

minimum is not a mandatory minimum. In essence, it is simply guidance for the courts. It can be suspended. An individual can be put on probation, and that is what is going to happen in a substantial case of first offenders. Now as a practical matter, when a second offender, when a person for the second time is caught selling a film or selling a photograph involving child pornography, I can't...frankly, I can't think of any situation where a judge is going to need to give more than 25 years. Twenty-five years is a long time. If this individual is 30, by the time he is arrested and convicted, to say that the judge ought to be able to put him away until he is 80, as opposed to putting him away until he is 55, I don't really think makes a lot of sense. For a first offender, if there is a sentence at all, it is probably going to be in the range of 6 to 12 months. A penalty with a maximum of five years will adequately cover that. Now again, it doesn't make a lot of difference what way you go on this amendment because it is not going to change sentencing practices out there. The people are going to get the same sentence no matter what. But the amendment, I think, is based on the false premise that simply by increasing the penalties far beyond a penalty any judge, for all practical purposes, is going to give or is likely to assess is somehow going to deter crime. It also assumes that individuals, before committing a crime, are going to read the statute books and see what the maximum penalty is and somehow allow that to affect their conduct. I think we know that people, before committing offenses, don't read the statute books, except in very rare cases, and their conduct in determining whether to pedal child pornography is not going to be affected by whether the maximum penalty is 5 years or 25 years. Finally, I think having penalties of that magnitude...

SPEAKER NICHOL: One minute.

SENATOR HOAGLAND: ...tends to turn the bill into something of a fraudulent bill because we are telling the public out there that first offense child pornographers are going to get 25 years, second and subsequent offense child pornographers are going to get 50 years, and we know that that simply is not the case. In other words, I think the committee maximum penalties, in a sense, are a truth in sentencing bill, a truth in sentencing provision because even though offenders are not going to get anywhere near those penalties anyway, the 5 and the 25 years, at least, is