

108TH CONGRESS  
1ST SESSION

# S. 1086

To repeal provisions of the PROTECT Act that do not specifically deal with the prevention of the exploitation of children.

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IN THE SENATE OF THE UNITED STATES

MAY 20, 2003

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

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## A BILL

To repeal provisions of the PROTECT Act that do not specifically deal with the prevention of the exploitation of 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 “Judicial Use of Discre-  
5 tion to Guarantee Equity in Sentencing Act of 2003” or  
6 “JUDGES Act”.

1 **SEC. 2. A REPORT ON THE INCIDENCE OF DOWNWARD DE-**  
2 **PARTURES.**

3 (a) REPORT REQUIRED.—Not later than 180 days  
4 after the date of enactment of this Act, the United States  
5 Sentencing Commission shall submit to Congress a report  
6 on the incidence of downward departures from the United  
7 States Sentencing Guidelines.

8 (b) CONTENT OF REPORT.—The report required by  
9 subsection (a) shall include—

10 (1) a discussion of the history and purpose of  
11 departures in the Federal sentencing guideline sys-  
12 tem;

13 (2) information on rates of departures from the  
14 sentencing guidelines, including information on vari-  
15 ations in departure rates among different districts  
16 and judicial circuits, and among different offense  
17 and departure types, and an assessment of the fac-  
18 tors that may account for these variations;

19 (3) an analysis of the grounds provided by dis-  
20 trict court judges when they depart from the guide-  
21 lines, and whether the Commission should adopt  
22 guidelines or policy statements to prohibit, encour-  
23 age, or discourage departures based on such  
24 grounds;

1           (4) a review of departure appeals, including  
2 trends in the number and disposition of departure  
3 appeals;

4           (5) a comparison of the departure authority in  
5 Federal law with the departure authority in manda-  
6 tory State sentencing guideline systems;

7           (6) an assessment of the extent to which depart-  
8 ures from the sentencing guidelines circumvent or  
9 promote operation of the sentencing guidelines sys-  
10 tem;

11           (7) an assessment of the extent to which depart-  
12 ures from the sentencing guidelines undermine or  
13 promote the purposes of sentencing as set forth in  
14 section 3553(a)(2) of title 18, United States Code;

15           (8) an assessment of variations in the mag-  
16 nitude of departures and the frequency with which  
17 the final sentences result in imprisonment, inter-  
18 mediate conditions of confinement, or release;

19           (9) an assessment of the extent to which exist-  
20 ing mechanisms to review departures from the sen-  
21 tencing guidelines are sufficient to ensure that the  
22 purposes of sentencing referred to in paragraph (7)  
23 are achieved; and

1           (10) any other information, assessments, or rec-  
 2           ommendations that the Commission considers to be  
 3           appropriate.

4           (c) PUBLIC HEARING.—In preparing the report, the  
 5 Commission shall—

6           (1) hold at least 1 public hearing on the subject  
 7           of guideline departures; and

8           (2) solicit the views of the Federal judiciary,  
 9           the Department of Justice, the defense bar, and  
 10          other interested parties.

11 **SEC. 3. REPEAL OF NONCONFORMING PROVISIONS.**

12          (a) REPEAL.—

13           (1) IN GENERAL.—Subsections (e) through (h),  
 14           and (j) through (n) of section 401 the Prosecutorial  
 15           Remedies and Other Tools to end the Exploitation  
 16           of Children Today Act of 2003, or the PROTECT  
 17           Act, are repealed effective April 30, 2003.

18           (2) NO EFFECT.—Subsections (c) through (h),  
 19           and (j) through (n) of section 401 of the PROTECT  
 20           Act, and the amendments made by those sub-  
 21           sections, shall be deemed to have never taken effect.

22          (b) TECHNICAL AMENDMENT.—Section 401 of the  
 23 PROTECT Act is amended by redesignating subsection  
 24 (i) as subsection (c).

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