

Calendar No. 204

105TH CONGRESS
1ST Session
S. 900

A BILL

To provide for sentencing enhancements and amendments to the Federal Sentencing Guidelines for offenses relating to the abuse and exploitation of children, and for other purposes.

OCTOBER 9, 1997

Reported with an amendment

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To provide for sentencing enhancements and amendments to the Federal Sentencing Guidelines for offenses relating to the abuse and exploitation of children, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 12, 1997

Mr. FEINGOLD (for himself and Mr. DEWINE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

OCTOBER 9, 1997

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide for sentencing enhancements and amendments to the Federal Sentencing Guidelines for offenses relating to the abuse and exploitation of children, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 ~~This Act may be cited as the “Child Exploitation~~
5 ~~Sentencing Enhancement Act of 1997”.~~

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the sexual exploitation of children, including
4 the sexual abuse of minors, and illegal sexual
5 activity with minors, poses a significant threat to the
6 health, safety, and well-being of children in the
7 United States;

8 (2) there is a compelling governmental interest
9 in preserving the health and safety of children, and
10 the prevention and elimination of the sexual abuse
11 and exploitation of children serves that interest;

12 (3) if computers are used to facilitate the sex-
13 ual abuse or exploitation of children—

14 (A) by facilitating the contact, persuasion,
15 inducement, enticement, or coercion of a child
16 in order to exploit or engage in illegal sexual
17 activity with that child, the risk of harm is
18 magnified and more dangerous to children be-
19 cause—

20 (i) the use of a computer allows the
21 sexual offender to target and reach a wider
22 range of potential victims than would oth-
23 erwise be possible if direct physical pres-
24 ence and contact with the child was nec-
25 essary to initiate and facilitate the crime;
26 and

1 (ii) the use of a computer allows the
2 sexual offender to avoid more readily de-
3 tection by law enforcement officials, as law
4 enforcement officials may lack the re-
5 sources or training necessary to identify,
6 pursue, and apprehend those individuals
7 who target children for sexual exploitation
8 through the use of computers; and

9 (B) the use of a computer allows a sexual
10 offender to avoid revealing, or to knowingly
11 conceal from a potential victim, the actual iden-
12 tity of the offender (including the offender's
13 sex, age, and name) and therefore allows the of-
14 fender to gain more readily the confidence of an
15 unsuspecting child;

16 (4) there is a compelling governmental interest
17 in prohibiting repeated and continuing patterns of
18 child sexual exploitation through extended incarceration
19 for offenders who use computers to facilitate
20 the sexual exploitation of a child or to sexually ex-
21 ploit a child;

22 (5) individuals who engage in a repeated and
23 continuing pattern of sexual abuse or exploitation of
24 children over a period of time are particularly harm-
25 ful to children;

1 (6) it is important to pay special attention to
2 the identification of those offenders who show the
3 greatest risk of continuing victimizing of children, so
4 that the offenders may be incapacitated through ex-
5 tended incarceration;

6 (7) consistently, experts in the field of criminal
7 justice find that criminal history, especially a history
8 of sexual offenses, is the most important and accu-
9 rate predictor of whether an individual might com-
10 mit a sexual offense in the future;

11 (8)(A) the report issued by the United States
12 Sentencing Commission in 1996 entitled “Sex Of-
13 fenses Against Children: Findings and Recommenda-
14 tions Regarding Federal Penalties”²² contains a re-
15 view of the cases of all Federal offenders sentenced
16 for offenses of pornography and transportation of
17 minors for illegal sexual activity and criminal sexual
18 abuse;

19 (B) in the report, the United States Sentencing
20 Commission found that—

21 (i) in approximately 20 percent of the
22 cases reviewed by the United States Sentencing
23 Commission, the defendant had a prior sex-re-
24 lated conviction;

1 (ii) 64 percent of the defendants convicted
2 under sexual abuse guidelines who had prior
3 convictions for sexual offenses had committed
4 sexual crimes against children; and

5 (iii) for all categories of sexual abuse, the
6 probability that a child was the prior victim of
7 such a defendant was high (ranging from a 50
8 to 70 percent probability);

9 (9) incapacitation through extended incarceration
10 will prevent those offenders who engage in a
11 repeated and continuing pattern of sexual exploi-
12 tation of children from continuing to commit the hei-
13 nous sexual offenses against children; and

14 (10) the prevention and elimination of the sex-
15 ual exploitation of children provides a compelling
16 governmental interest in prohibiting repeated and
17 continuing patterns of child sexual exploitation
18 through extended incarceration.

19 **SEC. 3. DEFINITIONS.**

20 In this Act:

21 (1) CHILD; CHILDREN.—The term “child” or
22 “children” means a minor or minors of an age speci-
23 fied in the applicable provision of title 18, United
24 States Code, that is subject to review under this Act.

1 (2) MINOR.—The term “minor” means any in-
 2 dividual who has not attained the age of 18, except
 3 that, with respect to references to section 2243 of
 4 title 18, United States Code, the term means an in-
 5 dividual described in subsection (a) of that section.

6 **SEC. 4. INCREASED PENALTIES FOR USE OF A COMPUTER**
 7 **IN THE SEXUAL ABUSE OR EXPLOITATION OF**
 8 **A CHILD.**

9 Pursuant to the authority granted to the United
 10 States Sentencing Commission under section 994(p) of
 11 title 28, United States Code, the United States Sentencing
 12 Commission shall—

13 (1) review the Federal Sentencing Guidelines on
 14 aggravated sexual abuse under section 2241 of title
 15 18, United States Code, sexual abuse under section
 16 2242 of title 18, United States Code, sexual abuse
 17 of a minor or ward under section 2243 of title 18,
 18 United States Code, coercion and enticement of a ju-
 19 venile under section 2422(b) of title 18, United
 20 States Code, and transportation of minors under
 21 section 2423 of title 18, United States Code; and

22 (2) upon completion of the review under para-
 23 graph (1), promulgate amendments to the Federal
 24 Sentencing Guidelines to increase penalties if the de-
 25 fendant used a computer with the intent to per-

1 suade, induce, entice, or coerce a child of an age
 2 specified in the applicable provision referred to in
 3 paragraph (1) to engage in any prohibited sexual ac-
 4 tivity.

5 **SEC. 5. INCREASED PENALTIES FOR KNOWING MISREPRE-**
 6 **SENTATION IN THE SEXUAL ABUSE OR EX-**
 7 **PLOITATION OF A CHILD.**

8 Pursuant to the authority granted to the United
 9 States Sentencing Commission under section 994(p) of
 10 title 28, United States Code, the United States Sentencing
 11 Commission shall—

12 (1) review the Federal Sentencing Guidelines on
 13 aggravated sexual abuse under section 2241 of title
 14 18, United States Code, sexual abuse under section
 15 2242 of title 18, United States Code, sexual abuse
 16 of a minor or ward under section 2243 of title 18,
 17 United States Code, coercion and enticement of a ju-
 18 venile under section 2422(b) of title 18, United
 19 States Code, and transportation of minors under
 20 section 2423 of title 18, United States Code; and

21 (2) upon completion of the review under para-
 22 graph (1), promulgate amendments to the Federal
 23 Sentencing Guidelines to increase penalties if the de-
 24 fendant knowingly misrepresented the actual identity
 25 of the defendant with the intent to persuade, induce,

1 entice, or coerce a child of an age specified in the
2 applicable provision referred to in paragraph (1) to
3 engage in a prohibited sexual activity.

4 **SEC. 6. INCREASED PENALTIES FOR PATTERN OF ACTIVITY**
5 **OF SEXUAL EXPLOITATION OF CHILDREN.**

6 Pursuant to the authority granted to the United
7 States Sentencing Commission under section 994(p) of
8 title 28, United States Code, the United States Sentencing
9 Commission shall—

10 (1) review the Federal Sentencing Guidelines on
11 criminal sexual abuse, the production of sexually ex-
12 plicit material, the possession of materials depicting
13 a child engaging in sexually explicit conduct, coer-
14 cion and enticement of minors, and the transpor-
15 tation of minors; and

16 (2) upon completion of the review under para-
17 graph (1), promulgate amendments to the Federal
18 Sentencing Guidelines to increase penalties applica-
19 ble to the offenses referred to in paragraph (1) in
20 any case in which the defendant engaged in a pat-
21 tern of activity involving the sexual abuse or exploi-
22 tation of a minor.

1 **SEC. 7. REPEAT OFFENDERS; INCREASED MAXIMUM PEN-**
 2 **ALTIES FOR TRANSPORTATION FOR ILLEGAL**
 3 **SEXUAL ACTIVITY AND RELATED CRIMES.**

4 (a) REPEAT OFFENDERS.—

5 (1) CHAPTER 117.—

6 (A) IN GENERAL.—Chapter 117 of title
 7 18, United States Code, is amended by adding
 8 at the end the following:

9 **“§ 2425. Repeat offenders**

10 “(a) IN GENERAL.—Any person described in this
 11 subsection shall be subject to the punishment under sub-
 12 section (b). A person described in this subsection is a per-
 13 son who violates a provision of this chapter, after one or
 14 more prior convictions—

15 “(1) for an offense punishable under this chap-
 16 ter or chapter 109A or 110; or

17 “(2) under any applicable law of a State relat-
 18 ing to conduct punishable under this chapter or
 19 chapter 109A or 110.

20 “(b) PUNISHMENT.—A violation of a provision of this
 21 chapter by a person described in subsection (a) is punish-
 22 able by a term of imprisonment of a period not to exceed
 23 twice the period that would otherwise apply under this
 24 chapter.”.

25 (B) CONFORMING AMENDMENT.—The
 26 chapter analysis for chapter 117 of title 18,

1 United States Code, is amended by adding at
2 the end the following:

“2425. Repeat offenders.”

3 ~~(2) CHAPTER 109A.—Section 2247 of title 18,~~
4 United States Code, is amended to read as follows:

5 **“§ 2247. Repeat offenders**

6 ~~“(a) IN GENERAL.—Any person described in this~~
7 ~~subsection shall be subject to the punishment under sub-~~
8 ~~section (b). A person described in this subsection is a per-~~
9 ~~son who violates a provision of this chapter, after one or~~
10 ~~more prior convictions—~~

11 ~~“(1) for an offense punishable under this chap-~~
12 ~~ter or chapter 110 or 117; or~~

13 ~~“(2) under any applicable law of a State relat-~~
14 ~~ing to conduct punishable under this chapter, or~~
15 ~~chapter 110 or 117.~~

16 ~~“(b) PUNISHMENT.—A violation of a provision of this~~
17 ~~chapter by a person described in subsection (a) is punish-~~
18 ~~able by a term of imprisonment of a period not to exceed~~
19 ~~twice the period that would otherwise apply under this~~
20 ~~chapter.”~~

21 ~~(b) INCREASED MAXIMUM PENALTIES FOR TRANS-~~
22 ~~PORTATION FOR ILLEGAL SEXUAL ACTIVITY AND RELAT-~~
23 ~~ED CRIMES.—~~

1 (1) TRANSPORTATION GENERALLY.—Section
2 2421 of title 18, United States Code, is amended by
3 striking “five” and inserting “10”.

4 (2) COERCION AND ENTICEMENT OF MINORS.—
5 Section 2422 of title 18, United States Code, is
6 amended—

7 (A) in subsection (a), by striking “five”
8 and inserting “10”; and

9 (B) in subsection (b), by striking “10” and
10 inserting “15”.

11 (3) TRANSPORTATION OF MINORS.—Section
12 2423 of title 18, United States Code, is amended—

13 (A) in subsection (a), by striking “ten”
14 and inserting “15”; and

15 (B) in subsection (b), by striking “10” and
16 inserting “15”.

17 (e) AMENDMENT OF SENTENCING GUIDELINES.—

18 Pursuant to the authority granted to the United States
19 Sentencing Commission under section 994(p) of title 28,
20 United States Code, the United States Sentencing Com-
21 mission shall—

22 (1) review the Federal Sentencing Guidelines
23 relating to chapter 117 of title 18, United States
24 Code; and

1 **SEC. 9. DIRECTIVE TO THE UNITED STATES SENTENCING**
2 **COMMISSION.**

3 In carrying out this Act, the United States Sentenc-
4 ing Commission shall—

5 (1) with respect to any action relating to the
6 Federal Sentencing Guidelines subject to this Act,
7 ensure reasonable consistency with other guidelines
8 of the Federal Sentencing Guidelines; and

9 (2) with respect to an offense subject to the
10 Federal Sentencing Guidelines, avoid duplicative
11 punishment under the guidelines for substantially
12 the same offense.

13 **SEC. 10. AUTHORIZATION FOR GUARDIANS AD LITEM.**

14 (a) **AUTHORIZATION OF APPROPRIATIONS.**—There
15 are authorized to be appropriated to the Department of
16 Justice, for the purpose specified in subsection (b), such
17 sums as may be necessary for each of fiscal years 1998
18 through 2001.

19 (b) **PURPOSE.**—The purpose specified in this sub-
20 section is the procurement, in accordance with section
21 3509(h) of title 18, United States Code, of the services
22 of individuals with sufficient professional training, experi-
23 ence, and familiarity with the criminal justice system, so-
24 cial service programs, and child abuse issues to serve as
25 guardians ad litem for children who are the victims of,
26 or witnesses to, a crime involving abuse or exploitation.

1 **SEC. 11. APPLICABILITY.**

2 This Act and the amendments made by this Act shall
3 apply to any action that commences on or after the date
4 of enactment of this Act.

5 **SECTION 1. SHORT TITLE.**

6 *This Act may be cited as the “Child Exploitation Sen-*
7 *tencing Enhancement Act of 1997”.*

8 **SEC. 2. DEFINITIONS.**

9 *In this Act:*

10 (1) *CHILD; CHILDREN.—The term “child” or*
11 *“children” means a minor or minors of an age speci-*
12 *fied in the applicable provision of title 18, United*
13 *States Code, that is subject to review under this Act.*

14 (2) *MINOR.—The term “minor” means any indi-*
15 *vidual who has not attained the age of 18, except*
16 *that, with respect to references to section 2243 of title*
17 *18, United States Code, the term means an individual*
18 *described in subsection (a) of that section.*

19 **SEC. 3. INCREASED PENALTIES FOR USE OF A COMPUTER**
20 **IN THE SEXUAL ABUSE OR EXPLOITATION OF**
21 **A CHILD.**

22 *Pursuant to the authority granted to the United States*
23 *Sentencing Commission under section 994(p) of title 28,*
24 *United States Code, the United States Sentencing Commis-*
25 *sion shall—*

1 (1) *review the Federal sentencing guidelines on*
2 *aggravated sexual abuse under section 2241 of title*
3 *18, United States Code, sexual abuse under section*
4 *2242 of title 18, United States Code, sexual abuse of*
5 *a minor or ward under section 2243 of title 18, United*
6 *States Code, coercion and enticement of a juvenile*
7 *under section 2422(b) of title 18, United States Code,*
8 *and transportation of minors under section 2423 of*
9 *title 18, United States Code; and*

10 (2) *upon completion of the review under para-*
11 *graph (1), promulgate amendments to the Federal*
12 *sentencing guidelines to provide an appropriate sen-*
13 *tencing enhancement if the defendant used a computer*
14 *with the intent to persuade, induce, entice, or coerce*
15 *a child of an age specified in the applicable provision*
16 *referred to in paragraph (1) to engage in any prohib-*
17 *ited sexual activity.*

18 **SEC. 4. INCREASED PENALTIES FOR KNOWING MISREPRE-**
19 **SENTATION IN THE SEXUAL ABUSE OR EX-**
20 **PLOITATION OF A CHILD.**

21 *Pursuant to the authority granted to the United States*
22 *Sentencing Commission under section 994(p) of title 28,*
23 *United States Code, the United States Sentencing Commis-*
24 *sion shall—*

1 (1) *review the Federal sentencing guidelines on*
2 *aggravated sexual abuse under section 2241 of title*
3 *18, United States Code, sexual abuse under section*
4 *2242 of title 18, United States Code, sexual abuse of*
5 *a minor or ward under section 2243 of title 18, United*
6 *States Code, coercion and enticement of a juvenile*
7 *under section 2422(b) of title 18, United States Code,*
8 *and transportation of minors under section 2423 of*
9 *title 18, United States Code; and*

10 (2) *upon completion of the review under para-*
11 *graph (1), promulgate amendments to the Federal*
12 *sentencing guidelines to provide an appropriate sen-*
13 *tencing enhancement if the defendant knowingly mis-*
14 *represented the actual identity of the defendant with*
15 *the intent to persuade, induce, entice, or coerce a*
16 *child of an age specified in the applicable provision*
17 *referred to in paragraph (1) to engage in a prohibited*
18 *sexual activity.*

19 **SEC. 5. INCREASED PENALTIES FOR PATTERN OF ACTIVITY**
20 **OF SEXUAL EXPLOITATION OF CHILDREN.**

21 *Pursuant to the authority granted to the United States*
22 *Sentencing Commission under section 994(p) of title 28,*
23 *United States Code, the United States Sentencing Commis-*
24 *sion shall—*

1 (1) *review the Federal sentencing guidelines on*
 2 *criminal sexual abuse, the production of sexually ex-*
 3 *PLICIT material, the possession of materials depicting*
 4 *a child engaging in sexually explicit conduct, coercion*
 5 *and enticement of minors, and the transportation of*
 6 *minors; and*

7 (2) *upon completion of the review under para-*
 8 *graph (1), promulgate amendments to the Federal*
 9 *sentencing guidelines to provide an appropriate sen-*
 10 *tencing enhancement applicable to the offenses re-*
 11 *ferred to in paragraph (1) in any case in which the*
 12 *defendant engaged in a pattern of activity involving*
 13 *the sexual abuse or exploitation of a minor.*

14 **SEC. 6. REPEAT OFFENDERS; INCREASED MAXIMUM PEN-**
 15 **ALTIES FOR TRANSPORTATION FOR ILLEGAL**
 16 **SEXUAL ACTIVITY AND RELATED CRIMES.**

17 *(a) REPEAT OFFENDERS.—*

18 (1) *CHAPTER 117.—*

19 (A) *IN GENERAL.—Chapter 117 of title 18,*
 20 *United States Code, is amended by adding at the*
 21 *end the following:*

22 **“§ 2425. Repeat offenders**

23 “(a) *IN GENERAL.—Any person described in this sub-*
 24 *section shall be subject to the punishment under subsection*

25 *(b). A person described in this subsection is a person who*

1 *violates a provision of this chapter, after one or more prior*
 2 *convictions—*

3 “(1) *for an offense punishable under this chap-*
 4 *ter, or chapter 109A or 110; or*

5 “(2) *under any applicable law of a State relat-*
 6 *ing to conduct punishable under this chapter, or*
 7 *chapter 109A or 110.*

8 “(b) *PUNISHMENT.—A violation of a provision of this*
 9 *chapter by a person described in subsection (a) is punish-*
 10 *able by a term of imprisonment of a period not to exceed*
 11 *twice the period that would otherwise apply under this*
 12 *chapter.”.*

13 (B) *CONFORMING AMENDMENT.—The chap-*
 14 *ter analysis for chapter 117 of title 18, United*
 15 *States Code, is amended by adding at the end*
 16 *the following:*

“2425. *Repeat offenders.*”.

17 (2) *CHAPTER 109A.—Section 2247 of title 18,*
 18 *United States Code, is amended to read as follows:*

19 **“§ 2247. Repeat offenders**

20 “(a) *IN GENERAL.—Any person described in this sub-*
 21 *section shall be subject to the punishment under subsection*
 22 *(b). A person described in this subsection is a person who*
 23 *violates a provision of this chapter, after one or more prior*
 24 *convictions—*

1 “(1) for an offense punishable under this chap-
2 ter, or chapter 110 or 117; or

3 “(2) under any applicable law of a State relat-
4 ing to conduct punishable under this chapter, or
5 chapter 110 or 117.

6 “(b) PUNISHMENT.—A violation of a provision of this
7 chapter by a person described in subsection (a) is punish-
8 able by a term of imprisonment of a period not to exceed
9 twice the period that would otherwise apply under this
10 chapter.”

11 (b) INCREASED MAXIMUM PENALTIES FOR TRANSPOR-
12 TATION FOR ILLEGAL SEXUAL ACTIVITY AND RELATED
13 CRIMES.—

14 (1) TRANSPORTATION GENERALLY.—Section
15 2421 of title 18, United States Code, is amended by
16 striking “five” and inserting “10”.

17 (2) COERCION AND ENTICEMENT OF MINORS.—
18 Section 2422 of title 18, United States Code, is
19 amended—

20 (A) in subsection (a), by striking “five” and
21 inserting “10”; and

22 (B) in subsection (b), by striking “10” and
23 inserting “15”.

24 (3) TRANSPORTATION OF MINORS.—Section 2423
25 of title 18, United States Code, is amended—

1 (A) in subsection (a), by striking “ten” and
2 inserting “15”; and

3 (B) in subsection (b), by striking “10” and
4 inserting “15”.

5 (c) *AMENDMENT OF SENTENCING GUIDELINES.*—Pur-
6 *suant to the authority granted to the United States Sentenc-*
7 *ing Commission under section 994(p) of title 28, United*
8 *States Code, the United States Sentencing Commission*
9 *shall—*

10 (1) *review the Federal sentencing guidelines re-*
11 *lating to chapter 117 of title 18, United States Code;*
12 *and*

13 (2) *upon completion of the review under para-*
14 *graph (1), promulgate such amendments to the Fed-*
15 *eral sentencing guidelines as are necessary to provide*
16 *for the amendments made by this section.*

17 **SEC. 7. CLARIFICATION OF DEFINITION OF DISTRIBUTION**
18 **OF PORNOGRAPHY.**

19 *Pursuant to the authority granted to the United States*
20 *Sentencing Commission under section 994(p) of title 28,*
21 *United States Code, the United States Sentencing Commis-*
22 *sion shall—*

23 (1) *review the Federal sentencing guidelines re-*
24 *lating to the distribution of pornography covered*
25 *under chapter 110 of title 18, United States Code, re-*

1 *lating to the sexual exploitation and other abuse of*
2 *children; and*

3 *(2) upon completion of the review under para-*
4 *graph (1), promulgate such amendments to the Fed-*
5 *eral sentencing guidelines as are necessary to clarify*
6 *that the term “distribution of pornography” applies*
7 *to the distribution of pornography—*

8 *(A) for monetary remuneration; or*

9 *(B) for a nonpecuniary interest.*

10 **SEC. 8. DIRECTIVE TO THE UNITED STATES SENTENCING**
11 **COMMISSION.**

12 *In carrying out this Act, the United States Sentencing*
13 *Commission shall—*

14 *(1) with respect to any action relating to the*
15 *Federal sentencing guidelines subject to this Act, en-*
16 *sure reasonable consistency with other guidelines of*
17 *the Federal sentencing guidelines; and*

18 *(2) with respect to an offense subject to the Fed-*
19 *eral sentencing guidelines, avoid duplicative punish-*
20 *ment under the guidelines for substantially the same*
21 *offense.*

22 **SEC. 9. AUTHORIZATION FOR GUARDIANS AD LITEM.**

23 *(a) AUTHORIZATION OF APPROPRIATIONS.—There are*
24 *authorized to be appropriated to the Department of Justice,*

1 *for the purpose specified in subsection (b), such sums as*
2 *may be necessary for each of fiscal years 1998 through 2001.*

3 **(b) PURPOSE.**—*The purpose specified in this sub-*
4 *section is the procurement, in accordance with section*
5 *3509(h) of title 18, United States Code, of the services of*
6 *individuals with sufficient professional training, experi-*
7 *ence, and familiarity with the criminal justice system, so-*
8 *cial service programs, and child abuse issues to serve as*
9 *guardians ad litem for children who are the victims of, or*
10 *witnesses to, a crime involving abuse or exploitation.*

11 **SEC. 10. APPLICABILITY.**

12 *This Act and the amendments made by this Act shall*
13 *apply to any action that commences on or after the date*
14 *of enactment of this Act.*