

JUVENILE RAPE IN PRISON PROTECTION ACT OF 1997

—————  
JUNE 26, 1997.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed  
—————

Mr. MCCOLLUM, from the Committee on the Judiciary,  
submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 1898]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1898) to amend title 18 of the United States Code to penalize the rape of minors in Federal prisons, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 1898, the “Juvenile Rape in Prison Protection Act of 1997,” introduced by Ms. Jackson Lee, a member of the Subcommittee on Crime, would amend section 2241(a) of title 18 of the United States Code so as to establish mandatory life imprisonment for anyone 21 years of age or older who commits the federal offense of aggravated sexual abuse in violation of section 2241(a) of title 18 of the United States Code, where the victim is a Federal prisoner who has not attained the age of 18 years.

BACKGROUND AND NEED FOR THE LEGISLATION

During the mark-up of H.R. 3, the “Juvenile Crime Control Act of 1997,” in May, 1997, Ms. Jackson Lee, a member of the Subcommittee on Crime, offered an amendment seeking to accomplish the same goal as that of H.R. 1898. It was withdrawn with the ex-

pectation that it would be acted upon at a later date. Subsequently, Ms. Jackson Lee introduced the provision as H.R. 1837.

Prior to the Judiciary Committee mark-up on June 18, 1997, Ms. Jackson Lee introduced a separate bill, H.R. 1898, which contained technical changes to H.R. 1837. Like the first bill, H.R. 1898 is intended to protect juveniles in Federal prison from being subjected to sexual assault. As laudable as this goal is, it is important to note that there is currently not a single juvenile in any Federal prison anywhere in the country. As a matter of federal practice, any juveniles proceeded against in the federal juvenile justice system who receive secure confinement as part of their sentences are housed in State juvenile detention facilities. There are currently 197 such juveniles in State detention facilities around the country. Consequently, there are presently no juveniles who need the protection afforded by this bill. It is possible that in the future the policies of the Federal government on this point could change, resulting in juveniles being held in a Federal juvenile facility and coming in contact with adult staff. This bill has been supported because of the possibility of a future need for such protection.

Importantly, H.R. 3, the “Juvenile Crime Control Act of 1997,” which was passed by the House of Representatives on May 8, 1997, will not in any way contribute to any juveniles being placed in Federal prison. H.R. 3 preserves the custody provision of current law, which prohibits any person under the age of 18—even violent juvenile offenders prosecuted as adults—from being detained with adult offenders.

#### HEARINGS

No hearings were held on H.R. 1898, the “Juvenile Rape in Prison Protection Act of 1997.”

#### COMMITTEE CONSIDERATION

On June 18, 1997, the Committee on the Judiciary met in open session and ordered reported favorably the bill H.R. 1898, without amendment, by a voice vote, a quorum being present.

#### VOTE OF THE COMMITTEE

There were no recorded votes.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI 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.

#### COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1898, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 23, 1997.*

Hon. HENRY J. HYDE,  
*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. 1898, the Juvenile Rape in Prison Protection Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

JAMES L. BLUM,  
(For June E. O'Neill, Director).

Enclosure.

*H.R. 1898—Juvenile Rape in Prison Protection Act of 1997*

CBO estimates that enacting this legislation would have no significant impact on the federal budget. H.R. 1898 would not affect direct spending or receipts; therefore, pay-as-you-go procedures do not apply. This bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would impose no costs on state, local, or tribal governments.

H.R. 1898 would provide for a mandatory life sentence for an adult who sexually abuses a federal prisoner under the age of 18. The penalty for sexual abuse in a federal prison under existing law is a sentence of any number of years, or life imprisonment. In recent years, there have been very few cases involving sexual abuse of a juvenile in federal prison. In addition, most perpetrators of such crimes are already sentenced to long prison terms. Thus, we estimate that enacting this bill would not significantly increase the federal prison population.

The CBO staff contact for this estimate is Mark Grabowicz. This estimate was approved by Peter H. Fontaine for Paul N. Van de Water, Assistant Director for Budget Analysis.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(1)(4) 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

This section provides that the short title of the bill is the “Juvenile Rape in Prison Protection Act of 1997.”

### SECTION 2. JUVENILE RAPE IN PRISON

This section would amend Section 2241(a) of title 18, United States Code. Section 2241(a) of title 18, United States Code, prohibits anyone in the special maritime and territorial jurisdiction of the United States or in a Federal prison from knowingly causing another person to engage in a sexual act through the actual or threatened use of force against that person, or from attempting to do so.

This section would amend section 2241(a) so as to establish mandatory life imprisonment for anyone 21 years of age or older who commits the federal offense of aggravated sexual abuse in violation of section 2241(a) of title 18, United States Code, where the victim is a Federal prisoner who has not attained the age of 18 years. At the same time, this section establishes the affirmative defense to a prosecution under section 2241(a), which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the victim had attained the age of 18 years.

The Committee in no way intends to affect the death penalty provision established in section 2245 of title 18 of the United States Code. Section 2245 of title 18 of the United States Code provides that any person who, in the course of committing aggravated sexual abuse in violation of title 18, engages in conduct which results in death, may be punished by the death penalty. H.R. 1898 calls for mandatory life imprisonment for the aggravated sexual abuse of a minor in federal prison. This sentence of mandatory life imprisonment does not in any way affect the death penalty sentence established in section 2245. Even if this bill were to become law, with section 2241(a) amended accordingly, if an adult offender were to rape a minor in a Federal prison, and that conduct were to result in the death of the minor, the offender could still be charged under section 2245, with the death penalty being applied.

It is important to note that while section 2241 applies to the offense of aggravated sexual abuse in multiple federal jurisdictions—the special maritime and territorial jurisdiction of the United States and Federal prison—this bill would establish a mandatory sentence of life imprisonment only for aggravated sexual assault in a Federal prison.

### AGENCY VIEWS

No agency views were received on H.R. 1898.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## SECTION 2241 OF TITLE 18, UNITED STATES CODE

**§ 2241. Aggravated sexual abuse**

(a) BY FORCE OR THREAT.—(1) Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly causes another person to engage in a sexual act—

[(1)] (A) by using force against that other person; or

[(2)] (B) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(2) *Whoever, having attained the age of 21 years, violates paragraph (1) of this subsection or subsection (b) in a Federal prison shall, except in the case of an attempt, if the victim has not attained the age of 18 years, be imprisoned for life.*

(3) *It is an affirmative defense to a prosecution under paragraph (2) of this subsection, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the victim had attained the age of 18 years.*

\* \* \* \* \*

## DISSENTING VIEWS

Although we share the concerns regarding the problem of rape in prison and we are particularly appalled by the rape of juveniles by adults, we do not believe that this bill solves the problem.

Juveniles should not be housed with adults period. This legislation arises as a result of discussions regarding the problems facing juveniles housed with adults. Prior to passage of the Juvenile Justice and Delinquency Prevention Act, abused and neglected children were held in jails and other locked facilities with youth who had committed violent crimes. These children were mistreated, re-abused and exposed to criminal behavior. Children in adult jails often attempt suicide. The suicide rate for such children in adult jails is eight times higher than for children in juvenile detention centers.<sup>1</sup> Most suicide attempts by children occur during the first 24 hours of confinement.<sup>2</sup> In addition, children who come into contact with adult inmates are often physically or sexually abused.<sup>3</sup>

<sup>1</sup>“Juveniles in Adult Jails and Lockups: It’s Your Move” 3 (Community Research Center for OJJDP Feb. 1985) [hereafter Jails and Lockups]; Michael G. Flaherty, “An Assessment of the National Incidence of Juvenile Suicide in Adult Jails, Lockups and Juvenile Detention Centers” 10 (Community Research Forum for OJJDP 1980).

<sup>2</sup>Lindsey M. Hayes, “And Darkness Closes In \* \* \* A National Study of Jail Suicides” 10 Criminal Justice and Behavior 461, 471 (1983).

<sup>3</sup>Jails and Lockups at 2.

Sexual assault is five times more likely among youth in prison than in training schools.<sup>4</sup>

For example, in Ironton, Ohio, a 15 year-old girl ran away from home overnight, then returned to her parents. A juvenile court judge put her in a county jail to “teach her a lesson.” The girl was sexually assaulted by a deputy jailer on her fourth night in jail.<sup>5</sup>

In an even more egregious case, in 1996, 17 year-old Rodney Hulin, Jr. committed suicide to escape the repeated sexual abuse he was suffering at the hands of adult inmates with the prison warden’s full knowledge.<sup>6</sup>

Making stronger penalties for those adult inmates who assault juveniles will not solve the problem. Most of these rapes are never even reported, much less charged, so higher penalties will be of little assistance to the juvenile raped in jail by the adult inmate.

Additionally, in the federal system, as required by 18 U.S.C. 5039, all those individuals under age 18 are housed in contract juvenile facilities whether they are sentenced as adults or juveniles.<sup>7</sup> When a juvenile sentenced as an adult turns 18, a case management decision is made to determine whether the inmate will remain in a juvenile facility or be transferred to an adult facility.

Those offenders designated to an adult facility are put into the general prison population. Currently, this means that no offender under age 18 is housed in an adult federal prison. Conversely, those juveniles sentenced as adults have been designated into contract juvenile facilities.<sup>8</sup> Thus, there are no juveniles under the age of 18 housed in Federal prisons making this legislation entirely unnecessary.

This legislation is yet another example of how the Congress tries to convince the American people that it is working to fix a particular problem while actually doing nothing at all. If anything, this legislation appears to represent an excuse to justify pending bills which would allow juveniles to be housed with adults. If so, this would be the weakest form of post hoc rationalization. If any principle is clear from our juvenile justice experience, it is that juveniles should not be housed with adults. The fact that adults who rape minors in federal prisons could be subject to a mandatory life term in prison cannot begin to make up for the damage and the hardship that would result from such crimes. Moreover, this legislation does nothing to increase the penalties for raping a juvenile in state prison, where such conduct may actually occur.

Finally, even if it were possible for this crime to occur, while life imprisonment may be merited in some cases, we are opposed to a mandatory minimum penalty of life imprisonment. Title 18 United States Code section 2241 already authorizes a penalty of up to life imprisonment for aggravated sexual abuse. In fact, under current

<sup>4</sup>Martin Forst, Jeffrey Fagen, T. Scott Vivona, “Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy,” 40 *Juvenile & Family Court Journal*, 1, 9 (1989).

<sup>5</sup>Soler, “Litigation on Behalf of Children in Adult Jails,” 34 *Crime and Delinquency* 190, 201 (April 1998)[hereafter *Litigation on Behalf of Children*] (citing *Doe v. Burwell*, 537 F. Supp. 186 (S.D. Ohio 1982)).

<sup>6</sup>Statement of Rodney Hulin, June 3, 1996 (on file with House Judiciary Committee, Democratic Staff).

<sup>7</sup>Memorandum from Steve Scher, Congressional Relations, Bureau of Prisons to Melanie Sloan, February 28, 1997 (on file with House Judiciary Committee, Democratic staff) [hereafter BOP Memo].

<sup>8</sup>BOP Memo.

law, if death results from aggravated sexual abuse, the defendant may be sentenced to death. It is clear that current law already includes severe penalties for rape and this bill is unnecessary.

Because we believe that this bill does nothing to address the fundamental problem of the abuse of juveniles when mixed with adult inmate populations, because this bill addresses a situation which cannot exist under current law—juveniles cannot be housed with adults in Federal prisons, and because we are opposed to the mandatory minimum penalty contained in this legislation, we dissent from passage of this bill.

JOHN CONYERS, JR.  
BOBBY SCOTT.  
MAXINE WATERS.  
MELVIN L. WATT.

○