

119TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To direct the United States Sentencing Commission to amend the sentencing guideline relating to child sexual abuse material.

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IN THE SENATE OF THE UNITED STATES

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

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**A BILL**

To direct the United States Sentencing Commission to  
amend the sentencing guideline relating to child sexual  
abuse material.

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 “Sentencing Account-  
5       ability For Exploitation Act” or the “SAFE Act”.

6       **SEC. 2. AMENDMENT OF FEDERAL SENTENCING GUIDE-**  
7                       **LINE RELATING TO CHILD SEXUAL ABUSE**  
8                       **MATERIAL.**

9       (a) DEFINITIONS.—In this section:

1           (1) CHILD.—The term “child” means an indi-  
2           vidual who has not attained 18 years of age.

3           (2) CHILD SEXUAL ABUSE MATERIAL.—The  
4           term “child sexual abuse material” has the meaning  
5           given the term “child pornography” in section  
6           2256(8) of title 18, United States Code.

7           (3) PROHIBITED SEXUAL CONDUCT AGAINST A  
8           CHILD.—The term “prohibited sexual conduct  
9           against a child”—

10                   (A) means—

11                           (i) conduct committed against a child  
12                   relating to—

13                                   (I) kidnapping;

14                                   (II) illegal sexual abuse, contact,  
15                   or activity;

16                                   (III) live streaming of child sex-  
17                   ual abuse;

18                                   (IV) using a child to produce  
19                   child sexual abuse material; or

20                                   (V) sexual exploitation, including  
21                   child sex trafficking; or

22                           (ii) an attempt or conspiracy to en-  
23                   gage in any conduct described in sub-  
24                   clauses (I) through (V) of clause (i);

1 (B) does not include conduct involving or  
2 similar to advertising, transporting, mailing,  
3 distributing, receiving, possession, accessing, or  
4 viewing child sexual abuse material; and

5 (C) does not require a conviction.

6 (b) DIRECTIVE.—Pursuant to its authority under  
7 section 994(p) of title 28, United States Code, the United  
8 States Sentencing Commission shall review and amend the  
9 Federal sentencing guidelines and policy statements appli-  
10 cable to persons convicted of an offense under section  
11 1466A, 2251(d)(1)(A), 2252, 2252A, or 2260(b) of title  
12 18, United States Code, in order to reflect the intent of  
13 Congress that penalties for the offense under the guide-  
14 lines and policy statements—

15 (1) appropriately account for—

16 (A) the actual and potential harm to vic-  
17 tims and to the public from the offense; and

18 (B) changes that have occurred since the  
19 relevant guidelines and policy statements were  
20 last amended with respect to—

21 (i) typical offense behavior; and

22 (ii) the use of modern computer and  
23 internet technologies; and

24 (2) to better reflect the current spectrum of of-  
25 fender culpability.

1           (c) REQUIREMENTS.—In carrying out subsection (b),  
2 the United States Sentencing Commission shall—

3           (1) ensure that the Federal sentencing guide-  
4 lines and policy statements reflect—

5               (A) the seriousness of the offenses de-  
6 scribed in that subsection;

7               (B) the need to afford adequate deterrence  
8 to commission of the offenses;

9               (C) the need for just punishment for the  
10 offenses;

11              (D) the need to protect the public from  
12 further crimes of a defendant convicted of any  
13 such offense; and

14              (E) the need to differentiate among offend-  
15 ers based on their culpability and potential dan-  
16 gerousness;

17           (2) avoid duplicative punishment within the ap-  
18 plicable guidelines and under the Federal sentencing  
19 guidelines for substantially the same conduct;

20           (3) develop a guideline that accounts for—

21               (A) whether, prior to, during, or after the  
22 offense at issue, the defendant engaged in, con-  
23 spired to engage in, or attempted to engage  
24 in—

1 (i) an act of prohibited conduct  
2 against a child; or

3 (ii) a pattern of activity involving pro-  
4 hibited conduct against a child, whether in-  
5 volving a single victim or multiple victims;

6 (B) whether, prior to, during, or after the  
7 offense at issue, the defendant—

8 (i) participated in a group dedicated  
9 to child sexual abuse material or prohibited  
10 conduct against a child; or

11 (ii) encouraged, instructed, required,  
12 or similarly caused another individual to  
13 commit an offense involving child sexual  
14 abuse material or prohibited conduct  
15 against a child;

16 (C) whether the defendant engaged in mul-  
17 tiple acts, not accounted for in the defendant's  
18 criminal history or counts of conviction, involv-  
19 ing child sexual abuse material over an ex-  
20 tended period of time or with a high degree of  
21 frequency;

22 (D) whether the defendant intentionally  
23 used, or promoted the use of, software, tech-  
24 nology, procedures, or any other means to con-  
25 ceal the offense or the identity or location of

1 the defendant or any victim, or to destroy evi-  
2 dence for an improper purpose, unless ac-  
3 counted for in the conduct of conviction;

4 (E) whether 3 or more online channels,  
5 technologies, platforms, or methods were used  
6 to commit the offense;

7 (F) gradations in—

8 (i) the severity of the depicted sexu-  
9 ally explicit conduct, including especially  
10 severe physical or emotional trauma; and

11 (ii) the age or physical development of  
12 the minor;

13 (G) the number of items of child sexual  
14 abuse material or the number of victims in-  
15 volved in the offense;

16 (H) whether the offense involved distribu-  
17 tion of child sexual abuse material, accounting  
18 for the nature of the distribution, including—

19 (i) distribution in order to receive any  
20 valuable consideration; and

21 (ii) distribution through any method  
22 that does not limit who can obtain the ma-  
23 terial or how many individuals can obtain  
24 the material;

1 (I) whether the offense involved the pro-  
2 duction, creation, or manufacture of child sex-  
3 ual abuse material that is not subject to the  
4 cross reference in section 2G2.2(c)(1) of the  
5 United States Sentencing Guidelines Manual to  
6 section 2G2.1 of the Manual;

7 (J) whether the offense was the direct and  
8 proximate cause of the victim's death by sui-  
9 cide; and

10 (K) any other conduct or factors that the  
11 United States Sentencing Commission deter-  
12 mines appropriate to reflect the seriousness of  
13 the offense and differentiate among offenders;

14 (4) make any necessary conforming changes to  
15 the guidelines; and

16 (5) ensure that the guidelines adequately meet  
17 the purposes of sentencing, as set forth in section  
18 3553(a)(2) of title 18, United States Code.

19 (d) AUTHORITY FOR UNITED STATES SENTENCING  
20 COMMISSION.—In carrying out this section, the United  
21 States Sentencing Commission—

22 (1) may amend provisions of the Federal sen-  
23 tencing guidelines that were promulgated pursuant  
24 to any other specific congressional directives or legis-  
25 lation directly amending the guidelines and promul-

1 gate amendments that would result in sentencing  
2 ranges different than those that would have applied  
3 under such directives or legislation; and

4 (2) in developing a guideline that comports with  
5 the requirements of this section, particularly ac-  
6 counting for the factors set forth in subsection  
7 (c)(3)—

8 (A) may—

9 (i) design the specific offense charac-  
10 teristics, including the increase in offense  
11 level that each offense characteristic would  
12 provide; and

13 (ii) define any terms; and

14 (B) may not lower the applicable base of-  
15 fense level provided in section 2G2.2(a) of the  
16 United States Sentencing Guidelines Manual as  
17 in effect on the date of enactment of this Act.

18 (e) REPEALS.—

19 (1) LAWS.—The following provisions of law are  
20 repealed:

21 (A) Section 632 of the Treasury, Postal  
22 Service and General Government Appropria-  
23 tions Act, 1992 (28 U.S.C. 994 note; Public  
24 Law 102–141).



1 (B) Sections 2 and 3 of the Sex Crimes  
2 Against Children Prevention Act of 1995 (28  
3 U.S.C. 994 note; Public Law 104–71).

4 (C) Section 401(i)(1) of the Prosecutorial  
5 Remedies and Other Tools to end the Exploi-  
6 tation of Children Today Act of 2003 (28  
7 U.S.C. 994 note; Public Law 108–21).

8 (2) GUIDELINES.—Section 2G2.2(b) of the  
9 United States Sentencing Commission Guidelines  
10 Manual is amended by striking paragraph (7).