

(2) near- and long-term water demand and supplies in the study area including any opportunities to treat and utilize impaired water supplies through innovative and economically viable treatment technologies;

(3) public health and safety and environmental quality issues related to the regional rural water supply system or rural water system enhancement;

(4) opportunities for water conservation in the study area to reduce water use and water system costs;

(5) the construction costs and projected operation and maintenance costs of the proposed regional rural water supply system and an assessment of participating communities' ability to pay 20 percent to 50 percent of the construction costs and the full share of the system operation and maintenance costs;

(6) opportunities for mitigation of fish and wildlife losses incurred as a result of the construction of the regional rural water supply system or rural water system enhancement on an acre-for-acre basis, based on ecological equivalency, concurrent with system construction; and

(7) the extent to which assistance for rural water supply is available pursuant to other Federal authorities and the likely effectiveness of efforts to coordinate assistance provided by the Secretary with other available Federal programs and assistance.

(c) **USE OF OTHER REPORTS.**—In conducting a feasibility study pursuant to this section, or an appraisal investigation under section 5, the Secretary shall, to the maximum extent practicable, utilize, in whole or in part, any engineering or other relevant report submitted by a state, tribal, regional, or local authority associated with the proposed regional rural water supply system.

(d) **PUBLIC AVAILABILITY.**—The Secretary shall make available to the public, upon request, the results of each feasibility study undertaken pursuant to this Act, and shall promptly publish in the Federal Register a notice of the availability of those results.

(e) **DISCLAIMER.**—Nothing contained in this section shall be interpreted as requiring a feasibility study or imposing any other new requirement for rural water projects or programs that are already authorized.

SEC. 7. AUTHORIZATION.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Mr. DASCHLE. Mr. President, I am pleased to join my colleague, Senator BINGAMAN, in introducing the Reclamation Rural and Small Community Water Enhancement Act, S. 1085.

The Bureau of Reclamation has accomplished a great deal over the last century, starting with the early irrigation and water development programs that opened the West to settlement and economic growth. Clean, abundant water supplies were integral to our Nation's westward expansion. Without the vision and effort of the Bureau over the last century, the West would be a vastly different, and less hospitable, place.

Though the role of the Bureau has changed over the years, it is still the premier Federal water development agency. Today, one of its primary duties is the building of rural water projects in South Dakota and other Western States. Rural areas often lack the resources and infrastructure necessary to provide stable water supplies to their residents. Most families, farmers, and ranchers rely on inadequate

wells, or live in areas where the water quality is so poor they are required to truck or haul water over long distances. Rural water projects conducted by the Bureau have helped overcome these obstacles, tackling the problem on a regional level and vastly improving the quality of water and the quality of life in much of my State. Rural water systems have become an indispensable lifeline to help deal with the severe drought that has affected much my State.

The bill we are introducing today takes the next, logical step to bring the Bureau's rural water projects into the 21st century. The Reclamation Rural and Small Community Water Enhancement Act will create a new program within the Bureau of Reclamation to help rural and tribal communities develop water supply solutions, like rural water systems, to address regional water needs. The Bureau's experience in administering other rural water systems will ensure this program compliments existing Federal drinking water programs, like those operated by the Environmental Protection Agency and the Department of Agriculture, and provide rural communities with the tools they need to plan for the future.

As we look forward, however, it is equally important that we not ignore those projects that have already received approval by Congress. In South Dakota, the Mni Wiconi, Mid-Dakota, Perkins County, and Lewis and Clark rural water systems will serve thousands of families, farms, and businesses. Their timely completion is integral to the health, welfare, and economic security of my State. Unfortunately, the administration's fiscal year 2004 budget request drastically cuts funding for these and other rural water projects throughout the country by more than 80 percent. This will lead to unnecessary delays in the provision of drinking water to homes and families and will only serve to increase the cost of the projects.

That is why this legislation directs the Secretary of the Interior to take all necessary steps to complete these and all other rural water projects that have already received congressional authorization. The bill recognizes the hard work that has already gone into the development of these projects, and will help ensure that they are completed on schedule. At the same time, this new program will aid in the development of future projects so that other communities can finally realize the benefits that a well-run rural water system can provide.

I urge my colleagues to support this legislation.

By Mr. KENNEDY (for himself,
Mr. LEAHY, Mr. FEINGOLD, and
Mr. LAUTENBERG):

S. 1086. A bill to repeal provisions of the PROTECT Act that do not specifically deal with the prevention of the exploitation of children; to the Committee on the Judiciary.

Mr. KENNEDY. Mr. President, it is a privilege to join my colleagues in introducing this legislation on fairness in our Federal sentencing system. The Judicial Use of Discretion to Guarantee Equity in Sentencing Act, or the JUDGES Act, will repeal a number of controversial sentencing provisions that were added at the last moment to the recently enacted "AMBER Alert law" on missing, abducted, and exploited children.

These provisions—called the "Feeney Amendment"—have nothing to do with protecting children, and everything to do with handcuffing judges and eliminating fairness in our Federal sentencing system. As Chief Justice Rehnquist said, they "do serious harm to the basic structure of the sentencing guidelines system and . . . seriously impair the ability of courts to impose just and responsible sentences."

The Judicial Conference of the United States, the American Bar Association, the U.S. Sentencing Commission, and many prosecutors, defense attorneys, law professors, civil rights organizations, and business groups vigorously opposed them. Now that the child-abduction legislation has passed, it is the responsibility of Congress to repeal these extraneous and ill-considered provisions and begin a serious and thorough review of the current sentencing guidelines system.

The Sentencing Reform Act of 1984 was the result of extraordinary bipartisan cooperation. In the Senate Judiciary Committee, over a ten-year period, Senator THURMOND, Senator HATCH, Senator BIDEN, and I worked with the Carter and Reagan administrations to strike the best balance between the goal of consistent sentencing in Federal law and the need to give Federal judges discretion to make the sentence fit the crime in individual cases. There was also strong bipartisan cooperation in the House Judiciary Committee, and we worked together over several years to enact a strong, balanced, and bipartisan bill.

Many judges think the 1984 Act went too far in limiting their discretion. Over the years, I have heard many Senators suggest that we should give judges more authority to consider the circumstances of each offender and the facts of each offense. Enacted without hearings or meaningful debate, the Feeney Amendment was a giant step in the wrong direction.

The Feeney Amendment effectively strips Federal judges of discretion to impose individualized sentences, and transforms the longstanding sentencing guidelines system into a mandatory minimum sentencing system. It limits in several ways the ability of judges to depart downwards from the guidelines. It overturns a unanimous 1996 Supreme Court decision, *Koon v. United States*, which established a deferential standard of review for departures from the guidelines based on the facts of the case—thereby undermining what the Court described as the "traditional sentencing discretion" of trial

courts and the "institutional advantage" of Federal district courts over appellate courts to make fact-based sentencing determinations.

The Feeney Amendment also limits the number of judges who can serve on the Sentencing Commission, and directs the Commission to amend the guidelines and policy statements under them "to ensure that the incidence of downward departures are [sic] substantially reduced." It also requires the Attorney General to establish a "judicial blacklist" by informing Congress whenever a district judge departs downward from the guidelines. It imposes new, burdensome record-keeping and reporting requirements on Federal judges, and requires the Sentencing Commission to disclose confidential court records to the House and Senate Judiciary Committees upon request. Earlier this month, Chief Justice Rehnquist specifically criticized these record-keeping and reporting requirements as potentially amounting "to an unwarranted and ill-considered effort to intimidate individual judges in the performance of their judicial duties."

It was an extreme step for Congress to insist that Federal judges—appointed by the President and confirmed by the Senate—should not have discretion to impose lower sentences in unusual cases, subject to appeal. It was even more extreme to pass such a sweeping proposal without the benefit of hearings and full debate in either House of Congress.

Because the Feeney Amendment was introduced at the last possible moment, Congress was deprived of full and balanced information on whether departure decisions are made in inappropriate instances. The Justice Department compounded that problem by submitting a highly misleading letter on April 4th expressing its "strong support" for the Amendment. The Department argued that the Amendment was justified because an epidemic of lenient sentences was undermining the Sentencing Reform Act. It failed, however, to mention that the committee report accompanying the 1984 Act anticipated a departure rate of about 20 percent. Today, the rate at which judges depart from the guidelines over the objection of the government is slightly more than 10 percent—well within acceptable rates.

The Department claimed that there are too many downward departures from the sentencing guidelines, but it failed to mention that, according to the American Bar Association, almost 80 percent of these departures are requested by the Justice Department itself. In arguing for the abrogation of the Supreme Court's ruling in *Boon v. United States*, the Department also failed to mention that it wins 78 percent of all sentencing appeals, or that 85 percent of all defendants who receive downward departures based on grounds other than cooperation with the government nevertheless receive prison time.

Last week, I asked Michael Chertoff, a nominee to the United States Court of Appeals for the Third Circuit, about his involvement in drafting the Justice Department's letter of support for the Feeney Amendment. He said that he had "no part in drafting" the letter, and that he did not review the letter before it was sent. In his current position as Assistant Attorney General in charge of the Criminal Division in the Department, Mr. Chertoff is chiefly responsible for formulating criminal law enforcement policy and advising the Attorney General and the White House on matters of criminal law. The fact that the Department's leading authority on criminal law did not participate in writing its influential letter demonstrates the travesty of the process that led to the Feeney Amendment's enactment.

It is important for Congress to undo the damage done to the Federal criminal justice system. The JUDGES Act, which we are introducing today and which Congressman CONYERS is introducing in the House, repeals the provisions of the Feeney Amendment that do not specifically involve sex crimes or crimes against children—the purpose of the underlying child-abduction legislation to which it was attached. In the place of these ill-advised changes to Federal sentencing law, the JUDGES Act directs the Sentencing Commission to report to Congress within 180 days on the incidence of downward departures from the Sentencing Guidelines. The Commission's report will provide Congress with useful information to evaluate the need for reform, including information on rates of departures by district, circuit, offense, and departure ground. It will also provide a review of departure appeals, an assessment of the extent to which departures affect the guideline system, and an assessment of variations in the magnitude of departures and the frequency with which the final sentences result in imprisonment, other conditions of confinement, or release.

When completed, the Commission's report will provide a solid basis for further action by Congress. We need to hold hearings; collect the relevant data; consult with the judges, the Sentencing Commission, the Justice Department, the defense bar, and other authorities; and decide whether legislation is needed to improve the sentencing guidelines. If judges are abusing their discretion, we should limit it. If more discretion is appropriate, we should provide it. In the words of Chief Justice Rehnquist, "Before such legislation is enacted there should, at least, be a thorough and dispassionate inquiry into the consequences of such action."

It was a serious mistake for Congress to enact the Feeney Amendment over the strong objections of the Chief Justice, the Judicial Conference, the American Bar Association, the Sentencing Commission, and the over-

whelming majority of prosecutors and defense attorneys who deal with the guidelines on a daily basis. The JUDGES Act will correct this mistake and set us on the right path to achieving any necessary reforms. I urge my colleagues to support it.

I ask unanimous consent that the following letter from the Leadership Conference on Civil Rights, the National Association of Criminal Defense Lawyers, the National Legal Aid and Defender Association, the National Association of Federal Defenders, and Families Against Mandatory Minimums be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MAY 20, 2003.

The Hon. EDWARD M. KENNEDY,
U.S. Senate, Washington, DC.

DEAR SENATOR KENNEDY: The undersigned organizations write to express our strong support for the JUDGES Act. Under the guise of addressing crimes against children, the recently enacted PROTECT Act (S. 151) effected broad and ill-considered changes to our federal sentencing system. In repealing those provisions that are not limited to child-related and sexual offenses, the JUDGES Act would help restore judicial discretion to impose just sentences in most federal cases.

Enacted without hearings or meaningful debate, Title IV of the PROTECT Act (the "Feeney Amendment") represents the most dramatic change to federal sentencing law since passage of the Sentencing Reform Act of 1984. It threatens to deprive judges of discretion to impose individualized sentences and transform the federal sentencing guidelines into a near-mandatory minimum sentencing systems. As with mandatory sentences, Title IV will increase unwarranted sentencing disparities and disproportionate sentences, and erode public confidence in our federal justice system.

No reliable evidence was offered to justify this curtailment of judicial discretion. On the contrary, statistics indicate that the overwhelming majority of sentences, other than those requested by the government to reward defendants for assisting in the prosecution of others, are within the range specified by the sentencing guidelines. Significantly, nearly 80 percent of all downward departures are requested by the government to reward assistance to the government or to manage the high volume of immigration cases in certain border districts.

These statistics solidly discredit title IV's most disastrous provision—Section 401(m), which orders the Sentencing Commission to amend the guidelines so as to substantially reduce the number of departures. The JUDGES Act repeals that provision in favor of a neutral study of departures by the Sentencing Commission.

In carefully considering and enacting the Sentencing Reform Act of 1984 and eventually approving the Sentencing Guidelines, Congress struck a careful balance between sentencing uniformity and judicial discretion. Title IV of the PROTECT Act upsets this balance without justification and without due consideration for the opposing views of the federal judiciary, the Sentencing Commission, the bar and many diverse groups from the left and right.

We appreciate your leadership in this area, and we look forward to working with you in support of the JUDGES Act.

Leadership Conference on Civil Rights,
National Association of Criminal Defense Lawyers, National Legal Aid and

Defender Association, National Association of Federal Defenders, Families Against Mandatory Minimums.

Mr. LEAHY. Mr. President, I am very pleased to join the senior Senator from Massachusetts and Senators FEINGOLD and LAUTENBERG in introducing the Judicial Use of Discretion to Guarantee Equity in Sentencing Act of 2003, or the JUDGES Act. This bill will restore judicial discretion in Federal criminal sentencing, a responsibility that was all but stripped away in controversial, extraneous provisions that were added to the AMBER Alert law enacted last month.

I was deeply disappointed when the Republicans took the bipartisan, non-controversial AMBER Alert bill and added numerous unrelated and ill-considered provisions. One set of provisions, collectively called the Feeney Amendment, blithely overturned the basic structure of the carefully crafted sentencing guideline system without any serious process in either the House or the Senate, and over the strong objections of the Nation's most senior jurists. Speaking about the original Feeney Amendment, the Chief Justice of the United States wrote: "This legislation, if enacted, would do serious harm to the basic structure of the sentencing system and would seriously impair the ability of courts to impose just and responsible sentences." I commend Senator KENNEDY for trying to repair the harm done in the Feeney Amendment by introducing the JUDGES Act today.

Rather than directly address important measures to protect our children, the AMBER Alert conference committee effectively rewrote the criminal code on the back of an envelope. First, the final language established one set of sentencing rules for child pornographers and a more flexible set of sentencing rules for other Federal defendants, including terrorists, murderers, mobsters, civil rights violators, and white collar criminals. No one here believes that sex offenders deserve anything less than harsh sentences, but I cannot understand why we would treat the terrorists better.

Second, the conference report overturned a unanimous Supreme Court decision, *Koon v. United States*, by establishing a new standard of appellate review in all departure cases. This provision, like so many others in the Feeney Amendment, is not limited to cases involving children. The Court in *Koon* interpreted the departure standard in a way that limited departures but left some room for judicial discretion. By contrast, the enacted provision appears to require appellate courts to consider the merits of a departure before it can decide what standard of review to apply to the merits. This sloppy drafted, circular provision is likely to tie up the courts in endless litigation, draining already scarce judicial resources, and costing the taxpayers money.

In addition, the Feeney Amendment effectively created a "black list" of

judges that stray from the draconian mandates of the new law. The enacted amendment attempt to intimidate the Federal judiciary by compiling a list of all judges who impose sentences that the Justice Department does not like. Again, this provision is not limited to crimes against children, but applies in any type of criminal case. It takes a sledge hammer to the concept of separation of powers.

In justifying this assault on Federal judges, my colleagues on the other side of the aisle claimed that there was a "crisis" of downward departures in sentencing. In fact, downward departure rates are well below the range contemplated by Congress when it authorized the Sentencing Guidelines, except for departures requested by the government. The overwhelming majority of downward departures are requested by federal prosecutors to reward cooperation by defendants or to manage the high volume of immigration cases in certain border districts. When the government does not like a specific downward departure, it can appeal that decision, and it often wins—approximately 80 percent of such appeals are successful. The Feeney Amendment, forced through Congress with virtually no debate, was a solution in search of a problem.

The legislation that I join Senator KENNEDY in introducing today will repeal those provisions of the Feeney Amendment that veered from the underlying purpose of the AMBER Alert bill. Specifically, it will annul those sections that do not specifically involve crimes against children or sex crimes, effectively reversing the Feeney Amendment's attack on judicial discretion.

The JUDGES Act will provide accurate and complete information on the incidence of downward departures in sentencing—a set of data that we were denied when the Feeney Amendment was adopted in the AMBER conference. This bill directs the Sentencing Commission to conduct a comprehensive study on sentencing departures and report to Congress within 180 days. This is the type of review Chief Justice Rehnquist called for in his letter opposing the original Feeney language. He urged the Congress to engage in a "thorough and dispassionate inquiry" before changes were made to the Federal sentencing structure. That request was dismissed by supporters of the Feeney Amendment, but still deserves full consideration by the Congress.

Finally, the JUDGES Act will reverse a provision that goes beyond the Feeney Amendment, having been added to the AMBER Alert bill during the conference committee's one meeting. This provision limits the number of Federal judges who can serve on the Sentencing Commission. I, for one, believe that judges are extremely valuable members of the Commission. They bring years of highly relevant experience, not to mention reasoned judgment, to the table. The Republicans ap-

parently believe that their expertise is of limited value.

The JUDGES Act is a reasoned correction to the far-reaching provisions enacted in the Feeney Amendment. It will restore the integrity of the Federal sentencing system by allowing judges to impose just and responsible sentences. I urge my colleagues to support this important legislation.

By Ms. MIKULSKI (for herself and Mrs. CLINTON):

S. 1087. A bill to provide for uterine fibroid research and education, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Ms. MIKULSKI. Mr. President, I rise to introduce the Uterine Fibroid Research and Education Act. This bill expands and coordinates research on uterine fibroids at the National Institutes of Health, NIH, and creates an education campaign to make sure women and their doctors have the facts they need about this painful, chronic condition. I want to thank Representative STEPHANIE TUBBS JONES for introducing this legislation in the House of Representatives and Senator CLINTON for joining me as an original cosponsor.

Uterine fibroids are a major health issue for American women. Three quarters of all reproductive age women, and an even greater number of African American women, have uterine fibroids. Although many women with fibroids have few or no symptoms, it is estimated that a quarter of all women in their thirties and forties seek medical care for the abnormal or heavy bleeding, pain, infertility, or miscarriage that uterine fibroids cause.

Despite their prevalence, little is known about uterine fibroids, and few good treatment options are available to women who suffer from them. Right now, hysterectomy—the surgical removal of the uterus—is the most common treatment for uterine fibroids. More than 200,000 women undergo a hysterectomy each year to treat their uterine fibroids, which requires a six week recovery, has a 20 to 40 percent risk of complications, and means a woman can no longer bear children. Less invasive treatment options, like drug regimens or fibroid embolization, are promising, but many have not undergone the rigorous testing that women expect. In fact, the Agency for Healthcare Research and Quality at the Department of Health and Human Services found "a remarkable lack of high quality evidence supporting the effectiveness of most interventions for symptomatic fibroids."

Women deserve better. That's why I am introducing the uterine Fibroid Research and Education Act—to find new and better ways to treat or even cure uterine fibroids.

This bill does three things. First, it expands research at the National Institutes of Health, NIH, by doubling funding for uterine fibroids every year for the next five years. Despite a budget of