Dissenting Views to Accompany
H.R. 3132, the "Children's Safety Act of 2005"

We strongly dissent from H.R. 3132. While we agree with the legislation's stated objective of tackling the problem of violence against children, in particular violent offenses committed by sexual offenders, it does so in a manner that trammels the Constitution beyond the justifications underlying the bill itself. Specifically, the legislation would impose unduly harsh and discriminatory mandatory minimum sentences; it would expand the use of the federal death penalty to new offenses; and it would limit habeas corpus review in certain cases, leading to an increase in the number of innocent people being executed or languishing in prison. In addition, the legislation would unwisely treat juvenile offenders on par with adults and would have a disproportionate impact on Native Americans. Multiplying these important substantive issues, we are also concerned that many provisions of the bill are being rushed through Committee without adequate debate, consideration or consultation.

Among the professionals who have opposed, or have expressed serious concerns with H.R. 3132 are scientific researchers, treatment professionals, and child advocates, including: Mark Chaffin, Ph.D., Professor and Director of Research, Center on Child Abuse and Neglect; Steven J. Ondersma, Ph.D. Editor-in-Chief, Child Maltreatment: The Journal of the American Professional Society on the Abuse of Children; Barbara L. Bonner, Ph.D., University of Oklahoma Health Sciences Center; David Finkelhor, Ph.D., Director, Crimes against Children Research Center; John E.B. Myers, Professor of Law, University of the Pacific; Benjamin E. Saunders, Ph.D. Professor and Director, Family and Child Program, National Crime Victims Research and Treatment Center; William N. Friedrich, Ph.D, Mayo Clinic and Mayo Medical School; Jill Levenson, Ph.D., L.C.S.W., Professor of Human Services, Board of Directors, Association for the Treatment of Sexual Abusers; David Prescott, Treatment Assessment Director, Sand Ridge Secure Treatment Center; Robert E. Longo, MRC; LPC, Sexual Abuse Prevention & Education Resources International; Toni Cavanagh Johnson, Ph.D., Author and Consultant; Jane F. Silovsky, Ph.D., Director, Child Sexual Behavior Problem Treatment Program; Paul Stern, J.D. Board of Directors, Association for the Treatment of Sexual Offenders; Daniel Smith, Ph.D. Associate Professor and Director of Training, National Crime Victims Research & Treatment Center; Lucy Berliner, Harborview Center for Sexual Assault & Traumatic Stress; and the American Civil Liberties Union.

For the reasons set forth herein, we respectfully dissent from H.R. 3132.

Description of Legislation[1]

Title I of H.R. 3132, entitled "Sex Offender Registration and Notification Act," would establish a mandatory sex offender registry and notification program to be implemented by all

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[1] H.R. 3132 is a compilation (with some modification) of five different bills: H.R. 2423, the "Sex Offender Registration and Notification Act of 2005;" H.R. 2796, the "DNA Fingerprinting Act of 2005;" H.R. 2388, the "Prevention and Deterrence of Crimes Against Children Act of 2005;" H.R. 2318, the "Protection Against Sexual Exploitation of Children Act of 2005;" and H.R. 3129, the "Foster Child Protection and Child Sexual Predator Sentencing Act of 2005."

relevant jurisdictions, including every federally recognized Indian tribe, within two years.[2] It would require these jurisdictions to: (1) ensure that each person required to register does so; (2) collect specified information and prepare a statement of facts, criminal history and any other information required by the Attorney General; (3) publish this information on an internet website[3] ; (4) transmit the information to various federal, state and local agencies within 5 days of registration or any change in information; (5) verify the address of each registrant monthly for a sex offense against a minor (quarterly for a misdemeanor); and (6) enact a penalty of more than one year for failure to register. See Sections 112, 114, 117, 118, 119, 120, 121, and 127.

Under Title I, the term "sex offender" places juveniles in the same category as adults: it is one who has a conviction of or adjudication as a juvenile delinquent for a "specified offense against a minor," a "serious sex offense," or a "misdemeanor sex offense against a minor." See Sec. 111. More importantly, Title I imposes a myriad of registration requirements[4] and numerous mandatory minimums for even the slightest violation of these requirements. These mandatory minimums include, among others:

- Each jurisdiction must enact legislation requiring punishment of a maximum term of imprisonment exceeding one year (Sec. 113(e))
- Creates a new offense, Chapter 109B, 18 U.S.C. § 2250: A person who receives a notice from an official that s/he is required to register, and is a sex offender by reason of a conviction of one of the listed offenses or thereafter travels in interstate or foreign commerce or leaves Indian country, and knowingly fails to register is subject to imprisonment for a mandatory minimum of 5 years and not more than 20 years. (Sec. 151).[5]

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[2] Relevant jurisdictions include every State, the District of Columbia, every federally recognized Indian tribe, Guam, American Samoa, the Northern Mariana Islands, and the U.S. Virgin Islands.

[3] This includes publication of "all" information about "each sex offender" except social security number, victim's identity and any other information exempted by the Attorney General, on the jurisdiction's own internet website. See Sec. 121.

[4] The registration requirements placed on sex offenders include:

- Registration in each jurisdiction where the individual resides, works or goes to school
- Initial registration before completion of a sentence of imprisonment or if not sentenced to imprisonment not later than 5 days after being sentenced
- Notice to each jurisdiction involved of any change in residence, work or school not later than 5 days after such change
- If convicted before enactment, retroactively registration under a method determined by the Attorney General (Sec. 113)
- Lifetime registration generally or for a first misdemeanor sex offense against a minor for twenty years (Sec. 115)
- Verification of information in person at least once every six months (Sec. 116).

[5] Note that shortly before release from custody or immediately after sentencing, an "appropriate official" must "require the sex offender to read and sign a form stating that the duty to register has been explained and that the sex offender understands the registration requirement," whether the person actually understands the registration requirement or not. (Sec. 117(2)).

Title II of H.R. 3132 expands the national DNA Index System, but includes many controversial provisions in the process. For example, Section 202 amends Section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a) to give the Attorney General (or any agency within the Department of Justice or any agency that arrests, detains or supervises individuals facing charges) the power to collect DNA samples from persons who have not been found guilty, but are merely "arrested or detained under the authority of the United States."

Title III of the legislation, entitled "Prevention and Deterrence of Crimes Against Children Act," limits the ability of any individual convicted of killing a child to petition the court for habeas corpus review.[6] In addition, Title III adds a host of mandatory minimum sentences. For example, Sec. 302 would require for a "felony crime of violence against the person" of someone under 18, unless a higher mandatory minimum otherwise applies and regardless of any maximum:

- Life or death if death results - this would substantially broaden the offenses for which life or death may be imposed, and require a life sentence even in the absence of one of the mental culpability factors. That is, it would require a life sentence if death resulted from recklessness, negligence or by accident.
- Not less than 30 years or for life if the "crime of violence" is kidnapping, aggravated sexual abuse, sexual abuse, maiming, or results in serious bodily injury, i.e., involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss of the function of a bodily member, organ or mental faculty.
- Not less than 20 years or for life if the "crime of violence" is a sexual contact offense under 18 U.S.C. 2244(a)(1), (2) or (5), or results in bodily injury, i.e., a cut, abrasion, bruise, burn, or disfigurement, physical pain, illness, impairment of a bodily member, organ, or mental faculty, or any other injury to the body, no matter how temporary.
- Not less than 15 years or for life if a "dangerous weapon was used during and in relation to the crime of violence" (dangerous weapon is not defined in the federal criminal code, and has been held under state law to include anything from a firearm to a shoe, and even a pencil)
- Not less than 10 years or for life in any other case.

Title IV, entitled "Protection Against Sexual Exploitation of Children Act," and Title V, entitled "Foster Child Protection and Child Sexual Predator Deterrence Act," create a host of mandatory minimums criminal penalties and increase a number of existing mandatory minimum sentences. For example, Title IV would create mandatory minimums for felonies under Title 18,

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[6] Sec. 303, entitled "Ensuring Fair and Expeditious Federal Collateral Review of Convictions for Killing a Child," would strip federal courts of jurisdiction to review claims on habeas corpus of persons in state custody for a "crime that involved the killing of" a person under 18 unless "(A) the claim relies on-- (i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or (ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and (B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense." The rare claim that cleared this hurdle would be subjected to a complex set of truncated timetables.

Chapter 109A, §§ 2241, 2244, 2245, which are specifically included in the Major Crimes Act, 18 U.S.C. § 1153, and would add death as a possible penalty for offenses under Chapter 110, Chapter 117, and Section 1591. It would also increase mandatory minimums for offenses under Title 18, Chapter 110, §§ 2251, 2252, 2252A, 2252B and 2260, which are not specifically included in the Major Crimes Act. Title V would also provide for the civil commitment of individuals determined to be "sexually dangerous persons."

I. <u>The Legislation Imposes Ineffective and Discriminatory Mandatory Minimums</u>

The premise underlying H.R. 3132 is that tough mandatory minimum sentences will solve the problem of sex crimes against minors.[6] The empirical evidence, however, does not support this premise. The Judicial Conference of the United States and the U.S. Sentencing Commission have found that mandatory minimums distort the sentencing process and have the "opposite of their intended effect."[7] Mandatory minimums "destroy honesty in sentencing by encouraging charge and fact plea bargains." Moreover, mandatory minimums result in unwarranted sentencing disparity. That is, "mandatory minimums .... treat dissimilar offenders in a similar manner, although those offenders can be quite different with respect to the seriousness of their conduct or their danger to society..." and... "require the sentencing court to impose the same sentence on offenders when sound policy and common sense call for reasonable differences in punishment."[8]

In addition, mandatory minimums tend to discriminate against minorities. Both the Judicial Center in its study report entitled "The General Effects of Mandatory Minimum Prison Terms: a Longitudinal Study of Federal Sentences Imposed" and the United States Sentencing Commission in its study entitled "Mandatory Minimum Penalties in the Federal Criminal Justice System" found that minorities were substantially more likely than whites under comparable circumstances to receive mandatory minimum sentences. The Sentencing Commission study also reflected that mandatory minimum sentences increased the disparity in sentencing of like offenders with no evidence that mandatory minimum sentences had any more crime-reduction impact than discretionary sentences.

Finally, the mandatory minimum sentences prescribed in H.R. 3132 have an additional dimension of harshness and unfairness in the form of technical registration requirements. Under the bill, an offender who is required to register could be subjected to a 5 year mandatory minimum sentence for some technical problem with the registration requirement that could be deemed a failure to register.[9]

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[6] The legislation establishes 36 new mandatory minimum sentences and increases the sentences in eight existing provisions.

[7] *See* U.S. Sentencing Commission, Special Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System (August 1991).

[8] Id.

[9] In this regard, Mr. Scott offered an amendment that would have eliminated the mandatory minimum sentences related to the registration requirements in favor of a scheme with maximum sentences, granting discretion to the Sentencing Commission and the courts to

H.R. 3132 simply takes the wrong approach. Instead of focusing on correctional and rehabilitative programs, it unduly focuses on registration requirements. For example, a recent report by the Ohio Department of Rehabilitation and Correction demonstrated that paroled sex offenders completing basic sex offender programming while incarcerated had a lower recidivism rate than those who did not have programming. This was true for both recidivism of any type (33.9% with programming recidivated compared with 55.3% without programming) and sex-related recidivism (7.1% with programming recidivated compared with 16.5% without programming).[10]

In fact, excluding those convicted of rape, numerous studies evidence that sex offenders are highly treatable and have very low recidivism rates.[11] For example, according to the latest comprehensive Department of Justice offender statistics, overall, sex offenders are less likely than non-sex offenders to be rearrested for any offense within 3 years of release -- 43 percent of sex offenders versus 68 percent of non-sex offenders. And of the approximately 4,300 child molesters released from prisons in 15 States in 1994, 3.3% of these were rearrested for another sex crime against a child within 3 years of release from prison. In comparison, released prisoners with the highest re-arrest rates were robbers (70.2%), burglars (74.0%), larcenists (74.6%), motor vehicle thieves (78.8%), those in prison for possessing or selling stolen property (77.4%), and those in prison for possessing, using or selling illegal weapons (70.2%). Therefore, there is little evidence that harsher penalties in the form of technical registration requirements are needed to solve the problem of sexual abuse of children.

II. <u>The Legislation Unjustifiably Expands the Federal Death Penalty</u>

H.R. 3132 would create 2 new death penalty provisions at a time when evidence continues to expose the fallibility of the system and its discriminatory effects.

Numerous studies, including those conducted by the ACLU and the University of Michigan among others, have documented the exposure of innocent individuals to death penalty system.[12] Last year, a University of Michigan study identified 199 murder exonerations since

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determine the gradation of seriousness and punishment. Unfortunately, the amendment was narrowly defeated by a 17 to 16 vote.

[10] "Ten-Year Recidivism Follow-up of 1989 Sex Offender Releases," Department of Rehabilitation and Correction, Ohio (April 2001).

[11] See Orlando, Dennise, "Sex Offenders," *Special Needs Offenders Bulletin, a publication of the Federal Judicial Center*, No. 3, Sept. 1998, at 8; see also Alexander, M.A., "Sexual Offender Treatment Efficacy Revisited," 11 Sexual Abuse: A journal of Research and Treatment 2, at 101-117 (*cited in* Center for Sex Offender Management, "Recidivism of Sex Offenders," 13-14 (May 2001).

[12] *See* American Bar Association, "Gideon's Broken Promise: America's Continuing Quest for Equal Justice" (2005) (demonstrating that innocent people are wrongfully convicted in our criminal justice system due to the lack of effective defense representation for the poor). In fact, Governor Ryan of Illinois declared a moratorium in his state after 13 people were released from death row because of innocence. Ryan wanted assurances that the system was working before resuming executions. Some death penalty

1989, 73 of them in capital cases. The same study found that death row inmates represent a quarter of 1 percent of the prison population but 22 percent of the exonerated. Since 1973, 119 innocent people have been released from death row. An earlier study found that more than two out of every three capital judgments reviewed by the courts during a 23-year period were seriously flawed. Moreover, when experts reviewed all the capital cases and appeals imposed in the United States between 1973 and 1995 at the state and federal levels, they found a national error rate of 68%. In other words, over two-thirds of all capital convictions and sentences are reversed because of serious error during trial or sentencing phase. This does not include errors that were not serious enough to warrant a reversal.[13]

In fact, due in part to the high number of wrongful convictions with respect to the death penalty, Congress passed the Justice for All Act of 2004,[14] which received strong bipartisan support. The Act increases federal resources available to state and local governments to combat crimes with DNA technology and provides safeguards to prevent wrongful convictions and executions. Title III of the Innocence Protection Act also provides access to post-conviction DNA testing in federal cases, helps States improve the quality of legal representation in capital cases and increases compensation in federal cases of wrongful conviction. By increasing the number of federal death penalty provisions, H.R. 3132 runs counter to the spirit of the Innocence Protection Act and would actually prevent that legislation from achieving its full purpose. Even worse, these new death penalties are being proposed at a time when the Innocence Protection Act has not even been funded.

Furthermore, the death penalty has been shown to be racially and economically discriminatory.[15] Studies which examine the relationship between race and the death penalty have now been conducted in every active death penalty state. In 96% of these reviews, there was a pattern of either race-of-victim or race-of-defendant discrimination, or both. After its careful study of the death penalty in the United States, the United Nations' Human Rights Commission in 1998 issued a report which rightly concluded: "Race, ethnic origin and economic status appear to be key determinants of who will, and who will not, receive a sentence of death."[16]

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proponents have argued that the problems in Illinois are exceptional. In fact, however the error rate in Illinois is 66%, slightly lower than the national average of 68%.

[13] *See* "A Broken System: Error Rates in Capital Cases", 1973-1995 (Retrieved April 26, 2005 from http:// justice.policy.net/jpreport/).

[14] Pub.L.No. 108-405, S. 401-432 (2004).

[15] *See* Department of Justice Report, "The Federal Death Penalty System: A Statistical Survey" (1988-2000) (finding numerous racial and geographic disparities in the death penalty and revealing that 80% of the cases submitted by federal prosecutors for death penalty review in the past five years have involved racial minorities as defendants); *see also* University of Maryland Report, "An Empirical Analysis of Maryland's Death Sentencing System With Respect to the Influence of Race and Legal Jurisdiction," (2003) (available at newsdesk.umd.edu/pdf/finalrep.pdf) (concluding that defendants are much more likely to be sentenced to death if they have killed a Caucasian).

[16] Report of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, Mission to the United States of America, U.N. ESCOR, Hum. Rts. Comm., 54th Sess., Agenda

III. The Legislation Unjustifiably Limits the Right of Habeas Corpus Review

H.R. 3132 seeks to limit the ability of an individual to apply for a writ of habeas corpus in any case that involves the killing of a person under the age of eighteen. In essence, this bill completely strips federal judges, justices and courts of jurisdiction over this very rare class of claims.

The constitutional review of state cases assigned to federal courts is a serious matter, calling for careful consideration. It is a hallmark of the liberty that defines America. In the past, Congress has consistently avoided enacting such jurisdiction-stripping legislation. In fact, in 1996 when Congress passed the Antiterrorism and Effective Death Penalty Act (AEDPA), Congress intentionally decided against eliminating habeas jurisdiction, in its entirety, for any class of cases or claims.

Additionally, the need for such a measure is doubtful. Since passage of the AEDPA, there has been a clear decline in the number of state prisoners filing habeas corpus petitions in the federal district courts. Over the last five years, the number of state prisoners seeking federal habeas corpus review has declined 13%; the number of federal habeas corpus cases filed by state death-row inmates has declined 17% during that period.[17] Needless to say, these declines are quite significant, given that the 9% increase in the total state prison population.[18]

IV. The Legislation Unwisely Treats Juveniles as Adults

H.R. 3132 unwisely includes juveniles within its ambit and treats juvenile offenders on par with adult offenders. Under the current provisions of H.R. 3132, the legislation would mandate lifetime sex offender registration for children and youth.[19]

H.R. 3132 does not recognize the extensive research which underscores significant differences between youth who sexually abuse younger children and adult sex offenders. One significant difference is that the vast majority of children and teenagers adjudicated for sex crimes exhibit a high response rate to treatment and also do not progress onward to become adult sex offenders.[20]

Item 10, P 62, U.N. Doc. E/CN.4/1998/68/Add.3 (1998).

[17] See, Administrative Office of the United States Courts, Judicial Facts and Figures, Table 2.9, available at http://www.uscourts.gov/judicialfactsfigures/table2.09.pdf.

[18] See, Bureau of Justice Statistics, U.S. Department of Justice, Prison and Jail Inmates at Midyear 2000 and at Midyear 2004, available at http://www.ojp.usdoj.gov/bjs/pub/pdf/pjm00.pdf and http://www.ojp.usdoj.gov/bjs/pub/pdf/pjim04.pdf.

[19] Youth in grade school or junior high will be swept up alongside paroled adult sex offenders. Many caught in it will be 13 and 14 year olds. In some states, children 10 and under would be registered.

[20] In fact, low recidivism rates are a consistent finding across over five decades of follow-up research and over 30 studies. For example, the Association for the Treatment of Sexual

Moreover, childhood and adolescent sexual offenses are different from adult sex offenses in their motivation, nature, and extent. For example, a deviant sexual interest in young children, which is a major driving factor among persistent adult sex offenders, does not appear to play a role in the behavior of most children and teens. With rare exception, these youth are not pedophiles. Rather, for many children and youth, these behaviors are opportunistic, driven by curiosity and poor judgment, and are more impulsive rather than compulsive. Critical distinctions such as these between juveniles and adults have been clearly pointed out by blue-ribbon panels commissioned by the U.S. Department of Justice and by public information resources such as the Center for Sex Offender Management (CSOM), the National Center on the Sexual Behavior of Youth (NCSBY), and by professional and research organizations.

The United States has a century-long tradition of maintaining different standards and treatment for juvenile delinquents as opposed to adult criminals. Our values dictate that individuals should not be stigmatized for life based on childhood or early teenage behavior. Including juveniles under H.R. 3132 violates this tradition of American justice and creates a special class of juveniles mandated to bear lifetime public stigma.

V. The Legislation Fails to Prohibit the Sell of Dangerous Firearms to Convicted Sex Offenders

HR 3132 fails to address a glaring loophole that presently exists in our current system of gun laws. Namely, it fails to prohibit the sell of dangerous firearms to all convicted sex offenders.

Under current law, it is illegal to transfer a gun to anyone convicted of a crime punishable by more than one year. In addition, we also prohibit the transfer of such weapons to individuals convicted of committing misdemeanor crimes that we consider to be of a particularly serious nature. For example, we prohibit anyone convicted of committing a misdemeanor crime of domestic violence from purchasing or possessing a gun. Unfortunately, similar restrictions are not placed on individuals convicted of committing misdemeanor sex offenses.

Guaranteeing that all sex offenders are prevented from gaining access to dangerous firearms is of grave importance. Not long ago, Keith Dwayne Lyons, a high-risk sex offender, was convicted of engaging in unlawful sexual intercourse with a minor. According to filed police reports, Mr. Lyon was aided by the use of a firearm in carrying-out his crime.[21]

Abusers (ATSA), the largest international organization of professionals studying sex offender risk assessment and management approaches, states: "Recent research suggests that there are important distinctions between juvenile and adult sexual offenders, as well as the finding that not all juvenile sexual offenders are the same. There is little evidence to support the assumption that the majority of juvenile sexual offenders are destined to become adult sexual offenders . . .recent prospective and clinical outcome studies suggest that many juveniles who sexually abuse will cease this behavior by the time they reach adulthood, especially if they are provided with specialized treatment and supervision. Research also indicates that juvenile offenders may be more responsive to treatment than their adult counterparts due to their emerging development." (ATSA Position Paper, 2000).

[21] Reno Gazette-Journal, “High Risk Sex Offender Arrested”, Page 5c December 10, 2004

We also have been made painfully aware of the recent child molestations involving at least three Boy Scout officials who, over the course of the past several years, have been accused of molesting dozens of young boys. In the case of one of the alleged molesters in particular, Mr. Dennis Empey, we also learned he had been previously convicted of committing a sex offense after having been accused of "flashing a gun before sodomizing his victims."[22] During the course of the Committee's consideration of HR 3132, Representative Nadler offered an amendment to address this problem. Unfortunately, that amendment was defeated on a straight party-line basis.

VI. The Legislation Will Have a Disproportionate Impact on Native Americans

H.R. 3132's creation of additional federal crimes will disproportionately affect Native Americans who are significantly over-represented in the federal criminal system.[20] H.R. 3132 would add felony child abuse and neglect to the Major Crimes Act,[21] and would impose a host of harsh new mandatory minimum sentences for existing offenses under the Major Crimes Act. This will have a disproportionate impact on Native Americans because they comprise the vast majority of people prosecuted in federal court for offenses listed in the Major Crimes Act, and their sentences are already significantly longer than the sentences imposed in state courts on others for the same conduct.[22]

VII. Provisions of the Legislation are Being Rushed Through Without Adequate Debate

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[22] Idaho's 'Post Register' Uncovers Pedophiles Among Boy Scout Officials, Editor & Publisher, July 5, 2005.

[20] As Indian reservations are considered federal reserves which fall under federal jurisdiction, a significant amount of federal criminal prosecution is focused on Indian reservations. Native Americans are consequently over-represented in the federal prison population. As of 2000, while Native Americans are roughly 1% of the population, they represent 1.5% of the prison population. The rate of incarceration for Native Americans increases significantly in states with larger reservations. For example, while Native Americans are 6% of the population of Montana, Native Americans account for more than 20% of those incarcerated there, and 32% of women incarcerated in that state. Overall, Native Americans are incarcerated there at a rate more than 4 times that of white residents.

[21] Under the Major Crimes Act, any "Indian" who commits one of a list of felonies in "Indian country" is subject to prosecution and sentencing exclusively under federal law. H.R. 3132 would add "felony child abuse or neglect" to the list of offenses in the Major Crimes Act.

[22] In June of 2002, the United States Sentencing Commission formed the Ad Hoc Advisory Group on Native American Sentencing Issues ("Advisory Group") in response to concerns that Native American defendants were treated more harshly under the U.S. Sentencing Guidelines than similarly situated defendants prosecuted by the states. Focusing solely on aggravated assault, sexual abuse, and manslaughter, the Advisory Group found that sentences for sexual abuse and aggravated assault under the U.S. Sentencing Guidelines were significantly longer than those imposed for the same conduct by state courts, and were either higher or lower with respect to manslaughter.

A number of substantive provisions of H.R. 3132 are being rushed through the House without adequate debate, consideration or consultation with relevant interest groups. For example, as mentioned above, Sec. 510 of the bill adds felony child abuse and neglect to the Major Crimes Act; however, to date there has been no deliberative consultation with the representatives from the group most affected by the legislation, Native Americans.[23] Moreover, no hearing has been held on some of the more controversial provisions of the bill, including the provision which authorizes the Attorney General to collect DNA samples from any person arrested or detained under federal authority. Finally, the Committee has yet to hold hearings on the mandatory minium provisions of the legislation, a central aspect of how H.R. 3132 address sex offenses.

Conclusion

While there is no question that we must address the problem of violence against children and in particular violent offenses committed by sexual offenders, the emphasis of H.R. 3132 on the death penalty, mandatory minimums, and unforgiving registration requirements is misplaced. Mandatory minimum sentences have been studied extensively and have been proven to be ineffective in preventing crime. Moreover, the death penalty system has numerous deficiencies, not to mention its discriminatory effects. The bill also unwisely advocates lumping juvenile offenders with adult criminals without recognizing the critical distinctions between the two. Unfortunately, instead of addressing the issues underlying violence against children, H.R. 3132 adopts a 'lock 'em up and throw away the key' strategy with technical registration requirements and mandatory minimum sentences.

Description of Amendments Offered by Democratic Members

1. Amendment offered by Rep. Adam Schiff
Description of amendment: The Schiff amendment proposed to award bonus payments to any state that implemented an electronic monitoring system of sex offenders following their release from prison.

Vote on Amendment: The amendment was agreed to by voice-vote.

2. Amendment offered by Rep. Bobby Scott (#1)
Description of amendment: The Scott amendment proposed to eliminate the registration requirements for any individual convicted of a misdemeanor sex offense.

Vote on Amendment: The amendment was defeated by voice-vote.

3. Amendment offered by Rep. Bobby Scott (#2)
Description of amendment: The Scott amendment proposed to delete the two provisions of the bill that authorized the Attorney General to determine who should be labeled a 'sexual predator' for purposes of the registry and the provision that authorized the AG to designate which crimes would constitute a 'serious sex offense' under the terms of the bill.

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[23] There are a number of other provisions of the bill that would disproportionately affect Native Americans, but about which representative groups have not been consulted. See Sec. 302, 402, 504, 505, 506, 508, 512, and 513.

Vote on Amendment: The amendment was defeated by voice-vote.

4. Amendment offered by Rep. Bobby Scott (#3)
Description of amendment: The Scott amendment proposed to eliminate the five year mandatory minimum penalty for individuals who fail to register or make false statements when complying with the registration requirements, as prescribed by the bill.

Vote on Amendment: The amendment was defeated by voice-vote.

5. Amendment offered by Rep. Bobby Scott (#4)
Description of amendment: The Scott amendment proposed to strike the language in section 117, subsection 3 of the bill requiring a sex offender to "read and sign a form stating that the duty to register has been explained and the sex offender understands the registration requirement."

Vote on Amendment: The amendment was defeated by a vote of 16-17. *Ayes*: Representatives Conyers, Berman, Nadler, Scott, Watt, Jackson Lee, Waters, Meehan, Weiner, Sanchez, Van Hollen, Wasserman Schultz, Lungren, Inglis, Flake, Gohmert. *Nays*: Representatives Sensenbrenner, Coble, Smith, Gallegly, Chabot, Jenkins, Cannon, Hostettler, Green, Keller, Issa, Pence, Forbes, King, Feeney, Franks, Schiff.

6. Amendment offered by Rep. Bobby Scott (#5)
Description of amendment: The Scott amendment proposed to strike section 303 of the bill in its entirety; thereby eliminating the restrictions that the bill places on applications for the writ of habeas corpus review.

Vote on Amendment: The amendment was defeated by defeated by a vote of 12-18. *Ayes*: Representatives Conyers, Berman, Nadler, Scott, Jackson Lee, Waters, Wexler, Weiner, Schiff, Sanchez, Van Hollen, Wasserman Schultz. *Nays*: Representatives Sensenbrenner, Coble, Smith, Chabot, Lungren, Jenkins, Cannon, Inglis, Hostettler, Green, Keller, Issa, Flake, Forbes, King, Feeney, Franks, Gohmert.

7. Amendment offered by Rep. Debbie Wasserman Schultz
Description of amendment: The Wasserman Schultz amendment directed the Attorney General to establish guidelines for the civil confinement of certain sexually violent predators within state institutions.

Vote on Amendment: The amendment was withdrawn.

8. Amendment offered by Rep. Sheila Jackson Lee
Description of amendment: The Jackson Lee amendment proposed to expand the authority of the Attorney General to collect DNA samples from anyone convicted of committing a federal crime.

Vote on Amendment: The amendment was agreed to by voice-vote.

9. Amendment offered by Rep. Jerrold Nadler
Description of amendment: The Nadler amendment proposed to amend section 922 of title 18 U.S.C. in order to prohibit the transfer or possession of a firearm by any individual who had been convicted of committing a sex offense against a minor.

Vote on Amendment: The amendment was defeated on a straight party-line basis by a vote of 9 to 17. *Ayes*: Representatives Conyers, Nadler, Scott, Meehan, Weiner, Schiff, Sanchez, Van Hollen, Wasserman Schultz. *Nays*: Representatives Sensenbrenner, Coble, Smith, Chabot, Lungren, Jenkins, Cannon, Inglis, Hostettler, Green, Keller, Issa, Flake, Forbes, King, Franks, Gohmert.

10. Amendment offered by Rep. Bobby Scott (#6)
Description of amendment: The Scott amendment directed the Federal Bureau of Prisons to establish and provide access to a sex offender treatment program for all federal inmates, prior to the time of their release.

Vote on Amendment: The amendment was withdrawn with the understanding that Majority and Minority staff would work out a mutually agreeable version to be accepted by the Majority.

11. Amendment offered by Rep. Bobby Scott (#7)
Description of amendment: The Scott amendment proposed to establish a comprehensive risk classification for all sex offenders based upon the offender's risk of re-offense and degree of dangerousness to the public.

Vote on Amendment: The amendment was withdrawn with the understanding that Majority and Minority staff would work out a mutually agreeable version to be accepted by the Majority.

12. Amendment offered by Rep. Bobby Scott (#8)
Description of amendment: The Scott amendment proposed to provide the court with greater discretion in establishing the terms of supervised release for individuals covered under the bill.

Vote on Amendment: The amendment was agreed to by voice-vote.

13. Amendment offered by Rep. Bobby Scott (#9)
Description of amendment: The Scott amendment proposed to strike all of the death penalty eligible offenses and mandatory minimum sentences included throughout the bill.

Vote on Amendment: The amendment was defeated by voice-vote.

John Conyers
Robert C. Scott
Linda T. Sanchez