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Honorable Edward M. Kennedy
United States Senate
Washington, DC 20510

Dear Senator Kennedy:

I am writing to express the American Bar Association's support for your legislation to repeal provisions of the recently enacted PROTECT Act, passed as part of the Amber Alert legislation, which do not specifically relate to the prevention of the exploitation of children.

At the outset, I would like to reiterate the Association's disappointment and dismay that the PROTECT Act's fundamental changes to the federal criminal sentencing process were made without any of the customary safeguards of the legislative process, including comprehensive and balanced hearings and a fair opportunity for judges, practitioners and the U.S. Sentencing Commission to review and comment on them.

Specifically, your bill, S. 1086, the "JUDGES Act," would reverse ill-considered provisions in the PROTECT Act that sharply limit the ability of federal judges to depart downward from federal sentencing guidelines in certain cases and that compromise critical institutional features of the federal sentencing system. S.1086 would restore a sensible standard of appellate judicial review for departures, established by the U.S. Supreme Court in *Koon v. United States*, 518 U.S. 81 (1996). It would also eliminate very troubling reporting and oversight requirements on judges that could have a chilling effect on judicial independence and undermine the goal of achieving just sentences for all defendants.

Recognizing that problems may exist in current departure practice, S. 1086 directs the U.S. Sentencing Commission to undertake a comprehensive study of the incidence of downward departures from the sentencing guidelines. We believe this directive will allow Congress to determine the true nature and extent of downward departures and facilitate a measured legislative response to any identified deficiencies in current departure practice.

The ABA applauds your leadership on this issue, so critical to the maintenance of a just and effective federal sentencing system. We urge prompt hearings and favorable action on S.1086.

Sincerely,

Robert D. Evans

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