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107TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 107–527

LIFETIME CONSEQUENCES FOR SEX OFFENDERS ACT OF 2002

JUNE 24, 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. 4679]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4679) To amend title 18, United States Code, to provide a maximum term of supervised release of life for child sex offenders, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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99–006

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Lifetime Consequences for Sex Offenders Act of 2002".

SEC. 2. SUPERVISED RELEASE TERM FOR SEX OFFENDERS.

Section 3583 of title 18, United States Code, is amended by adding at the end the following:

"(k) SUPERVISED RELEASE TERMS FOR SEX OFFENDERS.—Notwithstanding subsection (b), the authorized term of supervised release for any offense under chapter 109A, 110, 117, or section 1591 is any term of years or life.".

Amend the title so as to read:

A bill to amend title 18, United States Code, to provide a maximum term of supervised release of life for sex offenders.

PURPOSE AND SUMMARY

H.R. 4679, the "Lifetime Consequences for Sex Offenders Act of 2002" would allow Federal judges to include, as part of any sentence of a convicted sex offender, a term of supervised release for any term of years or life. The court may terminate the term of supervised release and discharge the defendant at any time after 1 year if the court is satisfied that such action is warranted by the conduct of the defendant and the interest of justice. This will provide judges with more discretion in dealing with sex offenders since such offenses presently carry a maximum of one to 5 years of supervision. The law currently allows for lifetime supervision of certain Federal drug and terrorism offenses.

BACKGROUND AND NEED FOR THE LEGISLATION

Studies have shown that sex offenders are four times more likely than other violent criminals to recommit their crimes. Moreover, the recidivism rates do not appreciably decline as offenders age. 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.

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.

While any criminal's subsequent re-offending is of public concern, preventing sexual offenders from re-offending is particularly important, given the irrefutable and irreparable harm that these offenses cause victims and the fear they generate in the community. Sexual assault is a terrifying crime which leaves its victims with physical, emotional, and psychological scars and affects everyone around them.

This legislation will give Judges the discretion necessary to impose a term of supervised release that is appropriate for each defendant. Authorities will be able to monitor those sex offenders

that pose the greatest threat to our society for as long as the court feels they are a danger. It is important to note that there are no mandatory requirements contained in this bill. If a Judge decides that supervision is not necessary, then there is no requirement to impose any term of supervised release.

HEARINGS

There were no hearings held on H.R. 4679.

COMMITTEE CONSIDERATION

On June 19, 2002, the Committee met in open session and ordered favorably reported the bill H.R. 4679, with amendment, by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

1. An amendment was offered by Mr. Scott. The amendment would have limited a court's ability to impose a term of supervised release for any term of years or life to only felony offenses under chapters 109A, 110, 117, or section 1591 of title 18, not misdemeanors. The amendment was defeated by rollcall vote of 5 to 17.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde			
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Barr			
Mr. Jenkins		X	
Mr. Cannon			
Mr. Graham		X	
Mr. Bachus			
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Ms. Hart		X	
Mr. Flake			
Mr. Pence		X	
Mr. Forbes		X	
Mr. Conyers			
Mr. Frank	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler			
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin	X		
Mr. Weiner			
Mr. Schiff		X	

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Sensenbrenner, Chairman		X	
Total	5	17	

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. 4679 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. 4679, 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, June 24, 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. 4679, the Lifetime Consequences for Sex Offenders Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette J. Walker, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 4679—Lifetime Consequences for Sex Offenders Act of 2002.

H.R. 4679 would amend the Federal criminal code to provide that the maximum term of supervised release for sex offenders would be for life. Supervised release is a period of court-ordered monitoring following release from incarceration. CBO estimates that implementing H.R. 4679 would have a negligible effect on the Federal budget over the 2003–2007 period.

Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no direct costs on State, local, or tribal governments.

Based on information from the U.S. Sentencing Commission and the Administrative Office of the United States Courts on the number of sex offenders and the costs of supervised release, CBO expects that most of the convicted sex offenders who would receive longer supervised release sentences as a result of implementing the bill would be those who also receive prison sentences longer than 5 years. Therefore, CBO estimates that implementing H.R. 4679 would have a negligible effect on the cost of supervised release over the next 5 years. The cost of providing supervised release could increase after several years if sex offenders are sentenced to longer periods of supervised release.

The CBO staff contact for this estimate is Lanette J. Walker, 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 "Lifetime Consequences for Sex Offenders Act of 2002."

SECTION 2. SUPERVISED RELEASE TERM FOR SEX OFFENDERS

Section 2 of the bill amends 18 U.S.C. § 3583 which grants Federal courts the authority to include a term of supervised release after imprisonment. Under this section, a court would be authorized to impose a term of supervised release of any terms of years or life for any offense under chapters 109A (Sexual abuse), 110 (Sexual exploitation and other abuse of children), 117 (Transportation for illegal sexual activity and related crimes), or section 1591 (Sex trafficking of children by force, fraud, or coercion) of title 18. Under current law, a term of supervised release for any of these crimes would be limited to a maximum term of between one and 5 years. The only crimes for which a court may currently impose a life term of supervised release are certain Federal drug and terrorism offenses.

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 (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

SECTION 3583 OF TITLE 18, UNITED STATES CODE

§ 3583. Inclusion of a term of supervised release after imprisonment

(a) * * *

* * * * * * *

(k) SUPERVISED RELEASE TERMS FOR SEX OFFENDERS.—Notwithstanding subsection (b), the authorized term of supervised release for any offense under chapter 109A, 110, 117, or section 1591 is any term of years or life.

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, JUNE 19, 2002

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

The Committee met, pursuant to notice, at 10:29 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. A working quorum is present.

[Intervening business.]

Pursuant to notice, I now call up the bill H.R. 4679, the "Lifetime Consequences for Sex Offenders Act of 2002," for purposes of markup and move its favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 4679, follows:]

I

107TH CONGRESS
2D SESSION

H. R. 4679

To amend title 18, United States Code, to provide a maximum term of supervised release of life for child sex offenders.

IN THE HOUSE OF REPRESENTATIVES

MAY 8, 2002

Mr. GEKAS introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend title 18, United States Code, to provide a maximum term of supervised release of life for child sex offenders.

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 "Lifetime Consequences
5 for Sex Offenders Act of 2002".

6 **SEC. 2. SUPERVISED RELEASE TERM FOR CHILD SEX OF-**
7 **FENDERS.**

8 Section 3583 of title 18, United States Code, is
9 amended by adding at the end the following:

1 "(k) SUPERVISED RELEASE TERMS FOR SEX OF-
2 FENDERS.—Notwithstanding subsection (b), the author-
3 ized term of supervised release for any offense under chap-
4 ter 109A, 110, 117, or section 1591, 2421, 2422, 2423,
5 or 2425 is any term of years or life.".

○

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Texas, Mr. Smith, the Subcommittee Chairman, for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Chairman, H.R. 4679, the "Lifetime Consequences for Sex Offenders Act of 2002," was introduced by Representative George Gekas, and it would allow Federal judges to include, as part of any sentence of a convicted sex offender, a term of supervised release. The court would end the term of supervised release and discharge the defendant at any time after 1 year, if the court is satisfied that such action is warranted by the conduct of the defendant and the interest of justice.

Mr. Chairman, I support this bill and will yield the balance of my time to the gentleman from Pennsylvania.

Mr. GEKAS. I thank the gentleman for yielding.

The gentleman from Texas has adequately described the boundaries of our piece of legislation. What we want to emphasize for the Members is that what we do here is reposit discretion in the judge to deal with each sex offense that comes before him with a wider latitude of supervised release that might be appropriate for a given case.

We have in this Committee fashioned legislation previously, for drug offenses and for terrorism cases, a zero to lifetime ability of judges to order and direct supervised release. And as I say, that could last for a lifetime, depending on the circumstances of the case, for which we allow the judge to exercise discretion.

Well, everybody knows that in sex cases, particularly pedophile, those sick kind of cases about which we read too much these days, that the proclivity for recidivism is higher than in any other kind of case. So what do we have? We have a situation where the most that supervised release can be obtained for such a case under the current law is 5 years, if it's a serious enough felony, and only 3 years if it's a lesser categorized sex offense. What we do here now is match the drug offender and the terrorism offender with the sex offender, where we know recidivism is a constant element of this kind of offense, and we allow the judge to impose higher than the 5 years or the 3 years of supervised release. And that discretion, I have to remind the Members, also allows a reduction after a certain number of years or a total ending of the supervision.

So, again, we rely on the judge who has the sex offender in front of him to be able to determine under the facts of that case how much supervised release there ought to be and how much punishment should follow a breach of such supervision.

With that, I thank the gentleman for yielding.

Mr. SMITH. And I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, I'm opposed to this bill absent any standard for application of lifetime supervision. This bill would make subject to lifetime supervision misdemeanors and cases involving consensual acts, including consensual touching between high school students who are still teenagers.

There may be cases for which consideration for such treatment is warranted but not all of the cases falling under this bill. Although judges have the discretion to impose lifetime supervision or not, the tendency is likely to see it as safer to impose it whether it's needed or not.

And because it deals with cases in Federal jurisdiction, it will have a disparate racial impact on Native Americans, which will comprise about 75 percent of the cases in Federal jurisdiction. This bill was on the calendar for a Subcommittee hearing and markup, where we could have addressed these issues and concerns. But for some reason, it was taken off the calendar and brought directly to the full Committee. In an effort to improve the bill, I'll offer amendments aimed at focusing the bill on the type of cases that might warrant considerations of lifetime supervision.

I yield back.

Chairman SENSENBRENNER. Without objection, all Members may insert opening statements at this point in the record.

Chairman SENSENBRENNER. Are there any amendments?

The gentleman from Virginia.

Mr. SCOTT. I have an amendment at the desk, number 1.

Chairman SENSENBRENNER. The clerk will report Scott 1.

The CLERK. Amendment to H.R. 4679, offered by Mr. Scott. On page 2, line 4, after chapter 109A, insert "excluding section 2243(a), section 2244(a)(2), (3), (4), and section 2244(b)." On page 2, line 4——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

AMENDMENT TO H.R. 4679
OFFERED BY MR. SCOTT
#1

On page 2, line 4, after "Chapter 109A", insert: "excluding Section 2243(a), Section 2244(a) (2), (3), (4), and Section 2244(b)".

On Page 2, line 4, after "Chapter 117", insert: "involving a minor 12 years of age or under, or the use of force or the threat of force, or coercion, or through the administration to any person, without the knowledge and consent of such person, of any drug, intoxicant, or other similar substance, which substantially impairs the ability of such person to appraise or control conduct".

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

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, this would eliminate misdemeanors and consensual sexual activities, including touching between high school students and sex crimes between consenting adults. Perhaps some sex crimes warrant lifetime supervision of offenders, but without requiring any guidelines or reviews, we are unnecessarily subjecting misdemeanor offenders and other minor offenders to life sentences. In overzealous context of indiscriminately ferreting out sex offenders for harsher treatment, there are likely to be judges who, like lawmakers promoting such policies, prefer to err on the side of harsh treatment in order to avoid possible criticism they were not as tough as they could have been should the offender recidivate.

Now, for many of the crimes covered under this provision, lifetime supervision would be a lot more about enforcing conditions of supervision than about preventing additional sex crimes. Offenders will be in and out of prison not for new offenses but for violations of the conditions of supervision. This will not only be unfair to what may be a very minor offender but a waste of taxpayer resources.

I urge the adoption of the amendment as some limitation on potential abuses of discretion due to overzealous attention to a volatile issue.

The provision is rife with the prospects for unfairness in its application for another reason. The Sentencing Commission data reflects that if we pass Federal laws such as this—the Sentencing Commission data reflects that when we pass Federal laws such as this, they only apply in Federal jurisdictions, and 75 percent or more of those affected would be Native Americans on reservations. It is unfair for offenders in the same State to face vastly differing harshness in treatment for the same offense simply because of where the crime within the State was committed.

I urge my colleagues to pass the amendment. I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. Yes, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GEKAS. I thank the Chair.

What I said in the opening statement applies to my position in opposition to the Scott amendment. The key element to the entire piece of legislation that we have before us is the discretion of the judge. And this matches that same discretion that applies to drug offenses and to terrorism offenses as outlined in our PATRIOT Act.

Giving the judge discretion on these matters is one in which that judge can take into account all the factors to which the gentleman from Virginia refers. And if it's a case that is out of bounds in his or her mind, the judge's, as to lifetime supervision, he can order 1 year of supervision or he can order 10 years of supervision, and then when the offender comes back with some kind of application for modification of that supervision, he can lower it, the judge can.

And so this discretion in an area where proclivity for recidivism is the highest among any of the offenses that we can conjure up, then to allow a judge this discretion is very necessary.

I talked with two Federal judges on this very same matter. As a matter of fact, the matter was brought to my attention by a Federal judge who is frustrated by the fact that the supervision ends after 5 years in a case which he thought would be one which merited lifetime supervision.

There is a body of study results which indicates that when supervision is a part of a sex offender's life, that recidivism is prevented or at least set back for a number of years.

Therefore, I ask for a rejection of the Scott amendment.

I yield back the balance of my time.

Chairman SENSENBRENNER. For what purpose does the gentlewoman from California seek recognition?

Ms. WATERS. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WATERS. I would like to support Representative Scott. This bill is an example of the kind of piecemeal legislation in the criminal justice area that we really should not support.

We have many sex crimes that are being committed where the States have the jurisdiction. All of the sex offenses we are seeing that have occurred in the Catholic Church, where priests have committed sex crimes over and over again against children, would not be covered by this. This is just for a narrow category of sex offenders that fall under Federal law and, as Representative Scott said, mostly on Native Americans.

This is not a good piece of legislation. It's not a wise piece of legislation. And I think it attempts to send a signal that we are getting tough on crime and tough on sex offenses, and we're going to give the judge the ability to monitor these criminals for life, et cetera, et cetera.

It may have the appearance of that, but it does nothing to deal with the large majority of sex offenders who are punished under State law.

I would ask my colleagues not to support this very narrowly drawn bill that would simply single out a small segment of our society for lifelong supervision. It just really does not make good sense.

I would yield back the balance——

Mr. ISSA. Will the gentlelady yield? Would the gentlelady yield?

Ms. WATERS. Yes.

Mr. ISSA. Perhaps I could ask just a quick question. If this is so narrow, and there is clearly a need for a national supervision policy, then would you support, in the alternative, if this is voted down, and in the future after reasonable study, a national sex offender policy that would take those people guilty of Federal and State offenses and, once they are released from State jurisdiction, that they would fall under a national review policy?

Would you support that, in order to broaden this, assuming that we have appropriate hearings?

Ms. WATERS. Yes, I absolutely would. And let me tell you something else I'd put into a law like that: I would particularly target individuals, adults, who have jobs and careers that bring them in contact with children, because we have discovered that people who commit sex offenses against children over and over again seek opportunities to work with children. And I think those who place themselves in some responsible role, supervising and working with children, should certainly have the harshest penalties and lifelong supervision. I certainly would.

Chairman SENSENBRENNER. Does the gentlewoman yield back?

Ms. WATERS. I yield back the balance of my time.

Mr. WATT. Mr. Chairman?

Mr. GREEN. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Wisconsin, Mr. Green, seek recognition?

Mr. GREEN. 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 the Scott amendment. What I find so interesting in this Committee, as we try to deal with the very serious problem of sex crimes against kids, we are first criticized for being overly broad, and then we're criticized for being overly narrow. It's tough for us to figure out just what it is that we should be doing here.

Let me criticize the Scott amendment from a slightly different standpoint than my friend and colleague, Mr. Gekas, the author of the underlying bill.

Mr. Gekas has pointed out the great discretion the judges have here. I would almost wish they didn't have as much discretion. I would rather see mandatory lifetime monitoring.

This isn't about being tough on crime. This isn't posturing for being tough on crime. This is giving judges the tools to prevent sex crimes against kids, because we know that sex crimes against kids—those monsters who perpetrate sex crimes against kids have among the highest recidivism rates of any type of offender.

What we're trying to do here is to give judges the ability to intervene and to stop it from happening again. That's why we have lifetime supervision, because we want to stop these crimes from occurring over and over again.

The gentlelady is right; too many times these crimes occur over and over again. And we've seen the scandal in the Catholic Church. And as a good Catholic myself, I look at it as monstrosity and atrocity and tragedy.

Ms. WATERS. Will the gentleman yield?

Mr. GREEN. No, let me finish my statement if I can.

The key is, I think, when we find someone who does perpetrate a crime, a sex crime against kids, that I think we need to intervene immediately. With first-time offenders, I think a judge should have the ability for lifetime monitoring. If a judge has before him an adult and looks at this person as being a genuine risk, I think the judge should have every right to impose lifetime supervision. To me, that only makes sense.

The judge—this legislation comes because Congressman Gekas was contacted by a Federal judge who said he or she needed additional tools to prevent sex crimes against kids. What we have in this legislation, in my view, is a very modest approach to doing just that. And yet, we see with the Scott amendment an effort to pull certain crimes out, to narrow the scope of much of this as possible.

Please, when the Federal judiciary comes to us, looking for help, asking for tools to deal with what is a very serious crime, a crime that tears communities and families apart, that destroys the future of children, robs them of their innocence, let's try to give these judges the tools they need to do the job.

Please reject the Scott——

Ms. WATERS. Would the gentleman yield?

Mr. GREEN.—amendment, and let's support the underlying bill.

And with the time I have left, I'd be happy to yield to the gentlelady.

Ms. WATERS. Mr. Issa asked me a question about whether or not I would support lifetime monitoring if in fact it covered State sex offenses, and I'm going to ask you the same thing. And would you also support legislation such as I've alluded to, where we would especially make it even harsher for adults who are in supervisory roles over children, and particularly the church and the Catholic Church, as we have seen these abuses now? Would you do that?

Mr. GREEN. I am the author of the Two Strikes and You're Out for those who commit sex crimes against kids, so I'm on record on saying I'll be pretty harsh toward those who do commit these crimes.

Ms. WATERS. That's not my question, though.

Mr. GREEN. It was one of your questions.

And with respect to State supervision, in my home State, we already do provide for much greater supervision than is current law on the Federal law. So, yes, I do support the idea of enhanced long-term supervision of sex offenders. I think that is part of the answer without what we need to do.

And with that, Mr. Chairman, I yield back my time.

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

I confess that I don't know a lot about supervised release. I guess when I was practicing law it was in the era before—it was in the era of when you got convicted and sentenced and went to jail and served your time. And when you got out, that was kind of—you had paid your debt to society. And then we got to things like Megan's

Law. We started making lists of people and keeping a register of people.

We now have supervised release, which is really a term that I am not even familiar with. So can I—maybe I can get Mr. Scott to clarify.

How does this differ from probation, the good, old-fashioned probation that we used to think about?

Mr. SCOTT. I think it's pretty much the same. You're released on conditions, and they set the conditions any kind of way they want. You violate the conditions, you go back to jail.

Mr. WATT. And the conditions are set at the initial sentencing for the rest of a person's life, or is there periodic review of this? What happens?

Mr. SCOTT. It can be they tell you to report to the probation/parole department, and then they say, "You are released. Here are the conditions. And do this and do that. We're going to supervise you. If you don't show up on time, you can go back to jail."

And that's one of the problems. If you violate the conditions of your release under supervision, that's a violation and they'll send you back to prison. And we're talking about misdemeanor, consensual acts.

I mean, all these things—you're talking about touching, fully clothed. You touch someone on certain parts of their body——

Mr. WATT. Let me reclaim my time——

Mr. SCOTT.—through the clothing——

Mr. WATT.—just to ask, in the absence of your amendment, basically then a judge with unlimited discretion, no guidance, has the authority to basically set whatever terms he wants for the rest of somebody's life for a consensual act?

Mr. SCOTT. According to the bill, misdemeanors and consensual activities—and not talking about—you know, if a 19-year-old and a 15-year-old are on a date, things that routinely happen in the movies. I mean, people watching the movies touch certain parts of the body, consensual.

Mr. WATT. I wouldn't know anything about that. [Laughter.]

Mr. SCOTT. Well, take my word for it.

You can be convicted of a crime and then subjected to lifetime supervision.

So if you violate—8 years from now, if you violate the conditions of your release, you're back in jail.

Mr. WATT. Mr. Chairman, I guess this just seems very troubling to me. And I confess that I am not convinced that this is a good idea, simply because we did it in the terrorism bill. Maybe there would be the rationale in that kind of context. I'm certainly not convinced that it's a good idea because we did it at some point on drug offenses. I suspect I probably voted against that, if I had the opportunity to vote against it.

I just think there is something inherently unfair about, number one, not allowing somebody to serve their time and come to grips with what they've done in the past and put it behind them; and, number two, not giving judges some guidelines about how they will exercise this discretion.

And, you know, my experience really is that when that kind of unfettered discretion is given to judges, the result typically is that

it falls more harshly on various groups that come into those courts and——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. WATT. So I encourage a vote for Mr. Scott's amendment.

Chairman SENSENBRENNER. The question is on the Scott amendment.

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?

The gentleman from Virginia.

Mr. SCOTT. Number 3, I have an amendment at the desk, number 3.

Chairman SENSENBRENNER. The clerk will report Scott 3.

The CLERK. Amendment to H.R. 4679, offered by Mr. Scott. On page 2, line 3, after the word "any," insert the word "felony."

[The amendment follows:]

AMENDMENT TO H.R. 4679
OFFERED BY MR. SCOTT
#3

On page 2, lin 3, after the word "any", insert the word "felony"

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

Mr. SCOTT. Mr. Chairman, this amendment would eliminate misdemeanors from the coverage of this bill for reasons I've already stated. There is no justification for turning a misdemeanor into a life sentence.

And I just want to point out one of the things—one of the offenses that's covered by bill, section 2422: Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce or in any territory or possession of the United States to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense or attempts to do so shall be fined under this title and imprisoned no more than 10 years or both.

Now, that means that if you're crossing State lines to go to Virginia, where fornication is a crime, and you've crossed from D.C. to go to a Virginia hotel to engage in that activity, you can get lifetime supervision. I hope we'd at least confine it to felonies.

I yield back.

Chairman SENSENBRENNER. The gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GEKAS. And I ask the Members to vote against this particular Scott amendment.

We keep returning to the precept of discretion in the judge. When he or she sees some sex offender in front of him, even if it's a misdemeanor, where perhaps in the past of this sex offender,

there was a previous case of a felony or some sex offense that—on which society requires retaliation or supervision, that even if it's not a felony, the case that's before that judge, that judge should have the discretion for an elongated period of supervision. It might not be lifetime with respect to one who has committed a misdemeanor, but it may also be appropriate when you look at the background, or the judge does, of this individual who is now before that judge even on a crime less than a felony.

In further response to the gentleman from North Carolina, the title 18-relevant sections are full of factors and guidelines for the sentencing judge and for the judge who orders supervision, factors to be considered in including a term of supervised release, two pages of factors and guidelines that would help a judge outline what kind of supervision and for how long it should last. This is a simple question of——

Mr. WATT. Would the gentleman yield just long enough to give me a citation to what he is referring to?

Mr. GEKAS. Title 18, 3583 and subsection—well, you'll see the subsections that go all the way to the next subsection.

But anyway, what I'm saying to the Members of the Committee is, this is a problem for our age, to deal with sex offenders. It's for our era to take steps to prevent the kind of horrible acts that we see daily in the newspaper. So if a sex offender appears before a judge, shouldn't that judge have the discretion in seeing the age of the victim, the circumstances of the health—the health condition, the physical condition of that victim as a result of that act, the psychological damage that might have been caused to that child, the anguish of the parents of a victim, the circumstances of the neighborhood in which this occurred?

All of these factors go into not just adjudication of guilt or innocence of the crime, but that's, most of the time, in these kinds of cases, on a plea of guilty, it remains now for the judge to apply all these factors to a release and how much supervision there should be during the release of this individual. To put this predator—convicted, acknowledged predator—out into the neighborhood again, without supervision or without adequate supervision, is a crime that we're perpetrating, if we allow it to occur.

This is all a question of a defendant in front of a judge where the judge has just heard the horrible circumstances of a predatory act and who looks this defendant squarely in the eyes and determines that this individual has to be supervised for months and years. Or he may determine, from that same look into the eyes of the defendant, that a short period of supervised release will do very well to try to prevent a repetition of the kind of offense.

I ask for rejection of the Scott amendment.

Chairman SENSENBRENNER. For what purpose does the gentlewoman from California, Ms. Waters, seek recognition?

Ms. WATERS. Yes, I move to strike the last word.

Chairman SENSENBRENNER. Gentlewoman is recognized for 5 minutes.

Ms. WATERS. I rise in support of Mr. Scott's amendment. It is sensible. It is the most logical amendment that could be offered to try to make this a better piece of legislation.

I don't know if the Members were listening when Mr. Scott described that a 16-year-old and a 19-year-old could become—well, a

19-year-old, say, male could become the victim in this case, and be relegated to supervision for the rest of his life because he was in a movie with a 16-year-old and they were petting and touching and feeling, and that they could end up coming up under this act even though it was consensual.

Now, I know that oftentimes we do things for various reasons, as public policymakers and elected officials. Oftentimes, we forget about what society is really like. You forget about your sons. You forget about your daughters.

And then when you find that you've got a 19- or a 20-year-old son who ends up with a record because they were petting in a movie and is under lifetime supervision, and that's a part of his record, and he'll never ever be able to get a job again, because he's under the supervision of the Federal court for having petted when he was 19 years old, then you look to liberals to change the law, to do something about those situations.

This doesn't make good sense. This is a perfectly sensible amendment. Even if you believe there should be lifetime supervision for every sex offender, certainly you can distinguish between a misdemeanor and a felony. This amendment simply says: Confine it to felonies.

And again, Mr. Gekas, I must say to you, who said in your remarks that the time has come when we do something about sex offenders, we are all repelled by sex offenses, and particularly sex offenses against children. We don't like it. We want to do more about it.

I wish you would use some of your energy to do something about these pedophile priests, who are abusing these children over and over again and protected by the Catholic Church. And there has not been a word on the floor from Catholics. There's not been a word on the floor from the leadership. There's not been a word on the floor from Republicans about dealing with this issue.

And I wish, if you really believe that the time has come that the Republicans use their leadership in this House to deal with the fact that many, many, many children have been abused in the Catholic Church, have been protected at the highest levels of the Catholic Church, and they're still running around and going to some conference that says, "Maybe it's all right if you offend one time. But if you offend two times"——

Ms. HART. Point of order, Mr. Chairman.

Ms. WATERS.—"then you should be apprehended."

And I believe, Mr. Gekas, if you really do believe——

Ms. HART. Point of order, Mr. Chairman.

Ms. WATERS. I beg your pardon?

I beg your pardon?

Mr. ISSA. The gentlelady wanted to make a point of order.

Ms. WATERS. There is no point of order.

Chairman SENSENBRENNER. A point of order is not in order at this time.

Ms. WATERS. There is no point of order.

I believe, Mr. Gekas, if you're serious about doing something about sex offenses, and particularly those committed against children, we will undertake some real legislation to deal with the issue and not simply talk about tying up someone's life with supervision

for a misdemeanor perhaps that was committed when one was 19 years old in a consensual setting.

I think that it's unwise to proceed with this legislation, with misdemeanors included. I think, again, the request to confine it felonies makes good sense. And I would ask the Members to just be sensible in the way that they treat this legislation.

Mr. SCOTT. Will the gentlelady yield?

Ms. WATERS. I yield.

Mr. SCOTT. The gentlelady used an example of two teenagers. This covers consensual acts of adults going across State lines. So if two adults in Washington, D.C., agree to cross State lines to go to Virginia to commit fornication, that would be covered by this bill.

Ms. WATERS. That's even worse.

I hope that you're listening to Mr. Scott. I hope that you're not allowing the fact that this is an election year to color and cloud your——

Chairman SENSENBRENNER. The gentlewoman's time has expired.

Mr. FRANK. Mr. Chairman? Mr. Chairman?

Chairman SENSENBRENNER. The Chair moves to strike the last word and recognizes himself for 5 minutes.

When this Committee has had before it mandatory sentencing legislation, we have heard from many of the people who are complaining about this bill that we should not tie the hands of judges, that mandatory sentences are bad, that the judge should not base the sentence—based upon the Sentencing Guidelines and upon the evidence as well as any right of allocution that is given to the victims or the victims' families.

Now what this bill proposes to do is to give the judges discretion to have supervision last for a longer period of time. It empowers the judges to apply the facts and the evidence and whatever testimony was given during allocution in determining what the proper period of supervision should be.

And this is a particularly sensitive area, given the fact that the recidivism rate for people who are convicted of pedophilia is close to 100 percent. There is little or no rehabilitation involved in pedophiles. And I think that that's been quite plain.

Now, on the issue of pedophiles and the Roman Catholic clergy, the criminal law applies to them just as it applies to everybody else. And it is up to the prosecuting authorities, whether it be at the State or the Federal level, to determine whether or not to commence prosecution against a priest who is accused of a crime, whether it is a sex crime or anything else.

The issue of the continued membership of these people in the priesthood is a condition of employment. It is not a condition of the criminal code. And this Committee does not have jurisdiction over conditions of employment. That legislation is done by another Committee in the House of Representatives.

But it seems to me that we as a State should tread very carefully when we get involved in conditions of employment of members of the clergy of any religious denomination. I think the conditions of employment are going to have to be decided by the churches themselves, pursuant to their own church law and their own church em-

ployment policy, rather than having a Federal Government pass a one-size-fits-all policy.

So if the churches make mistakes, then they're going to have to suffer from that as a result of a reaction of the membership of the church both in terms of church attendance as well as in terms of contributions.

I yield back the balance of my time.

Ms. WATERS. Will the gentleman yield?

Chairman SENSENBRENNER. No, I yield back the balance of my time.

The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

First of all, I want to thank Mr. Gekas. Contrary to probably popular opinion, I do try to listen to what people say during the course of this debate. And he has directed me to the statute that has some guidelines in it, which actually makes me feel a little bit better—not enough to support the bill or not enough to vote against Mr. Scott's amendment. But there are some guidelines, some of which are very troubling, I would point out.

The first one says that the court, in determining the particular sentence to be imposed, and that now includes this supervised release shall consider——

Ms. LOFGREN. I'm sorry.

Mr. WATT. You're trying to censor me? [Laughter.]

Ms. LOFGREN. I wasn't. It was a mistake.

Mr. WATT.—shall consider "the nature and circumstances of the offense and the history and characteristics of the defendant."

You know, there are some people on this Committee who have gone—and this debate points it up. The Chairman's remarks put this in perspective.

Twenty, 25 years ago, a number of us started to advocate for mandatory minimum sentences to take discretion away from judges because they were using that discretion in ways that took into account things that we thought ought not to have been taken into account. We were guilty of buying into mandatory minimums for that reason, only to find that the mandatory minimums had a substantially disproportionate impact in our communities because the decisions about prosecution—who was getting prosecuted and charged with crimes that required mandatory minimums, as opposed to those that didn't require mandatory minimums—were being made by people who were taking considerations into account that we thought were inappropriate. And the decisions about sentencing under those mandatory minimums were being made inappropriately. And the decisions about arrests in the communities were being made, oftentimes, on factors that were inappropriate.

So forgive us if we have some uneasiness about these kinds of general standards that in this case talk about the "characteristics" of the defendant. That does not set some of us at ease for historical reasons, for the same reasons that some of us are not set at ease to go back to a day in the FBI when people can start to spy, when the FBI can start to spy on whoever they want to and show up at

any meeting, because we know that that was applied in ways that it was never intended to be applied.

So we've got a problem here. And I'm laying this out on the table. We get really concerned about how these things will play themselves out. And in this context, we know going in that because this applies only in Federal statutes, you're going to have an immediate disproportionate impact on Native Americans because they're the ones who are always covered under the Federal statutes, and we know that there is going to be an immediate disproportionate impact.

Chairman SENSENBRENNER. The gentleman's time has expired.

For what purpose does the gentleman from California, Mr. Issa, seek——

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

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. ISSA. To my colleague Mr. Watt, I would mention that although I have the same concerns about our scope being narrow and perhaps this not being a perfect bill, that no one else has jurisdiction on a reservation other than us. So if we don't move to deal with that, then we would leave a group who, if they commit crimes on the reservation, might not be available at all——

Mr. WATT. Will the gentleman yield just briefly on that point?

Mr. ISSA. Yes.

Mr. WATT. I'm sure he's aware that the tribes have jurisdiction over their own criminal justice system. So just because you don't control it, doesn't mean nobody's controlling—just because we don't control it, it doesn't mean nobody's controlling it.

Mr. ISSA. Reclaiming my time, I think Mr. Scott's amendment has great potential value. But in fairness to the author, Mr. Gekas, I think that the two need to be merged. And I would ask if the gentleman would allow for a technical correction to be done by staff on his word "felony" to make sure that it includes both a felony being looked at that time and a record of felony, so that Mr. Gekas' concern over someone who may be in front of the judge on a misdemeanor, or may even plead to a lesser offense being a misdemeanor, is covered by his history of sex felonies.

Is that something that Mr. Scott would accept?

Mr. SCOTT. I would accept that as a technical amendment.

Ms. LOFGREN. Would the gentleman yield?

Mr. ISSA. I would yield.

Ms. LOFGREN. At the risk of disrupting a potential compromise, I would argue against the proposal.

Mr. ISSA. Reclaiming my time then, Mr. Gekas, would you accept that to meet your concerns?

Mr. GEKAS. I believe that those concerns, all of them, are met by the fact that the offender in front of the judge is subject to the discretion of that same judge. And all the factors that you can name, any of them, are to be considered at that time and a proper exercised discretion allows for dealing with these sex offenders.

I also should add that if there is a disproportionate supervised release imposed by the judge, that too is subject to attack by the offender's attorneys, appellate jurisdiction, modification of sentencing and all of that.

I'm very happy and satisfied with the ability of a judge to look at the scenario in front of him and apply proper supervisory release.

Mr. ISSA. Thank you, Mr. Chairman.

Reclaiming my time, if Mr. Scott is still willing to allow that amendment or that revision, I would support his amendment, in spite of perhaps other objections, because I do believe that there is opening for abuse that, unless you're well-to-do, you would not be able to overcome. And so as much as I appreciate that there are two dissenting votes, Mr. Scott—have we met our requirement to have that technical amendment done? Mr. Chairman?

Chairman SENSENBRENNER. It's not a technical amendment. It's a substantive amendment.

Mr. ISSA. Okay.

Chairman SENSENBRENNER. You'd have to amend the amendment.

Mr. ISSA. Then I guess I offer to amend that. Can that be done——

Chairman SENSENBRENNER. Is the amendment in writing?

Mr. ISSA. Mr. Chairman, no, it is not.

Chairman SENSENBRENNER. Well, then the clerk has nothing to report.

Mr. ISSA. Well, then I find myself at a disadvantage at this point.

Mr. FRANK. Mr. Chairman, I would ask unanimous consent that Mr. Issa be allowed to offer that amendment orally.

Chairman SENSENBRENNER. Without objection.

Mr. ISSA. Thank you, Mr. Chairman. Then that, in a form of a substitution, is offered.

Chairman SENSENBRENNER. What is the amendment?

Mr. ISSA. The amendment would be to have the word "felony" in Mr. Scott's amendment—it would remain the same—include both felonies in front of the judge at that time and a record of sex felonies under the same statutes. So any defendant or any criminal who came before a judge——

Chairman SENSENBRENNER. Again, that is not in the proper form. You have to submit the amendment in the proper form. You cannot submit an idea and have it voted upon.

Mr. ISSA. I appreciate that, Mr. Chairman. I will reluctantly, then, withdraw it. And I also reluctantly support this bill in this——

Mr. SCOTT. Will the gentleman yield?

Mr. ISSA. I will yield.

Mr. SCOTT. Mr. Chairman, if the amendment doesn't pass, we're talking about, again, misdemeanor offenses getting life supervision for which the person will be in and out of jail simply for failing to show up, you know, just rinky-dink kind of offenses for the rest of their life. I think that is woefully overbroad, and I would hope the amendment would be adopted.

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. The time of the gentleman from California has expired.

For what purpose does the gentlewoman from California seek recognition?

Ms. LOFGREN. To strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. I believe that the amendment offered by Mr. Scott, although obviously well-intended, might have an effect that is opposite to what he might intend. And I'll give you an example. It's under State law, but it could easily—this situation could be exactly the same under the Federal statute.

In my own community, where an individual who is well-known in our community was charged with molesting his stepdaughters—it was a very high-profile trial. The girls were young. The events happened some years ago. And the individual was convicted by a jury but of a misdemeanor. The individual spent his 1 year in the county jail and was required under California law to register as a sex offender, which he failed to do. The failure to register is a misdemeanor as well.

The daughters have testified and have said publicly they are terrified that he is going to come after them again. And the judge is now faced with either the ability to put this individual, who apparently does pose a continuing threat, with one conviction of a misdemeanor and a potential second misdemeanor conviction, either in jail as a felon, because it's a second misdemeanor with a prior, or unsupervised parole. And in fact, the supervised parole might be the less severe approach to this situation.

I'm not saying what the judge should do in this case. That's up to judicial discretion, which is the point. The judge needs to make a determination about public safety and the protection of the public and the victims in these cases.

I am aware of the comments made by Mr. Watt that are enormously important about disproportionate and racially biased prosecutions that are the legacy of the criminal justice system in this country. It's wrong, and it's outrageous. But the amazing thing is that molesting children is the exception to that general rule; it's an equal opportunity offense. And it's one of the things that crosses economic and ethnic lines.

And I actually think that the bill that's been brought forward is sensible. I'm glad to see that it vests judicial discretion with judges in these cases, because the characteristics that need to be considered by the judges relate to the nature of the threat posed by the individual. I mean, there are situations where you have a molester who has become so aged that they may not pose the threat that they did at one time. All of those factors need to be brought into play. And I think that this gives a tool to a judge that is an alternative to long-term incarceration. And that is something that we should welcome to give to the judiciary.

So I understand that people have honest viewpoints that differ, but I thought that this perspective might be worth considering, and I offer that.

And I yield to Mr. Scott.

Mr. SCOTT. Thank you. And I thank the gentlelady for yielding.

The situation that the gentlelady has suggested is really part of the problem. You have a situation where a person could not be convicted of a felony. The evidence——

Ms. LOFGREN. He could of, but he wasn't.

Mr. SCOTT. Well, the jury decided misdemeanor. And you're going to convert the misdemeanor into a life sentence. That's the——

Ms. LOFGREN. Reclaiming my time, under California law, the misdemeanor following the prior misdemeanor can be—it's a wobbler and can be charged as a felony under California law or as a misdemeanor.

The point I'm trying to make is that by giving discretion to the judge, you have to give an alternative to a long-term incarceration in appropriate cases. Instead, you can do a parole or a supervised parole. And especially in the case of child molesting, where the recidivism rate is almost 100 percent, I think just releasing a child molester is a very dangerous thing to do. And to provide for tools to law enforcement for individuals to be supervised and not incarcerated for the rest of their lives or for 20 years is something that we ought to give the judiciary to use in their sound discretion.

And I would yield further to Mr. Scott.

Mr. SCOTT. I'll just point out that, again, is convicted of a misdemeanor and, as you've said, you could convert it into a life sentence, for which he'll be in and out of prison for the rest of his life based on technical violations. If you've got somebody who has committed a felony, convict them of the felony.

Ms. LOFGREN. Well, reclaiming my time, I think giving the discretion is a sound thing to do.

Chairman SENSENBRENNER. The time of the gentlewoman has expired.

Ms. LOFGREN. And I yield back.

Chairman SENSENBRENNER. The question is on Scott Amendment 3.

Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it, and——

Mr. SCOTT. Mr. Chairman, recorded vote?

Chairman SENSENBRENNER. A recorded vote is requested. Those in favor of Scott amendment 3 will, as your names are called, answer aye. Those opposed, no.

And the clerk will call the role.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Gekas?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no.

Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no.

Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Mr. Barr?

[No response.]

The CLERK. Mr. Jenkins?
[No response.]
The CLERK. Mr. Cannon?
[No response.]
The CLERK. Mr. Graham?
[No response.]
The CLERK. Mr. Bachus?
[No response.]
The CLERK. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no.
Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no.
Mr. Issa?
[No response.]
The CLERK. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no.
Mr. Flake?
[No response.]
The CLERK. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no.
Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no.
Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye.
Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren?
Ms. LOFGREN. No.
The CLERK. Ms. Lofgren, no.
Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.

Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye.
Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no.
Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there additional Members in the chamber who wish to cast or change their vote?
The gentleman from South Carolina, Mr. Graham.
Mr. GRAHAM. No.
The CLERK. Mr. Graham, no.
Chairman SENSENBRENNER. The gentleman from California, Mr. Issa.
Mr. ISSA. No.
The CLERK. Mr. Issa, no.
Chairman SENSENBRENNER. The gentleman from Tennessee, Mr. Jenkins.
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Chairman SENSENBRENNER. Further Members who wish to cast or change their vote?
If not, the clerk will report.
The CLERK. Mr. Chairman, there are 5 ayes and 17 nays.
Chairman SENSENBRENNER. The amendment is not agreed to.
Are there further amendments?
Mr. GEKAS. Mr. Chairman, I have an amendment at the desk.
Chairman SENSENBRENNER. The clerk will report the amendment.
Mr. GEKAS. I ask unanimous consent it be considered as read.
Chairman SENSENBRENNER. No, the clerk will report the amendment.
Mr. GEKAS. Yes.
Chairman SENSENBRENNER. We'll pass it out first so folks can see it.
Mr. GEKAS. Yes.
The CLERK. Amendment to H.R. 4679, offered by Mr. Gekas. On the first page, line 6, strike "child" in the section heading. Amend the title so as to——
Chairman SENSENBRENNER. Without objection, the amendment is considered as read.
[The amendment follows:]

TECHNICAL AMENDMENTS TO H.R. 4679

OFFERED BY Gekas

On the first page, line 6, strike "child" in the section heading.

Amend the title so as to read "A bill to amend title 18, United States Code, to provide a maximum term of supervised release of life for sex offenders.".

On page 2, line 4, after "1591" strike ", 2421, 2422, 2423, or 2425" .

Chairman SENSENBRENNER. And the gentleman from Pennsylvania is recognized for 5 minutes.

Mr. GEKAS. These are technical amendments, Mr. Chairman, that I ask the Members to adopt. They have to do with removing the word "child" so that we don't give a misimpression as to the total purview of the statute that includes other than child offensives. And the technical amendment at the bottom of our recommended amendment strikes a redundancy, with those sections 2421, 2422, 2423, and 2425, are already included in the basic legislation that we have proposed.

These are recommended by the staff. I ask the Members to approve the amendment.

Ms. WATERS. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Virginia, Mr. Scott, seek recognition?

Mr. SCOTT. I'll defer to——

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters?

Ms. WATERS. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WATERS. On the amendment, Mr. Chairman, I think, so that it is absolutely clear what this bill is, I would like to ask the gentleman if he would consider adding the word "Federal." "To provide a maximum term of supervised release of life for Federal sex offenders." Would he add the word "Federal" in between "for" and "sex"?

Chairman SENSENBRENNER. Does the gentleman from Pennsylvania want to answer that?

Mr. GEKAS. Yes. The legislation we propose modifies Federal law. It's in the Federal body of statutes. It is a Federal attempt—an at-

tempt to give Federal judges discretion. And it's just redundant to say "Federal." It is federal.

Ms. WATERS. Reclaiming my time, the reason I ask for this is because the press have a very difficult time, oftentimes, reporting on what we do. If it appears that it is reported incorrectly and people think we've made some change that will take care of all sex offenders, we will be misleading the public. And even though it may appear redundant to you, Mr. Gekas, I think it will be clarifying, and it will be accurate in its description. So I would respectfully ask the gentleman if he would add the word "Federal" in between "for" and "sex offenders."

Chairman SENSENBRENNER. The time belongs to the gentlewoman from California.

Mr. GEKAS. Are you yielding?

Ms. WATERS. Yes, I'll yield.

Mr. GEKAS. I thank the lady for yielding.

I've answered it. I believe that because we're dealing with a Federal statute, it's understood to be a Federal law, giving power to a Federal judge to act in a Federal matter. I think it's redundant to do anything more.

Ms. LOFGREN. Would the gentlelady yield?

Ms. WATERS. Yes.

Ms. LOFGREN. It seems to me, Mr. Chairman, that sometimes redundancies are not wrong. And I support the bill, but I would urge the Chairman to consider this, since it doesn't do any harm, and I think it adds to the general bipartisan comity on the measure.

And I yield back to the lady.

Ms. WATERS. Thank you. I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on——

Ms. WATERS. I yield to the gentleman, Congressman Scott. Were you trying——

Mr. SCOTT. Yes, thank you. I appreciate the lady yielding.

I'd like to congratulate the gentleman from Pennsylvania for truth in legislating. By crossing out the word "child" in the title of the bill, because it says "Supervised release for life for child sex offenders." He crossed out "child." That means any kind of offenders. That means adults, grown people who cross State lines to do anything that they can get charged with. Two adults crossing State lines, going from Washington, D.C., to Virginia to do anything that they could be charged with, without being graphic, which is about anything.

And so I want to congratulate the gentleman for exposing the bill for what it is. I have been talking about section 2422, which the cite—I've been saying, where if you cross State lines to engage in any activity for which you can be charged with a criminal offense, that's the cite. And you cross that out. But that's only technical, because the 117 includes 2422, so you really haven't crossed out anything. That part is technical.

But it is substantive to cross out the word "child," because that exposes the bill and is truth in legislating. And for that, I want to thank the gentleman from Pennsylvania.

Chairman SENSENBRENNER. Does the gentlewoman from California yield back?

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

Chairman SENSENBRENNER. The question is on the Gekas amendment.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Are there further amendments?

If not, the Chair notes the presence of a reporting quorum. The question occurs on the motion to report the bill H.R. 4679 favorably as amended.

Those in favor will say aye.

Opposed, no.

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

Without objection, the bill will be report favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendments adopted here today.

Without objection, the Chairman is authorized to move to go 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 House rules, in which to submit additional, dissenting, supplemental, or minority views.

DISSENTING VIEWS

By allowing a judge to impose lifetime supervision for any Federal sex offense, H.R. 4679 would allow what is, in effect, a life sentence for misdemeanors and consensual sexual crimes between consenting adults, as well as such crimes as "touching" between high school students. Perhaps, some sex crimes warrant lifetime supervision of offenders, but without requiring any guidelines or reviews, we are unnecessarily subjecting misdemeanants and other minor offenders to life sentences.

Proponents of the bill suggest that it is ok to provide for lifetime supervision of all offenses, regardless of the circumstances, because judges will use their discretion to avoid putting minor offenders under such supervision. However, in the overzealous context of indiscriminately ferreting out sex offenders for harsher treatment, there are likely to be judges who, like the lawmakers promoting such policies, prefer to ere on the side of harsh treatment to avoid the possible criticism that they were not as tough as they could have been, should an offender recidivate.

For many of the crimes covered under this provision, lifetime supervision will be a lot more about enforcing conditions of supervision than about preventing additional sex offenses. Offenders will be in and out of prison not for new or attempted sexual offenses, but for violations of the conditions of supervision. This is not only unfair to what may be a very minor offender, but a waste of taxpayer resources.

The provision is rife with the prospects for unfairness in its application for another reason, as well. Sentencing Commission data reflects that when we pass Federal laws such as this since they only apply in Federal jurisdiction, about 80% of those affected will be Native Americans on reservations. It is unfair for an offenders in the same state to face vastly differing harshness in treatment for the same offense simply because of where the crime is committed. At Committee markup of the bill, Rep. Scott offered amendments aimed at removing misdemeanor and consensual crimes from the prospects of life sentences, but the amendments were not accepted.

ROBERT C. SCOTT.
MELVIN L. WATT.

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