

April 7, 2003

The Honorable Patrick Leahy
United States Senate
Washington, DC 20510

Re: Tomorrow's Conference on Amber Alert Legislation

Dear Senator Leahy:

NPRA would first like to commend you for your work on the Amber Alert legislation, which makes an important contribution to the nation's fight to eliminate crimes against children. We support the goals and intent of this important legislative effort.

We must nevertheless ask you to reconsider one amendment to this legislation added during House consideration. I am writing to urge you to oppose the Feeney amendment, which we fear would unintentionally create a difficult situation for business, particularly in the energy, transportation, and manufacturing sectors of our economy. The Feeney amendment was added to H.R. 1104, the Omnibus Crimes Against Children ("Amber Alert") legislation.

The stated purpose of the Feeney amendment is laudable; it aims at limiting leniency in child pornography cases. But its applicability exceeds the scope of the Amber Alert legislation, and would apply to all federal crimes, regardless of their nature or seriousness. We would strongly recommend that the amendment's effect be limited to actions covered by the Amber Alert legislation.

Because of increasing criminal enforcement of environmental, health, and safety (EH&S) laws, this amendment could otherwise subject many individuals, business owners, officers, directors and employees to imprisonment for conduct they might not realize is illegal or even occurring.

The amendment would effectually deny judges in all federal cases the long-standing discretion to exercise flexibility by departing downward from the U.S. Sentencing Guidelines penalty range for mitigating factors. It would, however, preserve the ability to depart upward for aggravating factors.

The Amendment eliminates the little judicial discretion left in federal sentencing, effectively establishing mandatory minimum sentences for all federal crimes. This is tantamount to ensuring that individuals convicted of any federal offense will face actual and significant jail time, with no regard for the nature and significance of the action.

In short, the combination of sweeping criminal enforcement of EH&S laws (which have a criminal intent standard), broad corporate responsibility provisions and the prison sentences guaranteed by the Feeney amendment could result in miscarriages of justice.

This amendment eliminates the carefully crafted system created by the Sentencing Reform Act of 1984 and fleshed out by the United States Supreme Court in *United States v. Koon*. It disregards for the important role of the federal judiciary by placing complete sentencing discretion in the hands of federal prosecutors.

I urge you to oppose the Feeney amendment during consideration by the conference committee. Thank you for your consideration and your leadership on this important issue.

Sincerely,

Bob Slaughter
President

NPRA is a national trade association whose members own or operate most domestic refining capacity or petrochemical manufacturing operations.