

Summary of the Child Protection/ Alcohol and Drug Partnership Act S. 2435



Children's Defense Fund

An estimated 40-80% of the children in the child welfare system have families with alcohol and drug (AOD) problems. In order to ensure safety and permanence for these children and appropriate alcohol and drug treatment for their families, increased treatment and other services must be directed to their special needs. This will require increased resources and new partnerships between child welfare and AOD agencies, other service providers, courts, community leaders, and family members. The Child Protection/Alcohol and Drug Partnership Act (S.2435) would provide grants to state child welfare and alcohol and drug agencies to address the impact of alcohol and drug abuse on children and families who come to the attention of the child welfare system.

S.2435 was introduced on April 13, 2000, with bipartisan support* and has been referred to the Senate Finance Committee. It builds on the foundation of the bipartisan Adoption and Safe Families Act of 1997 (ASFA) which recognizes that the health and safety of children are paramount and accelerates time lines for states to move children in foster care to permanent homes. In order for appropriate and timely decisions to be made about safety and permanence for children, increased services for families with alcohol and drug problems must be provided immediately when children enter foster care. S.2435 would provide grants to state child welfare and alcohol and drug agencies to enable them together to address the treatment needs of these families.

The Child Protection/Alcohol and Drug Partnership Act will promote safety and permanence for children and recovery for their parents. S. 2435 will:

Provide \$1.9 Billion Over 5 Years for a Range of Activities to Improve Treatment

- State child welfare and AOD agencies that apply together will be eligible to receive 5-year grants under a new part of Title IV-B of the Social Security Act to expand treatment for families with alcohol and drug problems who come to the attention of the child welfare system. Indian tribes also may apply.
- Funds will be distributed to states based on the number of children under the age of 18 who reside in that state, with a minimum grant for small states to ensure that each state gets sufficient funding to develop useful activities. 3-5 % of the funds will be set aside for grants to Indian tribes and 2% for grants to the Territories.
- To encourage state investments, a state match of 15% is required for the first two years, 20% for the next two, and 25% for the fifth year; the match may be modified in special circumstances.

* Co-sponsors include Senators Olympia Snowe (R-ME), John D. Rockefeller IV (D-WV), Mike DeWine (R-OH), Christopher H. Dodd (D-CT), and Christopher S. Bond (R-MO).

Promote Child Protection/AOD Agency Partnerships to Increase Treatment and Services

- State child welfare and alcohol and drug agencies will have flexibility to decide how best to use these funds to enhance treatment. They may use them to:
 - Develop and/or expand comprehensive individualized alcohol and drug abuse prevention and treatment services that include:
 - Preventive and early intervention services for children that address their mental, emotional, and developmental needs;
 - Prevention and early intervention services for parents at risk for alcohol and drug abuse problems;
 - Comprehensive home-based, outpatient, and residential treatment options;
 - After-care support (both formal or informal) for families in recovery that promotes child safety and family stability; and
 - Services and supports that promote parent-child interaction and focus on children and other family members;
 - Improve screening and assessment tools;
 - Implement effective strategies to engage and retain parents in treatment;
 - Provide joint training of child welfare and AOD staff, judges and court staff; and
 - Improve data systems to monitor the progress of families and evaluate service and treatment outcomes to determine effective approaches to treatment.
- Input in planning and implementation is encouraged from a variety of stakeholders, including staff of alcohol and drug treatment and prevention agencies and child welfare agencies, advocates for children and families, consumers, judges and court staff, and representatives of other agencies and providers offering health, mental health, domestic violence, housing, education, employment and/or TANF services or assistance.

Ensure State Accountability for Outcomes for Children and Families

- The Secretary of HHS (together with the Administration for Children and Families, Substance Abuse and Mental Health Services Administration, state and local government officials, court staff, advocates and consumers) must establish, within the first year after passage of the Act, indicators that will be used to assess the performance of states in using the grant funds.
- In evaluating performance, state child welfare and AOD agencies and Indian tribes will be measured against themselves on their joint activities, assessing progress over time against an established baseline.
- Each state must submit to the Secretary of HHS annual progress reports and a final report on its evaluation and progress made at the end of each five-year funding cycle of the grant. States that fail to report on the indicators will be denied grant funds for the next fiscal year.
- The Secretary of HHS must submit an annual report to Congress on the joint activities, indicators, and progress made, and a report at the end of each five-year funding cycle containing the results of the evaluations and recommendations for future legislative actions.

*Prepared by the Children's Defense Fund. For more information call (202) 662-3574
For a complete copy of the bill on the Internet, go to <http://thomas.loc.gov> and type in S. 2435.*

The Child Protection/Alcohol and Drug Partnership Act (S. 2435) Will Help Keep Children Safe and in Permanent Families

Millions of American children lack safe and permanent families who can help them grow into healthy and productive adults.

- An estimated three million children annually are reported to state child protective service agencies as suspected victims of child abuse and neglect. In 1998, just over 900,000 children were confirmed abuse and neglect victims.¹
- A record 547,000 children were reported to be in foster care as of March 31, 1999. The average length of stay for these children is 33 months. More than half of them have been in foster care longer than 18 months.²

Alcohol and drugs (AOD) severely impact the lives of many of the families who come to the attention of the child welfare system.

- Children whose parents abuse alcohol and drugs are almost three times more likely to be abused and more than four times more likely to be neglected than children of parents who do not abuse alcohol and drugs.³
- An estimated 40-80% of the families involved in the child welfare system have problems with alcohol and/or drugs.⁴

Existing AOD treatment services are not adequate or appropriate for families in the child welfare system.

- Nationally there is a shortage in all types of publicly funded substance abuse treatment opportunities for those in need, especially for women. All states report long waiting lists for services.⁵ 63% of the people who are in need of treatment for drug abuse do not receive it.⁶
- Just over two-thirds of parents involved in the child welfare system need substance abuse treatment, but child welfare agencies can provide treatment services for less than one-third of them.⁷
- Substance abuse treatment services that are specifically tailored to meet the needs of women and parents are in chronically short supply. Parents with AOD problems in the child welfare system have multiple and especially complex problems. The mothers involved often face mental illness, domestic violence, health problems like HIV/AIDS, and abuse or neglect as a child, all of which pose special challenges for AOD treatment and recovery.⁸ Engagement and retention strategies require special attention to ensure completion of treatment.

Alcohol and drug abuse are treatable public health problems with effective remedies.

- Experts report that drug addiction treatment works as well as treatment for other chronic illnesses such as diabetes, asthma, and hypertension.⁹ The U.S. Department of Health and Human Services reports that nearly one-third of those in treatment achieve permanent abstinence in their first attempt at recovery. An additional one-third have periods of relapse but eventually achieve long-term abstinence, and one-third have chronic relapses that result in premature death from substance abuse and related consequences.¹⁰

- The Congressionally-mandated National Treatment Improvement Evaluation Study (NTIES) reported in 1997 a 50% decline in drug use in the more than 4,400 individuals surveyed one year after treatment. Alcohol and drug-related medical visits as well as high-risk sexual behavior declined significantly among all clients. For women, the employment rate rose by 25% and involvement in illegal activities decreased dramatically.¹¹ The positive trends in all of these areas have a critical impact on improved parenting skills and behavior
- The 1992 California Department of Alcohol and Drug Programs (CALDATA) study showed significant declines in drug use and illegal activity of clients following treatment. Additionally, this study of more than 1,800 clients reported the measured benefit to taxpayers exceeded the cost of treatment by 6 to 1 for women with children who did not receive welfare and 2.5 to 1 for women with children who received welfare.¹²

Not providing alcohol and drug treatment has a high human and fiscal cost.

- Children whose families do not get appropriate treatment are more likely to remain in foster care longer and to reenter care once returned home. Their siblings are also more likely to end up in foster care.¹³
- Studies indicate that for every \$1 invested in AOD treatment, \$7.14 dollars are saved by reductions in health costs, violence and crime, lost work and school productivity, and social services including child abuse/neglect/foster care.¹⁴

The Adoption and Safe Families Act renews emphasis on early decision-making to keep children safe and in permanent families.

- The bipartisan Adoption and Safe Families Act (ASFA), enacted in 1997, promotes safety and permanence for children by expediting timelines for decision-making. That law requires that a court review plans for a child's permanent living arrangement within 12 months of the date that a child enters foster care. It also requires that if a child is in foster care for 15 of the most recent 22 months, that a petition to end a parent's rights to the child must be filed, unless certain exceptions apply.
- To ensure that permanency decisions can be made for children whose families have AOD problems, special steps must be taken to begin services and treatment for the family immediately upon a child's entry into foster care. Studies show that a primary motivator for mothers to enter treatment is to keep or regain custody of their children.¹⁵

The Child Protection and Alcohol and Drug Partnership Act (S. 2435) promotes safety and permanence for these children and recovery for their parents.

- S. 2435 offers \$1.9 billion over five years to state child welfare and AOD agencies that agree together to take steps to develop and increase treatment services, establish appropriate screening and assessment tools, or improve strategies to engage and retain parents in treatment and provide after-care support. The activities must be directed to families with AOD problems who come to the attention of the child welfare system. Agencies also can use the funds to increase capacity to meet these families needs in a timely way by jointly cross-training child welfare and AOD staff, improving data to track progress in these families, and to promote evaluation. S. 2435 holds states accountable for demonstrating the progress they make with these funds.

To view a complete copy of the bill on the Internet, go to <http://thomas.loc.gov> and type in S. 2435.

ENDNOTES

¹ Administration for Children and Families, U.S. Department of Health and Human Services, ACF Press Room, HHS News, *HHS Reports New Child Abuse and Neglect Statistics* (Washington, DC: April 10, 2000).

² Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services, *The AFCARS Report, Current Estimates as of January 2000* (Washington, DC: Author, 2000).

³ P. Jaudes and J. Voohis, "Association of Drug Abuse and Child Abuse," *Child Abuse and Neglect* 19, no. 9 (1995): 1065-1075.

⁴ Nancy K. Young and Sidney L. Gardner, *Responding to Alcohol and other Drug Problems in Child Welfare: Weaving Together Practice and Policy* (Washington, DC: Child Welfare League of America Press, 1998).

⁵ National Association of State Alcohol and Drug Abuse Directors, Inc. *Major Increases Needed in FY'2001 for Substance Abuse Services* (February 2, 2000).

⁶ Office of National Drug Control Policy, National Drug Control Strategy: Performance Measures of Effectiveness, 2000 Annual Report (Executive Office of the President of the United States: Washington, DC)

⁷ Child Welfare League of America, *Alcohol and Other Drug Survey of State Child Welfare Agencies* (Washington, DC: Author, 1998).

⁸ Office of the Assistant Secretary for Planning and Evaluation, Substance Abuse and Mental Health Services Administration, Administration for Children and Families, U.S. Department of Health and Human Services, *Blending Perspectives and Building Common Ground, A Report to Congress on Substance Abuse and Child Protection* (Washington, DC: Author, April 1999).

⁹ Physician Leadership on National Drug Policy, Press release from website at <http://center.butler.brown.edu/plndp>, *Major Study Finds Drug Treatment as Good as Treatment for Diabetes, Asthma, etc. And Better and Cheaper than Prison* (Washington, DC: Author, March 17, 1998).

¹⁰ *Supra* note 8.

¹¹ Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services, *The National Treatment Improvement Evaluation Study* (Rockville, MD: Author, 1997).

¹² D.R. Gerstein, R.A. Johnson and C.L. Larison, *Alcohol and Other Drug Treatment for Parents and Welfare Recipients: Outcomes, Costs and Benefits*. Prepared for the U.S. Department of Health and Human Services (The Lewin Group: Fairfax, VA: 1997).

¹³ *Supra* note 7.

¹⁴ D.R. Gerstein et al, *Evaluating Recovery Services: The California Drug and Alcohol Treatment Assessment* (California Department of Alcohol and Drug Programs: Sacramento, CA, 1994).

¹⁵ *Supra* note 8.

Fact Sheet Prepared by the Children's Defense Fund (CDF), Child Welfare League of America (CWLA), Legal Action Center (LAC), National Association of State Alcohol and Drug Abuse Directors (NASADAD), and the American Public Human Services Association (APHSA). For further information, contact:

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May 17, 2000

ACTION ALERT

Help Get Senate Co-Sponsors for the Child Protection/Alcohol and Drug Partnership Act (S.2435)

The bipartisan Child Protection/Alcohol and Drug Partnership Act (S.2435) has been introduced in the Senate to secure needed resources for alcohol and drug treatment for families who come to the attention of the child welfare system. S.2435 would provide grants to state child welfare and alcohol and drug agencies that apply together for joint activities to help these families. Currently, treatment reaches less than one-third of the families in the child welfare system who need it.

The early and tailored interventions supported by S.2435 will promote better and more timely decision making—allowing children to stay or return home safely, or move to another permanent family. S.2435 builds on the 1997 Adoption and Safe Families Act (P.L. 105-89) that promotes the health and safety of children and accelerates timelines for states to move children in foster care to permanent homes.

Action Required: Contact your Senators, urging them to co-sponsor and support S.2435.* In addition, express your support in thank-you letters to those who have already co-sponsored the bill. Letters should be addressed to: The Honorable ____, U.S. Senate, Washington, DC 20510. To call, dial (202) 224-3121 and ask for your Senator's office.

The Child Protection/Alcohol and Drug Partnership Act:

- Provides \$1.9 billion in new funding over five years (\$200 million in the first year, expanding to \$575 million in year five) to state child welfare and alcohol and drug agencies that jointly apply.
- Helps to expand existing partnerships and build new ones between child welfare agencies and alcohol and drug abuse prevention and treatment agencies so that, together, they can provide necessary treatment and services for families with alcohol and drug problems in the child welfare system.
- Supports the development and expansion of comprehensive individualized prevention and treatment services; improved screening and assessment; approaches to eliminate barriers to treatment; effective strategies to engage and retain families in treatment; cross-system training and technical assistance; and improved data collection and evaluation.
- Allocates funding based on the state's number of children under 18, with a minimum amount for small states to ensure that every state gets a fair share. Indian tribes will have a 3–5% set-aside. State child welfare and alcohol and drug agencies will have a modest matching requirement for funding beginning at a 15% match and gradually increasing to 25%.
- Promotes accountability for outcomes by requiring that HHS, in consultation with others establish indicators that will be used to assess the progress of states and tribes with the funds. Annual progress reports to HHS are required.

For more information contact the Children's Defense Fund (CDF), Child Welfare League of America (CWLA), Legal Action Center (LAC), American Public Human Services Association (APHSA), or the National Association of State Alcohol and Drug Abuse Directors (NASADAD).

* Co-sponsors as of May 17, 2000 include Senators: Snowe (R-ME), Rockefeller (D-WV), DeWine (R-OH), Dodd (D-CT) and Bond (R-MO).

File: Children's
Safety on
Toy Safety

OFFICE OF MANAGEMENT AND BUDGET

**Legislative Reference Division
Labor-Welfare-Personnel Branch**

TO: Heather Howard OPD

URGENT

FROM: Robert J. Pellicci

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Number of Pages (including cover page): 3

Date: 5/8 **Time:** 11:50 am

Comments:

Departments of Labor + Commerce
Comments on CPSC proposal - will
send you others when received.

Fy'01
increase of 3.7 million
(from 48.8 to 52.5)



McCarthy Eileen <mccarthy-eileen@dol.gov>
05/05/2000 04:49:46 PM

Record Type: Record

To: Robert J. Pellicci/OMB/EOP

cc: Thomas Rosalind <thomas-rosalind@dol.gov>

Subject: DOL comments on Consumer Product Safety Commission Legislative Proposals (LRM RJP285)

> Bob,
>
> DOL has one substantive comment on the CPSC legislative proposals. In the
> description of the proposal to eliminate the cap on civil penalties for
> violations, the last sentence of the first paragraph says, "Other agencies
> have civil penalty authority with no 'cap' on the amount of the potential
> penalty, including...the Federal Mine Safety and Health Administration (30
> U.S.C. 820(a)." This is not a precisely accurate description of MSHA's
> authority. We request that CPSC add a sentence after this one, saying:
> "MSHA has a statutory maximum civil penalty amount, but has the authority
> to determine the civil penalty for each cited violation using the Mine
> Act's criteria."
>
> In addition, we have a couple of suggestions for CPSC's draft language:
>
> 1 The amendment to section 20(a)(3)(C) refers to rounding penalty amounts
> "up to" the nearest multiple while the amendment to section 5(c)(6)(C)
> refers to rounding penalty amounts "to" the nearest multiple. Perhaps
> this language should be made consistent (?).
>
> 2. The amendment to section 21 refers to persons who are "organizations,"
> but there does not seem to be a definition of "organization" in either the
> legislative proposal or CPSC's statute. It might be helpful to include
> such a definition in the new language.
>
> Please call me if you have any questions.
>
> Eileen McCarthy
> 219-8065 x145
>
>
>



- att1.htm

May 5, 2000

File: M 584
LRM: RJP285

TO: Bob Pellicci
OMB

FROM: 
Ken Clark
Commerce

SUBJECT: *Consumer Product Safety Commission Draft Bill on Improving
CPSC Enforcement Powers*

This draft bill would: (1) eliminate a present statutory cap on civil penalties for violations of product safety laws; (2) increase penalties (and delete a notice provision) involving criminal violations; and (3) give the CPSC the authority to select the remedy (repair, replacement or refund) to be offered the public in the case of a product recall – a selection currently reserved for the company involved.

We have no objection to the first two actions. However, changing the present law to permit the Commission, rather than the company, to select the remedy to be offered for a defective product is a highly unusual step, and a questionable one under Administration regulatory policy as well as accepted economic theory concerning efficient regulation. Although the Commission in its explanation and analysis of this provision offers an example in which a company might make a choice of remedy that clearly would not be in the public interest, the analysis does not indicate consideration of alternative ways – short of completely shifting the business decisionmaking involved to a government agency – to ensure that the selection of remedy made by a company is not clearly contrary to the public interest.

We recommend consideration of intermediate solutions unless there is some reason why none would be workable. One approach might be to amend current law: (a) to require a company to notify the Commission of its election among the three statutorily named remedial alternatives; and (b) to authorize the Commission, upon its own motion or that of an interested party, and based on a finding that such action is necessary in the public interest under the particular circumstances presented, to require the use of another of the alternatives. (Expedited Commission fact-finding procedures could also be authorized if delayed consumer relief is of significant concern.)

OFFICE OF MANAGEMENT AND BUDGET

Legislative Reference Division

Labor-Welfare-Personnel Branch

TO: Heather Howard OPD

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Number of Pages (including cover page): 8Date: 5/8 Time: 6 30 PM

Comments:

Justice comments re:
CPSC proposal.

U.S. DEPARTMENT OF JUSTICE
OFFICE OF LEGISLATIVE AFFAIRS

FACSIMILE COVER SHEET

To: Bob Pell, CCI

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NO. OF PAGES: _____

COMMENTS: _____



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Jacob J. Lew
Director
Office of Management and Budget
Washington, DC 20503

DRAFT

Dear Mr. Lew:

This responds to your request for the views of the Department of Justice on a draft bill of the Consumer Product Safety Commission (CPSC) that would, if enacted, enhance the Commission's enforcement authorities. As a general matter, we support the purposes and provisions of the draft bill. As noted below, we offer some suggestions for improvements.

1. Eliminate the cap on civil penalties for violations of product safety laws

We support this provision, lifting the cap on civil penalties. Under current law, the CPSC cannot seek more than \$1.65 million in any case against a company that knowingly violates consumer product safety laws. 15 U.S.C. § 2069(a)(1). Many of the cases the CPSC handles involve large corporations which make products affecting millions of American consumers. Clearly, a civil penalty against an extensive multinational corporation which has very large operating profits should not be limited to \$1.65 million. For a civil penalty to have any deterrent effect in the large scale cases, the cap must be changed. Otherwise, corporations can undertake a risky venture which might generate huge profits while at the same time being certain their regulatory liability is capped at only \$1.65 million.

As correctly noted by the CPSC, removing the cap on civil penalties is consistent with other agencies' statutes, such as those enforced by the Federal Trade Commission (15 U.S.C. § 21(a)) and the Federal Mine Safety and Health Administration (30 U.S.C. § 820(a)). The provision would not change the current standard for determining the amount of civil penalty sought. Under 15 U.S.C. § 2069(b), the Commission must consider (1) the nature of the product defect, (2) the severity of the risk of injury, (3) the occurrence or absence of injury, (4) the number of defective products distributed, and (4) the appropriateness of such penalty in relation to the size of the business or the person charged. If the CPSC staff cannot reach agreement with a company on a claim for civil penalty, the matter is referred to DOJ for appropriate action.

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We also support codifying the current civil penalty amount of \$7,000 for each knowing violation of a product safety law.

2. Increase the penalty for a criminal violation of product safety laws from a misdemeanor to a felony and eliminate the requirement that the agency give notice to a person that he or she is criminally violating the law

The CPSC can request the Justice Department to seek criminal penalties against violators of the Consumer Product Safety Act ("CPSA") for engaging in any one of a number of prohibited acts outlined in 15 U.S.C. § 2068 (such as introducing into interstate commerce defective products that are subject to a CPSC regulation or order), see 15 U.S.C. § 2070. The CPSC can also seek criminal penalties for violators of the Federal Hazardous Substances Act ("FHSA") for anyone engaging in a different series of prohibited acts outlined in 15 U.S.C. § 1263 (such as introducing into interstate commerce banned or misbranded hazardous substances), see 15 U.S.C. § 1264(a).

The proposed bill essentially makes three changes to the two criminal statutes enforced by the CPSC: (1) enhance penalties, (2) alter the existing mens rea requirements for some violations, (3) remove the requirement under one of the two statutes, the CPSA, that the CPSC provide advance "notice of noncompliance" to any party it wishes to prosecute criminally under the CPSA. For the reasons outlined below, we strongly urge that the notice requirement be removed from the CPSA and support some of the penalty enhancements and some of the mens rea requirement changes, but suggest a slightly different way of amending the two statutes to accomplish the same goals.

- a. The CPSA's notice requirement

We support removing the "notice of noncompliance" requirement of the CPSA, and believes it is the single greatest obstacle to the prosecution of criminal violations of the statute. In fact, because of the requirement that the CPSC provide violators of the CPSA with a "notice of noncompliance," we are aware of only one criminal prosecution under the CPSA in the Act's 28-year existence. That prosecution was for the distribution of butyl nitrite (see 15 U.S.C. § 2057a) by an individual to whom the CPSC had provided "notice of noncompliance" but who did not stop his distribution activities but simply took affirmative actions to conceal those activities which continued for several more years before he was eventually apprehended and prosecuted.

The notice requirement has provided a shield behind which bad actors who willfully violate the statute can hide comforted by the knowledge they can never be prosecuted because the CPSC has not yet detected their bad acts. We are aware of no other criminal statute that has such a prerequisite. The requirement is particularly unnecessary in light of the fact that the statute already requires the government prove beyond a reasonable doubt that a corporation or individual violated the statute knowingly. In other words, the CPSA already has a mens rea requirement that would prevent a corporation that was unaware it was violating the law from being prosecuted

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criminally.

A recent CPSC criminal case well illustrates the problematic nature of the CPSA's notice requirement. In that case, the general manager of a wholesale distributorship of various customer products, including lighters, had his employees remove the child-resistant mechanism from more than two million disposable lighters that he sold for a premium to retailers throughout the country. Because the defendant took affirmative steps to conceal his activities from the CPSC for nearly two years, the agency was not able to provide "notice of noncompliance," as is currently required by 15 U.S.C. § 2070. Thus, when the case was referred to the Justice Department, we were not able to bring any charges under the CPSA. Eventually, we were able to obtain a conviction with respect to a prosecutable false statement that the defendant had made to the CPSC. Nonetheless, because the removal of the child-resistant mechanism was itself not a crime due to his not receiving notice from the CPSC, the defendant was still able to argue successfully that his sentencing offense level under the sentencing guidelines for fraud should not be increased either for loss or for serious risk of bodily injury. This type of anomalous situation can be prevented by the removal of the notice requirement in 15 U.S.C. § 2070.

b. Altering the mens rea requirements and enhancing penalties in the CPSA and the FHSA

1. The CPSA Criminal Sanctions

Under 15 U.S.C. § 2070 of the CPSA, as currently written, defendants who "knowingly and willfully" violate the act are subject to one year in prison. The CPSC has proposed altering the mens rea requirement to only require the defendant "knowingly" violated the act, striking the term "and willfully" and has proposed increasing the fine and sentence provisions. The CPSC wants the maximum punishment expressly set out in the CPSA to be three years in prison and a fine of up to \$250,000 for individuals and \$500,000 for organizations. We support the CPSC's fine proposals which would simply make them consistent with the fines spelled out in 18 U.S.C. § 3571.¹

Although the CPSC proposes just one type of criminal violation of the CPSA, a knowing violation of which would carry a maximum three-year sentence, we believe a modification of the CPSC proposal would lead to more equitable results and provide a sliding scale of culpability and punishment. We believe that there should be two classes of CPSA violations: a "knowing" violation of the act carrying a maximum one-year prison sentence and a "willful" violation of the act carrying a maximum three-year prison sentence.

¹We note that the statement in the sectional analysis that the current maximum fine for an individual is \$50,000 does not appear to be accurate. Under 18 U.S.C. § 3571(b)(5), the correct amount is \$100,000. See also 18 U.S.C. § 3559(a)(6).

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The difference between the two mens rea requirements was spelled out in the Supreme Court's recent opinion, Bryan v. United States, 524 U.S. 184, 193 (1998). Although that case dealt with a gun statute, it provided the best recent explanation of the difference between the two mens rea requirements.

[U]nless the text of the statute dictates a different result, the term "knowingly" merely requires proof of knowledge of the facts that constitute the offense.

Id.

More is required, however, with respect to the conduct in the fourth category that is only criminal when done "willfully." The jury must find that the defendant acted with an evil-meaning mind, that is to say, that he acted with knowledge that his conduct was unlawful.

Id.

Using the above definitions as a guide, we would suggest that the statute be amended to state that any person who "knowingly" violated the CPSA, (in other words the individual knew that he or she was engaging in the prohibited act, regardless of whether the government could prove that the individual also knew the prohibited act was unlawful), would face a maximum of one year in prison. However, a second tier offense carrying a maximum punishment of up to three years in prison would be added for individuals in which the government could prove they knew they were acting in an unlawful manner. (It should be noted that, as the Court pointed out in Bryan, to prove a defendant acted "willfully" the government need not prove a defendant knew of the particular statute he or she violated, only that he was acting with the knowledge that he was violating the law.)

Our alternative statutory scheme would provide two different levels of punishment depending on the culpability of the defendant.

Although we believe that a "knowing" violation, absent a showing of "willfulness," should remain a one-year misdemeanor, rather than the three-year felony proposed by the CPSC, We believe that it is very important that the statute contain a three-year maximum for more culpable defendants, who currently can act with the worst mens rea and be certain that they will receive no more than one year in prison.

2. The FHSA Criminal Sanctions

Unlike criminal violations of the CPSA, which has always included a mens rea requirement, the FHSA has instead contained one strict-liability offense and one offense with a mens rea requirement. Under 15 U.S.C. § 1264(a) as currently written, any person who violates any provision of the FHSA, regardless of his or her mens rea, faces a maximum of 90 days in prison. If the government proves a defendant violated the act "with intent to defraud or mislead,"

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or for second or subsequent offenses, the punishment is limited to one year in prison. Although the punishment is significantly less, the language for this section of the FHSA is modeled after the criminal provisions of the Federal Food, Drug and Cosmetic Act, ("FDCA") found at 21 U.S.C. § 333(a)(2). The difference is that the FDCA presently carries a one-year punishment for strict liability violations and a three-year punishment for violations "with intent to defraud or mislead." In its proposed changes, the CPSC has suggested the FHSA statute be amended to basically mirror the present FDCA, although instead of making strict liability offenses punishable by up to one year in prison as in the FDCA, the CPSC seeks an eighteen-month maximum for strict liability violations of the FHSA. The CPSC seeks a three-year maximum sentence for violations with intent to defraud and mislead.

We join the CPSC in believing the current punishment scheme in the FHSA is far too lenient. Although we support the fine proposals, we recommend that the statute be amended in a way that comes closer to tracking the mens rea requirements used in the CPSA (changes outlined above) and that the statute abandon the mens rea requirement of the FDCA model, which has proved somewhat unworkable in many FDA criminal prosecutions.

Under our revised proposal, the maximum prison sentence for any person who violates a provision of the FHSA, without proof of any mens rea requirement, would be increased from the current 90 days to only twelve months. The CPSC proposed increasing the maximum punishment for strict liability violations to eighteen months; however, we believe that this recommendation is unwise. The twelve-month limit is the dividing line between felonies and misdemeanors in the federal criminal justice system. Unless Congress is clear that it intends to impose such a severe penalty without a mens rea requirement, a court may interpret the provision to include such a requirement. See Staples v. United States, 511 U.S. 600, 618 (1994). Therefore, limiting the penalty imposed under the strict liability provision of the amended FHSA to a 12-month sentence would reduce the likelihood that a court would read in a mens rea requirement into the statute.

We suggest that this section of the FHSA be rewritten to include a second-tier punishment for individuals who "willfully" violate the FHSA. Under this proposed change, individuals who violate the FHSA knowing they are violating the law would face up to three years in prison, regardless of whether they violate the FHSA with intent to defraud or mislead anyone.

3. Giving CPSC authority to select the way defective products will be fixed in product recalls

Although this Department does not typically play an active role in advising the CPSC on its handling of recalls, we support the proposed change, as it would strengthen the agency's hand in enforcing this key aspect of its statute. We believe it to be far more effective for the CPSC to choose which is the best method to get a defective product out of the marketplace than to leave it up to the defendant organization responsible for putting the product on the market in the first

place.

* * * * *

Thank you for the opportunity to comment on this matter. Please feel free to call upon us again if we may be of additional assistance.

Sincerely,

Robert Raben
Assistant Attorney General

DRAFT

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LEGISLATIVE PROPOSALS TO IMPROVE CPSC ENFORCEMENT POWERS

1. Eliminate the cap on civil penalties for violations of product safety laws

Under current law, the CPSC cannot assess more than \$1,650,000 in any one case against a company that knowingly violates consumer product safety laws. (Under the "Consumer Product Safety Improvement Act of 1990," this number is adjusted for inflation every five years. The next adjustment is due in 2005.) The proposed amendment eliminates this maximum civil penalty amount. Many of the cases in which the Commission seeks civil penalties involve very large corporations. More substantial civil penalties would provide a needed incentive for those companies to notify CPSC of defective products so that the agency can take timely action to protect consumers. Other agencies have civil penalty authority with no "cap" on the amount of the potential penalty, including the Federal Trade Commission (15 U.S.C. 21(l)) and the Federal Mine Safety and Health Administration (30 U.S.C. 820(a)).

The proposed amendment does not change the criteria for determining the amount of civil penalty to be sought. Under current law, the Commission must consider the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, the number of defective products distributed, and the appropriateness of such penalty in relation to the size of the business of the person charged. If the Commission staff cannot reach agreement with a company on a claim for civil penalty, the matter is referred to the Department of Justice for appropriate action.

The proposed amendment also codifies the current civil penalty amount of \$7,000 for *each* knowing violation of a product safety law. This amount was recently adjusted under the Consumer Product Safety Improvement Act of 1990 ("Improvement Act"), Public Law 101-608, 104 Stat. 3110 (November 16, 1990).

**SECTION 20(a) (CPSA) - CIVIL PENALTIES
(AMENDED TO DELETE CIVIL PENALTY CAP)**

SEC. 20(a). [15 U.S.C. 2069(a)]

(a)(1) Any person who knowingly violates section 19 of this Act shall be subject to a civil penalty not to exceed ~~\$5,000~~ \$7,000 for each such violation. Subject to paragraph (2), a violation of section 19(a)(1), (2), (4), (5), (6), (7), (8), (9), (10), or (11) shall constitute a separate offense with respect to each consumer product involved, ~~except that the maximum civil penalty shall not exceed \$1,250,000 for any related series of violations.~~ A violation of section 19(a)(3) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and, if such violation is a continuing one, each day of such violations shall constitute a separate offense, ~~except that the maximum civil penalty shall not exceed \$1,250,000 for any related series of violations.~~

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of paragraph (1) or (2) of section 19(a) -

(A) if the person who violated such paragraphs is not the manufacturer or private labeler or a distributor of the products involved, and

(B) if such person did not have either (i) actual knowledge that his distribution or sale of the product violated such paragraphs or (ii) notice from the Commission that such distribution or sale would be a violation of such paragraphs.

(3)(A) The ~~maximum~~ penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

(B) Not later than December 1, 1994 2005, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register ~~a schedule of maximum authorized penalties~~ the authorized penalty amount that shall apply for violations that occur after January 1 of the year immediately following such publication.

(C) ~~The schedule of maximum authorized penalties~~ authorized penalty amount shall be prescribed by increasing ~~each of~~ the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded up to –

(i) in the case of ~~penalties greater than \$1,000 but~~ a penalty amount less than or equal to \$10,000, the nearest multiple of \$1,000;

(ii) in the case of ~~penalties a penalty amount greater than \$10,000 but less than or equal to \$100,000,~~ the nearest multiple of \$5,000;

(iii) ~~in the case of penalties greater than \$100,000 but less than or equal to \$200,000, the nearest multiple of \$10,000.~~

(iv) ~~in the case of penalties greater than \$200,000, the nearest multiple of \$25,000.~~

(D) For purposes of this subsection:

(i) The term "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(ii) The term "cost-of-living adjustment for the preceding five years" means the percentage by which –

(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.

**SECTION 5(c) (FHSA) – CIVIL PENALTIES
(AMENDED TO DELETE CIVIL PENALTY CAP)**

SEC. 5(c). [15 U.S.C. 1264(c)]

(1) Any person who knowingly violates section 4 shall be subject to a civil penalty not to exceed ~~\$5,000~~ \$7,000 for each such violation. Subject to paragraph (2), a violation of subsections (a), (b), (c), (d), (f), (g), (i), (j), and (k) of section 4 shall constitute a separate offense with respect to each substance involved, ~~except that the maximum civil penalty shall not exceed \$1,250,000 for any related series of violations.~~ A violation of section 4(e) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required by section 4(e); and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, ~~except that the maximum civil penalty shall not exceed \$1,250,000 for any related series of violations.~~

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of subsection (a) or (c) of section 4 –

(A) if the person who violated such subsection is not the manufacturer, importer, or private labeler or a distributor of the substance involved; and

(B) if such person did not have either (i) actual knowledge that such person's distribution or sale of the substance violated such subsection, or (ii) notice from the Commission that such distribution or sale would be a violation of such subsection.

(3) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 4, the Commission shall consider the nature of the substance, the severity of the risk of injury, the occurrence or

absence of injury, the amount of the substance distributed, and the appropriateness of such penalty in relation to the size of the business of the person charged.

(4) Any civil penalty under this subsection may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated, and in what amount, the Commission shall consider the appropriateness of such penalty to the size of the business of the persons charged, the nature of the substance involved, the severity of the risk of injury, the occurrence or absence of injury, and the amount of the substance distributed. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(5) As used in the first sentence of paragraph (1), the term "knowingly" means (A) having actual knowledge, or (B) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

(6)(A) The ~~maximum~~ penalty amount authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

(B) Not later than December 1, 1994 2005, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register ~~a schedule of maximum authorized penalties~~ the authorized penalty amount that shall apply for violations that occur after January 1 of the year immediately following such publication.

(C) The ~~schedule of maximum authorized penalties~~ authorized penalty amount shall be prescribed by increasing ~~each of the amounts~~ referred to in

paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded to --

(i) in the case of ~~penalties greater than \$1,000 but~~ a penalty amount less than or equal to \$10,000, the nearest multiple of \$1,000;

(ii) in the case of ~~penalties~~ a penalty amount greater than \$10,000 ~~but less than or equal to \$100,000~~, the nearest multiple of \$5,000;

~~(iii) in the case of penalties greater than \$100,000 but less than or equal to \$200,000, the nearest multiple of \$10,000; and~~

~~(iv) in the case of penalties greater than \$200,000, the nearest multiple of \$25,000.~~

(D) For purposes of this subsection:

(i) The term "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(ii) The term "cost-of-living adjustment for the preceding five years" means the percentage by which --

(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.

2. Increase the penalty for a criminal violation of product safety laws from a misdemeanor to a felony and eliminate the requirement that the agency give notice to the company that is criminally violating the law.

The proposed amendment increases the potential criminal penalties for a knowing violation of consumer product safety laws from a misdemeanor (up to one year in prison) to a felony (up to three years in prison). It also increases the maximum monetary criminal penalty from \$50,000 to \$250,000 for individuals and \$500,000 for companies. These heightened penalties are commensurate with the seriousness of product safety violations, which can result in death or serious injury to children and families. Other agencies have authority to seek substantial (felony) criminal penalties for knowing violations of safety requirements (e.g., the Food and Drug Administration regarding prescription drug marketing violations (21 U.S.C. 333(b)) and the Department of Transportation regarding the transportation of hazardous material (49 U.S.C. 5124)).

The proposed amendment also eliminates the requirement that the Commission give notice of noncompliance before imposing a criminal penalty for a knowing violation of product safety laws. The notice requirement makes it all but impossible to pursue a criminal penalty against companies, even in the most serious cases. The threat of a criminal felony prosecution would create an additional strong incentive for companies to report product defects to the Commission.

**SECTION 21 (CPSA) – CRIMINAL PENALTIES
(AMENDED TO DELETE REQUIREMENT FOR NOTICE OF
NONCOMPLIANCE AND TO INCREASE AMOUNT OF PENALTY)**

SEC. 21. [15 U.S.C. 2070]

(a) Any person who knowingly ~~and willfully~~ violates section 19 of this Act ~~after having received notice of noncompliance from the Commission~~ shall be fined not more than ~~\$50,000~~ \$250,000 if such person is an individual, or not more than \$500,000 if such person is an organization, or be imprisoned not more than ~~one year~~ three years, or both.

(b) Any individual director, officer, or agent of a corporation who knowingly and ~~willfully~~ authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of section 19, ~~and who has knowledge of notice of noncompliance received by the corporation from the Commission,~~ shall be subject to penalties under this section without regard to any penalties to which that corporation may be subject under subsection (a).

**SECTION 5(a) (FHSA)- CRIMINAL PENALTIES
(AMENDED TO INCREASE AMOUNT OF PENALTY)**

SEC. 5(a). [15 U.S.C. 1264(a)]

Any person who violates any of the provisions of section 4 shall be guilty of a ~~misdemeanor~~ felony and shall on conviction thereof be subject to a fine of not more than ~~\$500~~ \$5,000 if such person is an individual, or not more than \$10,000 if such person is an organization, or to imprisonment for not more than ~~ninety days~~ eighteen months, or both; but for offenses committed with intent to defraud or mislead, or for second and subsequent offenses, the penalty shall be imprisonment for not more than ~~one year~~ three years, or a fine of not more than ~~\$3,000~~ \$250,000 if such person is an individual, or not more than \$500,000 if such person is an organization, or both such imprisonment and fine.

3. Give CPSC the authority to select the way a defective product will be fixed in a product recall.

Under current law, a company with a defective product that is being recalled has the right to select the remedy to be offered to the public, even if that remedy does not provide the most protection to consumers. The company can choose repair, replacement, or refund, less a reasonable allowance for use.

The proposed amendment will permit the Commission, rather than the company with the defective product, to select the remedy to protect the public. Companies will still be afforded the opportunity for a hearing to present their views, not only on whether their product constitutes a substantial product hazard, but also on the nature of the remedy that would be appropriate in the event that a recall is ordered.

The ability of companies to choose the remedy often does not further public safety. For example, if a manufacturer chooses to refund, "less a reasonable allowance for use," the purchase price of a product that has been on the market for a long time, the amount due consumers may be so small that there is no incentive for the consumer to take advantage of the recall. This is especially true where the hazardous product is still useful to the consumer and the cost of a replacement is substantial. The company is permitted to make this choice even though people have been at risk for a number of years, thousands of products are still in use, and injuries are continuing to occur. In this example, as the law is currently written, allowing the manufacturer to choose a refund would do little, if anything, to stop customers from using the dangerous product and public safety would not be furthered.

**SECTIONS 15(b) and 15(c)(2) (FHSA) – NOTIFICATION AND REPAIR,
REPLACEMENT, OR REFUND
(AMENDED TO ELIMINATE ELECTION OF REPAIR, REPLACEMENT,
OR REFUND BY PERSON SUBJECT TO SECTION 15 ACTION)**

SEC. 15(b). [15 U.S.C. 1274(b)]

If any article or substance sold in commerce is defined as a banned hazardous substance (whether or not it was such at the time of its sale) and the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing) that action under this subsection is in the public interest, the Consumer Product Safety Commission may order the manufacturer, distributor, or dealer to take ~~whichever of the following actions the person to whom the order is directed elects~~ one of the following actions, as specified by the Commission:

(1) If repairs to or changes in the article or substance may be made so that it will not be a banned hazardous substance, to make such repairs or changes.

(2) To replace such article or substance with a like or equivalent article or substance which is not a banned hazardous substance.

(3) To refund the purchase price of the article or substance (less a reasonable allowance for use, if the article or substance has been in the possession of the consumer for one year or more –

(A) at the time of public notice under subsection (a), or

(B) at the time the consumer receives actual notice that the article or substance is a banned hazardous substance, whichever first occurs).

An order under this subsection may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking ~~the action which such person has elected to take~~ whichever of the actions the Commission specifies under the preceding

paragraphs of this subsection. If the Commission specifies that the action described in paragraph (3) shall be taken, the Commission shall specify in the order the persons to whom refunds must be made. ~~if the person to whom the order is directed elects to take the action described in paragraph (3). If an order under this subsection is directed to more than one person, the Commission shall specify which person has the election under this subsection.~~ An order under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general headnote 2 of the Tariff Schedules of the United States), [19 U.S.C. 1202n2; "includes only the States, the District of Columbia, and Puerto Rico"] or from doing any combination of such actions, with respect to the article or substance with respect to which the order was issued.

SEC. 15(c)(2). [15 U.S.C. 1274(c)(2)]

If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (e) of this section) that any toy or other article intended for use by children that is not a banned hazardous substance contains a defect which creates a substantial risk of injury to children (because of the pattern of defect, the number of defective toys or such articles distributed in commerce, the severity of the risk, or otherwise) and that action under this paragraph is in the public interest, the Commission may order the manufacturer, distributor, or dealer to take ~~whichever of the following actions the person to whom the order is directed elects~~ one of the following actions, as specified by the Commission:

(A) If repairs to or changes in the toy or article can be made so that it will not contain a defect which creates a substantial risk of injury to children, to make such repairs or changes.

(B) To replace such toy or article with a like or equivalent toy or article which does not contain a defect which creates a substantial risk of injury to children.

(C) To refund the purchase price of such toy or article (less a reasonable allowance for use, if such toy or article has been in the possession of the consumer for 1 year or more (i) at the time of public notice under paragraph (1)(A), or (ii) at the time the consumer receives actual notice that the toy or article contains a defect which creates a substantial risk of injury to children, whichever first occurs).

An order under this paragraph may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking the action which such person has elected to take, whichever of the actions the Commission specifies under the preceding paragraphs of this subsection. If the Commission specifies that the action described in paragraph (3) shall be taken, the Commission shall specify in the order the person to whom refunds must be made, if the person to whom the order is directed elects to take the action described in subparagraph (C). If an order under this paragraph is directed to more than one person, the Commission shall specify which person has the election under this paragraph. An order under this paragraph may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general

headnote 2 to the Tariff Schedules of the United States), [19 U.S.C. 1202] or from doing any combination of such actions, with respect to the toy or article with respect to which the order was issued.

MAY 11, 2000

**ANNOUNCEMENT OF INITIATIVES TO IMPROVE THE SAFETY
OF CHILDREN'S PRODUCTS**

Date: Friday, May 12, 2000
Time: 11:00 AM
Location: Roosevelt Room
From: Heather Howard, Ann O'Leary and Eric Morse

I. PURPOSE

To demonstrate your commitment to children's health and safety by highlighting proposed legislation to strengthen the penalty authority of the Consumer Products Safety Commission and by announcing a campaign to increase reporting of dangerous products.

II. BACKGROUND

Overview

A *USA Today* investigation recently found that at least 17 manufacturers of children's toys failed to warn the government or the toy owners of complaints about the safety of their products. According to *USA Today*, "an analysis of government documents shows that problems with 75% of the most dangerous children's products recalled during the past three years were not reported to the government until the Consumer Product Safety Commission, often alerted by consumers, got involved." For example, the Commission recently announced a \$400,000 penalty against Hasbro, which waited until it had 12 reports of handles unlatching on infant carriers (resulting in seven skull fractures) before telling the Commission about the problem.

The Commission needs tougher penalties to deter companies from withholding complaints about their products. Currently, the Commission's penalty authority includes 1) civil penalties, which are capped at \$1.6 million (the total fine is \$7,000 per product, multiplied by the number of products sold, up to \$1.6 million), and 2) criminal misdemeanor penalties, including imprisonment of up to one year and fines capped at \$50,000.

The civil penalties are adjusted for inflation every five years, and were last adjusted in 1999. Even so, the cap is absurdly low. It is triggered when the number of products sold exceeds 228; the majority of cases the Commission handles involve, at a minimum, thousands of products sold. Under the criminal provisions of the statute, the Commission may charge anyone who "knowingly and willfully" violates the law, including the reporting requirements, "after having received notice of noncompliance." Thus, in effect, the criminal provisions only apply on a second offense. Given the high standard of the statute (knowledge of the law and willful violation), the Commission argues that the second offense requirement is unnecessary and hampers their ability to enforce the statute and protect consumer safety.

An additional problem is that, under current law, a company with a defective product that is being recalled has the right to select the remedy (repair, replacement, or refund), even if that remedy does not provide the most protection to consumers. Recently, General Electric came under fire for offering rebates for new GE dishwashers, rather than offering to fix the defective ones.

Proposals

At this event, you will announce legislative and non-legislative proposals to improve the safety of consumer products:

Legislative proposal

The administration is proposing, through a Presidential transmittal letter, legislation to strengthen the penalty authority of the Commission. Increased penalties would provide obvious incentives for companies to avoid manufacturing defective products, as well as to come forward earlier when problems are detected, thus preventing harm to consumers. The legislation[, which Representative Markey will be introducing,] would: 1) lift the overall cap on civil penalties; 2) make criminal violations a felony and remove the second offense requirement; and 3) provide CPSC the authority to challenge the recall remedy chosen by the product manufacturer if the remedy does not provide the most protection to the consumers.

Non-legislative proposal

You will also launch immediate efforts to protect the health and safety of children and families. You will announce a partnership between the CPSC and health care providers – who see firsthand the injuries caused by defective products -- to increase reporting of dangerous products that cause injuries and even deaths. A broad range of health care professionals – the American Academy of Family Physicians, the American Academy of Pediatrics, the American Medical Women’s Association, the American Nurses Association, [Emergency Physicians], [Emergency Nurses], [National Safe Kids Campaign] -- have committed to a campaign to encourage their member health providers to report injury causing products to the CPSC.

These groups will promote the campaign to increase reporting of dangerous products in their newsletters, web sites, and e-mail updates, and have also agreed to work with the CPSC to disseminate information about product recalls. For example, the American Academy of Pediatrics has committed to promoting this campaign to pediatricians in *AAP News*, the Academy’s newsmagazine, which is sent to 55,000 members monthly, as well as to posting information on the Academy’s official web site, with a direct link to CPSC’s product reporting web site, and to notifying pediatricians regularly about product recalls in the magazine’s “Health Alerts.” The Academy will also promote this effort to families in *Healthy Kids*, the Academy’s parenting magazine.

III. PARTICIPANTS

Meet and greet

Members of Congress

Ann Brown

Representatives from groups in the partnership:
Brittany Cipriotti (Parent/victim)

Speakers

Ann Brown

Brittany Cipriotti

Dr. Marilyn Bull, Indianapolis pediatrician, Chair, AAP Committee on Injury Prevention
HRC

Rep. Ed Markey (?)

Audience

Health professionals supporting the campaign

Consumer groups

IV. SEQUENCE OF EVENTS

Copy from schedule

V. PRESS PLAN

- Pool press for the announcement. After the announcement, Rep. Markey, Ann Brown, and the health professionals will proceed to the stake-out.

VI. REMARKS

- Provided by Laura Schiller.

ATTACHMENTS

- Press paper

GENERAL BACKGROUND INFO

Q: Why is this legislation being proposed?

A: This initiative is in response to recent reports of manufacturers failing to warn the government about the safety of their products as required by consumer product safety laws. Defective products – which have included cribs, infant carriers, toys, and household products – caused hundreds of injuries ranging from burns to fractures and even deaths. Many of these unfortunate injuries can be avoided if potentially hazardous products, especially those used by children, the most vulnerable consumers, were promptly reported to the CPSC.

Q: How will this legislation result in companies taking action to heighten consumer awareness of their dangerous products and improve the safety of such products?

A: The proposed legislation is designed to act as an incentive for companies to report complaints about their potentially dangerous products. First, the proposed amendment lifts the cap on civil penalties. Under current law, the CPSC cannot assess more than \$1,650,000 in any one case against a company that knowingly violates consumer product safety laws. More substantial civil penalties would provide a needed incentive for companies to notify CPSC of defective products so that the agency can take timely action to protect consumers. Next, the new legislation would increase the penalty for a criminal violation of product safety laws from a misdemeanor to a felony. Finally, the proposal would give the CPSC authority to select the way a defective product will be fixed in a product recall. Through this legislation, our hope is that companies will be more sensitive to consumer complaints and take action to both remedy potentially dangerous products and promptly report consumer complaints to the CPSC.

Q: Why is the First Lady involved in this event?

A: The First Lady has a longstanding interest in children's health and safety and has participated in several initiatives with the Commission to improve the safety of children's products, including kicking off a national campaign to alert parents and caregivers to safety hazards in child care settings, and helping the Commission promote "Baby Safety Showers," which educate expecting and new parents on baby safety.

CAMPAIGN TO INCREASE REPORTING OF DANGEROUS PRODUCTS

Q: How will the campaign protect children from dangerous products?

A: Health care providers from the associations in the campaign – such as pediatricians and emergency room nurses -- would report to the CPSC when they see a death or serious injury that may have been caused by a consumer product. These professionals, who see firsthand the injuries caused by defective products, can play an important role in protecting consumers from injury by reporting dangerous products to the CPSC through its Internet web site or through its toll-free Hotline.

RESEARCH

Q: Who conducted the research which revealed the violations against CPSC laws?

A: There have been a number of independent and government organizations that have kept close watch on products that could potentially injure children. Our primary sources were a USA Today investigation (4-3-2000) and The U.S. Consumer Product Safety Commission.

MISCELLANEOUS

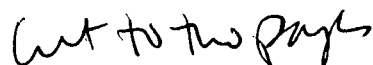
Q: What is the procedure for consumers to make a formal complaints against companies with regard to violating CPSC laws?

A: Consumers can contact the CPSC through their web site: (www.cpsc.gov) and their toll free number: (800) 638-2772.

Q: If this legislation is adopted, what implications do tax-payers and/or companies face (with regard to the pricing of products)?

Q: Is the CPSC currently investigating any particular companies, and which products are in question?

A: This information may be obtained by contacting the CPSC directly. They can be reached at (301) 504-0580 or through their web site: www.cpsc.gov.



FIRST LADY HILLARY RODHAM CLINTON ANNOUNCES EFFORTS TO IMPROVE THE SAFETY OF CHILDREN'S PRODUCTS

Today, First Lady Hillary Rodham Clinton will announce efforts to improve the safety of consumer products, particularly products that are potentially harmful to children. The First Lady, joined by Ann Brown, Chairman of the Consumer Products Safety Commission (CPSC), [Representative Ed Markey], and a broad range of health professionals and consumer advocates, will highlight legislation to strengthen the penalty authority of the CPSC, and announce a public-private campaign to help the CPSC identify dangerous products.

This proposal is in response to recent reports of manufacturers that have failed to warn the government about faulty and unsafe products, as required by consumer product safety laws. In the last five years alone, CPSC investigations of dangerous products have resulted in penalties assessed against 21 companies for failing to report problems with their products. The products – which include cribs, infant carriers, toys, and household products – caused hundreds of injuries ranging from burns to fractures and even deaths. For example, the Commission recently announced a \$400,000 penalty against a company that waited until it had 12 reports of handles unlatching on infant carriers, resulting in seven skull fractures, before telling the Commission about the problem. Many of these unfortunate injuries can be avoided if potentially hazardous products, especially those used by children, the most vulnerable consumers, were promptly reported to the CPSC.

STRENGTHENING CONSUMER PRODUCT SAFETY LAWS

The First Lady will be highlighting a legislative proposal, sent to Congress today, that calls for tougher penalties designed to encourage companies to report problems with their products before they cause additional injuries. The legislation would: 1) lift the overall cap on civil penalties; 2) make criminal violations a felony; and 3) provide CPSC the authority to challenge the recall remedy chosen by the product manufacturer if the remedy does not provide the most protection to the consumers.

Under current law, the CPSC cannot assess more than \$1.65 million in civil penalties against a company that knowingly violates consumer product safety laws, which include the duty to report defective products. Legislation proposed by this Administration would lift the cap on civil penalties for violations of the consumer product safety laws, providing a much-needed incentive for companies to notify CPSC of defective products.

In addition, currently the CPSC can only assess criminal misdemeanor penalties for violation of product safety laws. The proposed legislation would increase the potential criminal penalties for a [knowing and willful] violation of consumer product safety laws from a misdemeanor to a felony, and increase the maximum monetary criminal penalty, from \$50,000 to \$250,000 for individuals and \$500,000 for companies.

Increased penalties will provide incentives for companies to avoid manufacturing defective products, as well as to come forward earlier when problems are detected, thus preventing harm to consumers. These heightened penalties are not only necessary to deter companies from

withholding complaints about their potentially dangerous products, but are also commensurate with the seriousness of product safety violations, which can result in death or serious injury to children and families.

Finally, the proposed legislation would amend the provision in current law that allows a company with a defective product to select the way a defective product is fixed in a product recall (repair, replacement, or refund), even if the remedy chosen does not provide the most protection to consumers. Under the proposed legislation, the Commission could determine that the chosen remedy is not in the public interest, and select an alternate remedy.

CAMPAIGN TO INCREASE REPORTING OF DANGEROUS PRODUCTS THAT HARM CHILDREN AND FAMILIES

The First Lady will also be announcing immediate efforts to protect the health and safety of children and families through heightened awareness of unsafe products. She will launch an innovative partnership with the CPSC and health care providers to uncover dangerous products that cause injuries and even deaths. A broad range of health care professionals – the American Academy of Family Physicians, the American Academy of Pediatrics, the American Medical Women's Association, the American Nurses Association, [Emergency Physicians], [Emergency Nurses], [National Safe Kids Campaign] -- have committed to a campaign to encourage their member health providers to report injury causing products to the CPSC.

About 60% of complaints the CPSC receives about potentially hazardous products come from sources other than the manufacturer. Therefore, these professionals – who see firsthand the injuries caused by defective products -- can play an important role in protecting consumers from injury by reporting dangerous products to the CPSC, which can then act to protect consumers.

These groups will promote a campaign to increase reporting of dangerous products, and have also agreed to work with the CPSC to disseminate information about product recalls. For example, the American Academy of Pediatrics has committed to promoting this campaign to pediatricians in *AAP News*, the Academy's newsmagazine, which is sent to 55,000 members monthly, as well as to posting information on the Academy's official web site, with a direct link to CPSC's product reporting web site, and to notifying pediatricians regularly about product recalls in the magazine's "Health Alerts." The Academy will also promote this effort to families in *Healthy Kids*, the Academy's parenting magazine. **In addition, the National Safe Kids Campaign, an organization devoted to preventing childhood injuries, will activate its state and local coalition members to visit the places product recalls often don't reach – thrift shops, day care centers, schools, and hotels and motels – to search for dangerous products.**

The commitments from these organizations will assist the CPSC, which already relies significantly on complaints from the public about defective products, in identifying products that are harming consumers, especially children.

THE CLINTON ADMINISTRATION'S COMMITMENT TO CONSUMER PRODUCT SAFETY

The Clinton Administration has strongly supported the work of the CPSC, and since the President took office, the Consumer Product Safety Commission's Budget has grown by 24 percent. In addition, the First Lady has a longstanding interest in children safety and has participated in several CPSC initiatives to improve the safety of children's products, including kicking off a national campaign to alert parents and caregivers to safety hazards in child care settings, and helping the Commission promote "Baby Safety Showers," which educate expecting and new parents on baby safety.

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More Defective Product Penalties?[A.P. INDEXES: TOP STORIES](#) | [NEWS](#) | [SPORTS](#) | [BUSINESS](#) | [TECHNOLOGY](#) | [ENTERTAINMENT](#)**Filed at 2:24 p.m. EDT****By The Associated Press**

WASHINGTON (AP) -- Hillary Rodham Clinton unveiled the president's plan Friday to toughen civil and criminal penalties for companies that fail to notify the government or consumers about potentially dangerous products.

The legislation would upgrade willful criminal violations of product safety laws from misdemeanors to felonies, and eliminate the \$1.65 million cap on civil penalties.

"With this legislation, the punishment will finally start to fit the crime," said Mrs. Clinton, who called million-dollar fines "just a drop in the bucket" with little impact on the profit margins of large corporations.

Although the changes would apply to most consumer products, Friday's announcement focused on children's products.

USA Today reported last month that at least 17 firms had been accused of keeping quiet about dangerous children's products since 1997. CPSC Chairman Ann Brown said she had witnessed "a continuing trend of nonreporting."

Last year, the CPSC assessed \$922,500 in fines, 10 times as much as it did 10 years ago. So far this year, fines have totaled more than \$1.3 million.

In April, toy giant Hasbro Inc. agreed to pay a \$400,000 civil penalty for failing to give consumers and the government timely notification about a defect in an infant carrier.

*hi: warning
Chubbsey**Eric - yeah! we
got a nice
story!
(A1)*