2004, child pornography charges were filed against approximately 1,486 defendants, and approximately 1,066 convictions on such charges were obtained.

Nationwide, according to the Department of Health and Human Services' 2003 report on child maltreatment, an estimated 906,000 children were victims of child abuse or neglect. Approximately 20 percent of these victims were physically abused, and approximately 10 percent were sexually abused. Moreover, according to that report, Pacific Islander children and American Indian or Alaska Native children are among those experiencing the highest rates of victimization. As the special maritime and territorial jurisdiction of the United States may cover many of these children, a federal legislative response to violence against children and child sexual abuse is warranted and important.

THE DEPARTMENT OF JUSTICE IS AGGRESSIVELY FIGHTING  
CRIMES AGAINST CHILDREN

The Department of Justice is working hard to combat child exploitation and sexual abuse crimes. For example, the Criminal Division's Child Exploitation and Obscenity Section (CEOS) already has generated a more than 445% increase in its caseload, including child pornography cases and investigations, handled in the past two years. In addition to increasing the sheer number of investigations and prosecutions brought by our attorneys, the quality and import of the cases has increased substantially, with a focus on producers and commercial distributors.

The Department of Justice has also made great strides in responding to the misuse of advancing technologies in child exploitation offenses. In August 2002, the Department created within CEOS the High Tech Investigative Unit (HTIU), which consists of computer forensic

specialists equipped to ensure the Department's capacity to prosecute the most complex and advanced offenses against children committed online. The HTIU renders expert forensic assistance and testimony in districts across the country in the most complex child pornography prosecutions conducted by the Department. Additionally, the HTIU currently receives and reviews an average of more than 200 tips per month from citizens and non-governmental organizations, such as the National Center for Missing and Exploited Children, and initiates investigations from these tips.

The Department focuses its efforts on investigations that have the maximum deterrent impact. For example, CEOS is currently coordinating 17 nationwide operations involving child pornography offenders. These are significant investigations of national impact. Nearly each one of the 17 involves hundreds or thousands, and in a few cases tens of thousands, of offenders. The coordination of these operations is complex, but the results can be tremendous. By way of example, the FBI is currently investigating the distribution of child pornography on various "member-only" online bulletin boards. As of March 19, 2005, the investigation had yielded 180 search warrants, 75 arrests, 130 indictments, and 61 convictions.

Quickly advancing Internet technologies present many challenges to investigators, and the Department is determined to keep pace with the criminal exploitation of technology in the realm of crimes against children. As child pornographers have started using peer-to-peer file sharing networks to distribute their images, national enforcement initiatives against peer-to-peer offenses have been launched. These initiatives encompass operations by the Federal Bureau of Investigation, the Department of Homeland Security, Immigration and Customs Enforcement (ICE), and state and local Internet Crimes Against Children task forces. Since the fall of 2003,

these initiatives collectively have resulted in more than 1000 investigations, 350 searches, and at least 65 arrests.

The Department also works toward the critical goal of identifying the victims depicted in images of child pornography, so that they can be rescued and protected from further abuse. One method for achieving this goal is already underway. The FBI Endangered Child Alert Program (ECAP) was launched on February 21, 2004, by the FBI's Innocent Images Unit and is conducted in partnership with CEOS. The purpose of ECAP is to proactively identify unknown subjects depicted in images of child pornography engaging in the sexual exploitation of children. Since ECAP's inception, seven "John Doe" subjects have been profiled by *America's Most Wanted*, and with the assistance of tips from viewers, five have been identified. More importantly, 31 victims (so far) in Indiana, Montana, Texas, and Colorado have been identified as a result of this initiative. All of the victims had been sexually abused over a period of years, some since infancy. CEOS is working with the field to identify suitable targets for this program, and we will continue to ensure that this program is utilized to its maximum potential.

A chilling example of the important work the Department is doing to fight child exploitation is the case of *United States v. Mariscal*, prosecuted in the Southern District of Florida. In that case, defendant Angel Mariscal was sentenced last September to a 100-year prison term, following his conviction on seven counts relating to the production of child pornography and related offenses. Mariscal had traveled repeatedly over a seven-year period to Cuba and Ecuador, where he produced and manufactured child pornography, including videotapes of himself sexually abusing minors, some under the age of 12. More than 100 victims were filmed exposing their genitals and/or engaging in sexual activity with the defendant and at

least two adult female co-conspirators. Mariscal further endangered these minors, because he is HIV-positive; thankfully, none of the identified victims has yet tested positive for HIV. After videotaping the children using a camcorder, the defendant imported the tapes, reproduced them onto CD-ROMS or VHS tapes in Miami, and distributed the CD-ROMs and VHS tapes throughout the United States by mail or Federal Express. Mariscal would advertise these items by mail, and in 2002, the child pornography sold for anywhere from \$595.00 to \$995.00 per item. Customers were also given the option of writing their own fantasy script. Mariscal's arrest has led to the prosecution of many of his customers across the country due to the coordinated efforts of the U.S. Postal Inspection Service and CEOS.

RECENT LEGISLATION HAS BEEN INSTRUMENTAL IN  
THE DEPARTMENT'S FIGHT AGAINST CHILD EXPLOITATION CRIMES

The Department of Justice deeply appreciates recent legislation that Congress has passed to combat child abuse and child exploitation crimes, such as the PROTECT Act. We have found that legislation extremely useful and have used it effectively, as shown by the following examples.

Section 106 of the PROTECT Act, codified at 18 U.S.C. § 3559(e), imposes mandatory life imprisonment for a defendant convicted of a federal sex offense in which the victim is a minor, if the defendant has a prior sex conviction in which a minor was the victim, unless the sentence of death is imposed. In *United States v. Albert J. Kappell*, prosecuted in the Western District of Michigan, the defendant was sentenced in March 2004 to life imprisonment for his conviction on nine counts of sexual abuse of two young girls, ages six and three. The victims, who are Native Americans, are enrolled members of the Keweenaw Bay Indian Community

(KBIC) in Michigan's Upper Peninsula. Kappell, a non-Indian, repeatedly abused the young girls, including with acts of penile and digital penetration, during a four-month period in which he lived with the girls' mother. Because Kappell had been previously convicted of sexual abuse against a minor in 1982, he was sentenced to a mandatory life term of imprisonment pursuant to this new sentencing provision of the PROTECT Act.

Section 101 of the PROTECT Act, codified at 18 U.S.C. § 3583(k), permits a term of supervised release of any number of years up to the life of the defendant for child exploitation crimes. In *United States v. Larry N. Cole*, prosecuted in the Southern District of Texas, the defendant was sentenced in January 2004 to more than six years in prison and court supervision for the rest of his life for possessing over 300 images of child pornography on several computers. A life term of supervised release was imposed under the PROTECT Act in recognition of the recidivist nature of Cole's conduct.

Section 105 of the PROTECT Act, codified at 18 U.S.C. § 2423(c), makes it a crime to travel in foreign commerce and engage in illicit sexual conduct with a minor, regardless of whether that was the purpose of the travel. This is a critical improvement over the previous law, under which the government had to prove that the perpetrator traveled for the purpose of engaging in a sexual act with a minor. The maximum penalty for this new offense is 30 years' imprisonment. In *United States v. Michael Lewis Clark*, prosecuted in the Western District of Washington, United States citizen Michael Lewis Clark was arrested in June 2003 in Cambodia for sexually abusing two Cambodian boys, ages 10 and 13. Clark was charged with engaging in illicit sexual conduct after travel in foreign commerce. The case was the first such prosecution under the new provision of the PROTECT Act. Clark had flown to Cambodia in May 2003, but

he had also spent considerable time in Cambodia over the previous five years. The investigation revealed that Clark targeted boys ranging from 10 to 18 years of age along the river front area of Phnom Penh, Cambodia, and would pay the boys for engaging in sexual contact with him. Clark pled guilty and was sentenced to 97 months of imprisonment. He currently has an appeal pending.

#### H.R. 2388 AND H.R. 2318

Both H.R. 2388 and H.R. 2318 would impose additional mandatory minimum sentences for child exploitation and sexual abuse crimes. The Department of Justice supports mandatory minimum sentences in appropriate circumstances. In a way sentencing guidelines cannot, mandatory minimum statutes provide a level of uniformity and predictability in sentencing. They deter certain types of criminal behavior, determined by Congress to be sufficiently egregious as to merit these penalties, by clearly forewarning the potential offender and the public at large of the minimum potential consequences of committing such offenses. Moreover, mandatory minimum sentences can also incapacitate dangerous offenders for long periods of time, thereby increasing public safety. In the context of sexual abuse crimes against children, this can be particularly important. Finally, in cases involving multiple offenders, mandatory minimum sentences provide an indispensable tool for prosecutors, because they provide the strongest incentive for defendants to cooperate against the others who were involved in their criminal activity.

In addition, H.R. 2318 effectively would restrict the jurisdiction of federal courts to entertain a first petition for federal habeas corpus review, in cases involving the murder of a child, to the same grounds that now govern their ability to consider second or successive

petitions for federal habeas corpus review filed by any state prisoner. Thus, in state cases involving the murder of a child, federal habeas courts would no longer be able to review any exhausted federal constitutional claim; rather, federal courts would only have jurisdiction to consider habeas claims based on (1) new rules of constitutional law that have been made retroactively applicable by the Supreme Court, or (2) newly discovered evidence that clearly and convincingly establishes that, but for the existence of a constitutional error, no reasonable fact finder would have found the petitioner guilty of the underlying offense. Although we are currently analyzing this provision, we have two preliminary concerns.

First, while we agree that those who murder children should be punished without undue delay, we note that other murderers would not be covered by this provision. We ask the Subcommittee to consider whether other categories of condemned murderers should be subject to accelerated federal habeas review as well. We also ask the Subcommittee to consider whether the laudable goal of accelerating habeas corpus review for child-killers would run the risk of diverting judicial resources so that the already-long delays in providing federal habeas review for other murderers, particularly those under sentences of death, may be inadvertently lengthened.

Second, we note that this provision would only cover habeas claims under Section 2254 and not claims for post-conviction relief under Section 2255. We ask the Subcommittee to consider whether it would be appropriate to consider applying the same procedures for child killers in federal custody.

#### CONCLUSION

In sum, the Department of Justice shares your goals of protecting children from violence and sexual exploitation and looks forward to working with you on H.R. 2388 and H.R. 2318.

We deeply appreciate the legislative tools that Congress has already provided law enforcement in our fight against these awful crimes and your commitment to consider additional measures that would aid us in our efforts.

Mr. Chairman, I again thank you and the Subcommittee for the opportunity to speak to you today, and I would be pleased to answer any questions the Subcommittee might have.