112TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
112–638

CHILD PROTECTION ACT OF 2012

JULY 31, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 6063]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 6063) to amend title 18, United States Code, with respect to child pornography and child exploitation offenses, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

The Amendment

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Child Protection Act of 2012".

SEC. 2. ENHANCED PENALTIES FOR POSSESSION OF CHILD PORNOGRAPHY.

(a) CERTAIN ACTIVITIES RELATING TO MATERIAL INVOLVING THE SEXUAL EXPLOITATION OF MINORS.—Section 2252(b)(2) of title 18, United States Code, is amended by inserting after "but if" the following: "any visual depiction involved in the offense involved a prepubescent minor or a minor who had not attained 12 years of age, such person shall be fined under this title and imprisoned for not more than 20 years, or if".

(b) CERTAIN ACTIVITIES RELATING TO MATERIAL CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.—Section 2252A(b)(2) of title 18, United States Code, is amended by inserting after "but, if" the following: "any image of child pornography involved in the offense involved a prepubescent minor or a minor who had not attained 12 years of age, such person shall be fined under this title and imprisoned for not more than 20 years, or if".

SEC. 3. PROTECTION OF CHILD WITNESSES.

(a) CIVIL ACTION TO RESTRAIN HARASSMENT OF A VICTIM OR WITNESS.—Section 1514 of title 18, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) by inserting "or its own motion," after "attorney for the Government,"; and

(ii) by inserting "or investigation" after "Federal criminal case" each place it appears;

(B) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively;

(C) by inserting after paragraph (1) the following:

"(2) In the case of a minor witness or victim, the court shall issue a protective order prohibiting harassment or intimidation of the minor victim or witness if the court finds evidence that the conduct at issue is reasonably likely to adversely affect the willingness of the minor witness or victim to testify or otherwise participate in the Federal criminal case or investigation. Any hearing regarding a protective order under this paragraph shall be conducted in accordance with paragraphs (1) and (3), except that the court may issue an ex parte emergency protective order in advance of a hearing if exigent circumstances are present. If such an ex parte order is applied for or issued, the court shall hold a hearing not later than 14 days after the date such order was applied for or is issued.";

(D) in paragraph (4), as so redesignated, by striking "(and not by reference to the complaint or other document)"; and

(E) in paragraph (5), as so redesignated, in the second sentence, by inserting before the period at the end the following: ", except that in the case of a minor victim or witness, the court may order that such protective order expires on the later of 3 years after the date of issuance or the date of the eighteenth birthday of that minor victim or witness"; and

(2) by striking subsection (c) and inserting the following:

"(c) Whoever knowingly and intentionally violates or attempts to violate an order issued under this section shall be fined under this title, imprisoned not more than 5 years, or both.

"(d)(1) As used in this section—

"(A) the term 'course of conduct' means a series of acts over a period of time, however short, indicating a continuity of purpose;

"(B) the term 'harassment' means a serious act or course of conduct directed at a specific person that—

"(i) causes substantial emotional distress in such person; and

"(ii) serves no legitimate purpose;

"(C) the term 'immediate family member' has the meaning given that term in section 115 and includes grandchildren;

"(D) the term 'intimidation' means a serious act or course of conduct directed at a specific person that—

"(i) causes fear or apprehension in such person; and

"(ii) serves no legitimate purpose;

"(E) the term 'restricted personal information' has the meaning give that term in section 119;

"(F) the term 'serious act' means a single act of threatening, retaliatory, harassing, or violent conduct that is reasonably likely to influence the willingness of a victim or witness to testify or participate in a Federal criminal case or investigation; and

"(G) the term 'specific person' means a victim or witness in a Federal criminal case or investigation, and includes an immediate family member of such a victim or witness.

"(2) For purposes of subparagraphs (B)(ii) and (D)(ii) of paragraph (1), a court shall presume, subject to rebuttal by the person, that the distribution or publication using the Internet of a photograph of, or restricted personal information regarding, a specific person serves no legitimate purpose, unless that use is authorized by that specific person, is for news reporting purposes, is designed to locate that specific person (who has been reported to law enforcement as a missing person), or is part of a government-authorized effort to locate a fugitive or person of interest in a criminal, antiterrorism, or national security investigation.".

(b) SENTENCING GUIDELINES.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements to ensure—

(1) that the guidelines provide an additional penalty increase above the sentence otherwise applicable in Part J of Chapter 2 of the Guidelines Manual if the defendant was convicted of a violation of section 1591 of title 18, United States Code, or chapters 109A, 109B, 110, or 117 of title 18, United States Code; and

(2) if the offense described in paragraph (1) involved causing or threatening to cause physical injury to a person under 18 years of age, in order to obstruct the administration of justice, an additional penalty increase above the sentence otherwise applicable in Part J of Chapter 2 of the Guidelines Manual.

SEC. 4. SUBPOENAS TO FACILITATE THE ARREST OF FUGITIVE SEX OFFENDERS.

(a) ADMINISTRATIVE SUBPOENAS.—

(1) IN GENERAL.—Section 3486(a)(1) of title 18, United States Code, is amended—

(A) in subparagraph (A)—

(i) in clause (i), by striking "or" at the end;

(ii) by redesignating clause (ii) as clause (iii); and

(iii) by inserting after clause (i) the following:

"(ii) an unregistered sex offender conducted by the United States Marshals Service, the Director of the United States Marshals Service; or"; and

(B) in subparagraph (D)—

(i) by striking "paragraph, the term" and inserting the following: "paragraph—

"(i) the term";

(ii) by striking the period at the end and inserting "; and"; and

(iii) by adding at the end the following:

"(ii) the term 'sex offender' means an individual required to register under the Sex Offender Registration and Notification Act (42 U.S.C. 16901 et seq.).".

(2) TECHNICAL AND CONFORMING AMENDMENTS.—Section 3486(a) of title 18, United States Code, is amended—

(A) in paragraph (6)(A), by striking "United State" and inserting "United States";

(B) in paragraph (9), by striking "(1)(A)(ii)" and inserting "(1)(A)(iii)"; and

(C) in paragraph (10), by striking "paragraph (1)(A)(ii)" and inserting "paragraph (1)(A)(iii)".

(b) SUBPOENA AUTHORITY FOR THE UNITED STATES MARSHALS SERVICE.—Section 566(e)(1) of title 28, United States Code, is amended—

(1) in subparagraph (A), by striking "and" at the end;

(2) in subparagraph (B), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(C) issue administrative subpoenas in accordance with section 3486 of title 18, solely for the purpose of investigating unregistered sex offenders (as defined in such section 3486).".

SEC. 5. INCREASE IN FUNDING LIMITATION FOR TRAINING COURSES FOR ICAC TASK FORCES.

Section 102(b)(4)(B) of the PROTECT Our Children Act of 2008 (42 U.S.C. 17612(b)(4)(B)) is amended by striking "$2,000,000" and inserting "$4,000,000".

SEC. 6. NATIONAL COORDINATOR FOR CHILD EXPLOITATION PREVENTION AND INTERDICTION .

Section 101(d)(1) of the PROTECT Our Children Act of 2008 (42 U.S.C. 17611(d)(1)) is amended—

(1) by striking "to be responsible" and inserting the following: "with experience in investigating or prosecuting child exploitation cases as the National Coordinator for Child Exploitation Prevention and Interdiction who shall be responsible"; and

(2) by adding at the end the following: "The National Coordinator for Child Exploitation Prevention and Interdiction shall be a position in the Senior Executive Service."

SEC. 7. REAUTHORIZATION OF ICAC TASK FORCES.

Section 107(a) of the PROTECT Our Children Act of 2008 (42 U.S.C. 17617(a)) is amended—

(1) in paragraph (4), by striking "and";

(2) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(3) by inserting after paragraph (5) the following:

"(6) $60,000,000 for fiscal year 2014;

"(7) $60,000,000 for fiscal year 2015;

"(8) $60,000,000 for fiscal year 2016;

"(9) $60,000,000 for fiscal year 2017; and

"(10) $60,000,000 for fiscal year 2018.".

SEC. 8. CLARIFICATION OF "HIGH-PRIORITY SUSPECT".

Section 105(e)(1)(B)(i) of the PROTECT Our Children Act of 2008 (42 U.S.C. 17615(e)(1)(B)(i)) is amended by striking "the volume" and all that follows through "or other".

SEC. 9. REPORT TO CONGRESS.

Not later than 90 days after the date of enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the status of the Attorney General's establishment of the National Internet Crimes Against Children Data System required to be established under section 105 of the PROTECT Our Children Act of 2008 (42 U.S.C. 17615).

Purpose and Summary

H.R. 6063 provides additional investigative and prosecutorial tools and enhanced penalties to combat the proliferation of Internet child pornography and child exploitation offenses.

Background and Need for the Legislation

I. THE PROLIFERATION OF CHILD PORNOGRAPHY AND CHILD EXPLOITATION ON THE INTERNET

According to the Justice Department, trafficking of child pornography images was almost completely eradicated in America by the mid-1980's. Purchasing or trading child pornography images was risky and almost impossible to undertake anonymously.

The advent of the Internet reversed this accomplishment. Internet child pornography is among one of the fastest growing crimes in America, increasing at an average of 150% per year. These disturbing images litter the Internet and pedophiles can purchase, view, or exchange this material with virtual anonymity.

The Department reports that "the expansion of the Internet has led to an explosion in the market for child pornography, making it easier to create, access, and distribute these images of abuse. . . . The child victims are first sexually assaulted in order to produce the vile, and often violent, images. They are then victimized again when these images of their sexual assault are traded over the

Internet in massive numbers by like-minded people across the globe."[1]

The National Center for Missing and Exploited Children (NCMEC) created the CyberTipline 14 years ago. To date, more than 51 million child pornography images and videos have been reviewed by the analysts in NCMEC's Child Victim Identification Program.[2] As NCMEC's former President and CEO, Ernie Allen, explained at a hearing before the Crime, Terrorism and Homeland Security Subcommittee on July 12, 2011, "these images are crime scene photos. According to law enforcement data, 19% of identified offenders in a survey had images of children younger than 3 years old; 39% had images of children younger than 6 years old; and 83% had images of children younger than 12 years old. Reports to the CyberTipline include images of sexual assault of toddlers and even infants."[3]

A 2011 Federal investigation demonstrates the ease with which pedophiles can exchange pornography via the Internet and the horrific nature of this crime. Operation Delego, initiated by Immigration and Customs Enforcement (ICE) agents, uncovered an international child pornography ring that operated an Internet forum known as "Dreamboard."[4] The forum was based in the United States, but had nearly 600 participants who spanned across five continents.

U.S. Attorney General Eric Holder described that "[i]n order to become part of the Dreamboard community, prospective members were required to upload pornography portraying children under 12 years of age or younger . . . Once given access, the participants had to continually upload images of child sexual abuse in order to maintain membership. The more content they provided, the more content they were allowed to access. Members who created and shared images and videos of themselves molesting children received elevated status and greater access. . . . Some of the children featured in these images and videos were just infants and in many cases, the children being victimized were in obvious and also intentional pain, even in distress and crying, just as the rules for one area of the bulletin board mandated. They had to be in distress and crying."[5]

II. PENALTIES FOR POSSESSION OF CHILD PORNOGRAPHY

Current law imposes a maximum 10-year penalty for child pornography possession offenses. Since the Supreme Court's 2005 *United States v. Booker*[6] decision, which made the Federal Sentencing Guidelines advisory, the Federal courts have begun to issue increasingly low sentences for child pornography offenses. From 2006 to 2010, the rate of within-Guideline range sentences for child

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[1] *The National Strategy for Child Exploitation Prevention and Interdiction, A Report to Congress,* U.S. DEPT. OF JUSTICE, Aug. 2010, *available at* http://www.projectsafechildhood.gov/docs/natstrategyreport.pdf (hereinafter National Strategy).

[2] *Testimony of Mr. Ernie Allen, President and CEO of the National Center for Missing and Exploited Children,* Hearing on H.R. 6063 before the Subcommittee on Crime, Terrorism, and Homeland Security, Committee on the Judiciary, U.S. House of Representatives, 112th Congress, July 12, 2011, at 2.

[3] *Id.* at 3.

[4] Terry Frieden, *72 charged in online global child porn ring,* CNN, Aug. 3, 2011, *available at* http://articles.cnn.com/2011-08-03/justice/us.child.porn.ring_1_sexual-abuse-bulletin-board-images-and-videos?_s=PM:CRIME.

[5] *Id.*

[6] 543 U.S. 220 (2005).

pornography possession dropped from 62.6% to 39.6%. During that same time period, the number of possession cases receiving sentencing departures jumped from 61 (25.6%) to 394 (44.9%).[7]

The decline in penalties stems, in part, from the false belief that possession of child pornography is not a serious crime, or at least is not as serious as other child exploitation offenses. This belief is dangerously flawed. As the Justice Department noted in its August 2010 National Strategy, "many experts in the field believe that use of [the] term [child pornography] contributes to a fundamental misunderstanding of the crime—one that focuses on the possession or trading of a picture and leaves the impression that what is depicted in the photograph is pornography. Child pornography is unrelated to adult pornography; it clearly involves the criminal depiction and memorializing of the sexual assault of children and the criminal sharing, collecting, and marketing of the images." [8]

The people who consume child pornography create the market for it, and thereby encourage the victimization of children. According to the Justice Department, 67 percent of reported sexual assault victims are children. There is a growing link between the possession of child pornography and the actual molestation of children. A 2005 study found that "40% of the cases involving [child pornography] possession in the [National Juvenile Online Victimization] Study involved dual offenses of [child pornography] possession and child sexual victimization detected in the course of the same investigation." [9] There is also evidence that pedophiles are increasingly only sharing their illegal images with "select" groups of people who are also able to share homemade images of child exploitation. This trend encourages further harm to children.

In 2009, a symposium of experts who studied child pornography met to share their findings and develop an international consensus on the risks to children from child pornography. The symposium recognized the general sense that there is a connection between child pornography and other sex related crimes.

> Symposium participants . . . agreed that there is sufficient evidence of a relationship between possession of child pornography and the commission of contact offenses against children to make this a cause of acute concern. Participants did not see this necessarily as a linear relationship, but considered it a relationship that must be assessed in determining treatment and criminal justice options because, based on research using samples of individuals convicted of child pornography offenses, a significant portion of those who possess child pornography have committed a contact sexual offense against a child.[10]

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[7] *Average Sentence and Position Relative to the Guideline Range for Child Pornography Possession Offenses, Fiscal Years 2005 through Preliminary 2010,* U.S. SENT. COMM'N (2010).

[8] *The National Strategy for Child Exploitation Prevention and Interdiction, A Report to Congress,* U.S. DEPT. OF JUSTICE, Aug. 2010, *available at* http://www.projectsafechildhood.gov/docs/natstrategyreport.pdf.

[9] Janis Wolak et al., *Child-Pornography Possessors Arrested in Internet-Related Crimes: Findings From the National Juvenile Online Victimization Study,* NAT'L CTR. MISSING & EXPLOITED CHILDREN, at 16.

[10] Andrew G. Oosterbaan, *Global Symposium for Examining the Relationship Between Online and Offline Offenses and Preventing the Sexual Exploitation of Children,* U.S. DEPT. OF JUSTICE 10 (2009), *available at* http://www.governo.it/GovernoInforma/Dossier/G8__interno__giustizia/LEPSG__Child__Exploitation__Symposium.pdf.

The belief that mere possession of child pornography images is not a serious crime also ignores the ongoing victimization that the children experience, often well into adulthood, knowing that their images continue to be shared on the Internet. As one psychologist recently testified in a child pornography possession case, "victims are constantly anxious, they walk around anxious. . . . when they go into the street they look at everyone they pass and say, 'Did you see the pictures?'. . . . They are constantly ruminating about who have seen those pictures."[11] These children's lives are thrown into permanent disarray to feed the appetites of the "mere" possessors.

III. PROTECTION OF CHILD WITNESSES AND VICTIMS

Child pornography and exploitation prosecutions hinge often on the testimony of the child victim. Unfortunately, many children are abused by an acquaintance or even a family member and are often intimidated from telling their stories with threats that they will be punished or get in trouble if they tell.

Intimidation of minor witnesses is a persistent problem in criminal prosecutions. The most notable example was the case of DeAndre Whitehead, a Baltimore man who was sentenced to 6 years in Federal prison in 2005 for ordering the killing of an 11-year-old girl who testified in his murder trial. The U.S. Attorney for the District of Maryland had to take over the case after the state prosecutor failed to secure a conviction in the state's intimidation case. Maryland received criticism at the time for its ineffective witness intimidation laws. The same problem has been seen elsewhere. In 2006, at Burlington Township, Pennsylvania, Truman High School class president Tyrone Lewis was prohibited from walking at his graduation or delivering his address except via video feed after the school received threats against Lewis, intended to intimidate his sister, Rachel, a witness in a murder case.

Surprisingly, the intimidation does not always come from the original perpetrators of the horrific act. In October 2007, a defense attorney in a child sexual-abuse case was arrested for intimidating the sixteen year old victim.[12] In February 2010, the father of a teen who forced a 5-year-old boy to perform sexual acts was charged with intimidating the victim's family.[13] In March 2011, a man charged with abusing two girls over a span of 9 years was accused of witness intimidation on three different occasions.[14]

Current fines and contempt citations are inadequate to protect minor witnesses and victims, especially in child sex abuse cases. For example, in a case in Dublin, Ohio, a high school lacrosse coach was fined only $1,000 after he was convicted of intimidating a player who accused the man's son, an assistant coach on the team, of sexual assault. Although Federal law provides criminal penalties for physical violence, threats, and other egregious forms of witness intimidation, more subtle forms of intimidation directed to a child

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[11] *United States v. C.R.,* —F.Supp.2d—-, 2011 WL 1901645, at *33 (E.D.N.Y. 2011).

[12] *Denver Attorney Arrested In Witness Intimidation Case*, The Denver News Channel (October 4, 2007), http://www.thedenverchannel.com/news/14269922/detail.html.

[13] *Father of Rape Suspect Charged with Witness Intimidation*, Wicked Local (February 19, 2010), http://www.wickedlocal.com/milford/news/x1650244989/Father-of-rape-suspect-charged-with-witness-intimidation#axzz1RoFC05we.

[14] *Whitman Man Indicted on Child Sex-Abuse Charges*, Enterprise News (March 09, 2011), http://www.enterprisenews.com/news/cops__and__courts/x13264467/Whitman-man-indicted-on-child-sex-abuse-charges.

remain unaddressed. This section provides Federal courts with the means to control such intimidation through effective protection orders, and the felony penalty would add needed teeth to the law to strengthen the deterrent effect of a restraining order to prevent repeat intimidation.

There is also an increase in evidence demonstrating a link between child sex trafficking and child pornography. The Justice Department's 2010 National Strategy for Child Exploitation Prevention and Interdiction makes references to the connection between sex trafficking and child pornography:

> Sex tourists are increasingly creating child pornography by recording their acts of child sexual abuse to bring home as souvenirs. After returning home, child sex tourists may share or sell their images and videos with other child predators. Images of the child's abuse are permanently memorialized and impossible to remove from circulation once they enter the Internet stream.[15]

> Ultimately, many predators coerce victims into sexual abuse, and many digitally memorialize their crimes for trading purposes and to ensure silence, essentially producing child pornography that will victimize children beyond the moment of sexual abuse.[16]

IV. ADMINISTRATIVE SUBPOENA AUTHORITY FOR APPREHENSION OF FUGITIVE SEX OFFENDERS

The U.S. Marshals Service serves a unique function among Federal law enforcement agencies. As authorized by 28 U.S.C. § 566, the Marshals' primary mission is "to provide for the security and to obey, execute, and enforce all orders of the United States District Courts, the United States Courts of Appeals, the Court of International Trade, and the United States Tax Court, as provided by law." The Marshals Service also executes all writs, process, and orders issued under the authority of the United States, and provides personal protection of Federal judges, court officers, witnesses, and others.[17]

The Marshals Service is also the Federal Government's primary agency for fugitive apprehension.[18] The agency holds all Federal arrest warrants until they are executed or dismissed. In fiscal year 2011, the Marshals apprehended more than 36,200 Federal fugitives, clearing approximately 39,400 felony warrants. U.S. Marshals-led fugitive task forces arrested more than 86,400 state and local fugitives, clearing 113,000 state and local felony warrants.[19]

The Adam Walsh Child Protection and Safety Act of 2006[20] requires the Attorney General to use the Justice Department law enforcement resources to assist jurisdictions in locating and apprehending sex offenders who fail to comply with registration require-

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[15] *National strategy for Child Exploitation Prevention and Interdiction*, U.S. Department of Justice 37 (2010), http://www.projectsafechildhood.gov/docs/natstrategyreport.pdf.

[16] *National strategy for Child Exploitation Prevention and Interdiction*, U.S. Department of Justice 31 (2010), http://www.projectsafechildhood.gov/docs/natstrategyreport.pdf.

[17] 28 U.S.C. §§ 566(c), (e)(1)(A).

[18] 28 U.S.C. § 566(e)(1)(B).

[19] *Fact Sheets: Sex Offender Operations,* U.S. MARSHALS SERVICE, Dec. 7, 2011, *available at* http://www.usmarshals.gov/duties/factsheets/fugitive__ops-2012.html.

[20] Pub. L. No. 109–248, 111 Stat. 2466 (2006).

ments. The Marshals is the primary agency charged with this responsibility.

Under the Adam Walsh Act, the Marshals Service assists state, local, tribal and territorial authorities in the location and apprehension of non-compliant sex offenders. It also investigates violations of the criminal provisions of the Adam Walsh Act, and identifies and locates sex offenders displaced as a result of a major disaster. In fiscal year 2011, the Marshals apprehended 12,144 sex offenders, initiated 2,720 investigations, issued 730 warrants for registration violations, and arrested 586 fugitives for other violations of the Adam Walsh Act.[21]

The Marshals' duties under the Adam Walsh Act require it to respond immediately to a tip regarding an absconded sex offender. However, to obtain records relevant to fugitive apprehension, the Marshals must make a request to a United States Attorney's Office to seek an "All Writs Act" order under 28 U.S.C. § 1651. This process is burdensome and time-consuming.

Administrative subpoena authority will allow the Marshals to access hotel, rental car, or airline records quickly, before the trail goes cold on a fugitive sex offender. Administrative subpoenas can only be used to obtain these types of records—they cannot be used to obtain the content of an email or wiretap a telephone.

There are over 300 instances where Congress has granted other Federal agencies administrative subpoena power in one form or another. In 1996, this Committee approved 18 U.S.C. § 3486 to authorize the use of administrative subpoenas to investigate Federal sexual exploitation or child abuse offenses and threats to the President and other protectees. This statute has been expanded by Congress several times since then—including as part of the PROTECT Act of 2003.[22]

The administrative subpoena statute currently gives authority to use such subpoenas to the Attorney General and the Secretary of the Treasury for cases involving health care, child sexual exploitation, or threats against the President or other persons protected by the Secret Service. This is narrow authority is provided to the law enforcement agencies that investigate these areas of crime—the FBI and the Secret Service.

Although the Marshals Service is under the authority of the Attorney General, their unique role of providing Federal court security and fugitive apprehension does not include criminal investigations involving the sexual exploitation or abuse of children. As such, the authority granted under § 3486 does not automatically extend to the Marshals.

V. INTERNET CRIMES AGAINST CHILDREN (ICAC) TASK FORCES

The Internet Crimes Against Children (ICAC) Task Forces help state and local law enforcement agencies develop an effective response to cyber enticement and child pornography cases. The ICAC program was developed in 1998, in response to the increasing number of children and teenagers using the Internet, the proliferation of child pornography, and heightened online activity by predators seeking unsupervised contact with potential underage victims.

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[21] *Supra* note 11.

[22] Pub. L. 108–21, 117 Stat. 650, S. 151 (Apr. 30, 2003).

The ICAC program is a national network of 61 coordinated task forces representing over 3,000 Federal, state, and local law enforcement and prosecutorial agencies. The program has been a demonstrable success. Since the ICAC program's inception in 1998, more than 338,000 law enforcement officers, prosecutors, and other professionals have been trained in the United States and in 17 countries on techniques to investigative and prosecute ICAC related cases. Since 1998, ICAC Task Forces have reviewed more than 280,000 complaints of alleged child sexual victimization resulting in the arrest of more than 30,000 individuals.

The PROTECT our Children Act of 2008 codified the authorization of the ICAC program. The Act authorized the task forces at $60 million a year for fiscal years 2008 through 2013. The Act also authorized funding for technical training programs for ICAC investigators. The Act capped the training funding at $2 million annually. This cap has had the unintended consequence of stifling training of ICAC investigators through these programs. The rapid change in Internet and telecommunications technology that can be used by pedophiles to hide from law enforcement requires constant upgrades in investigative tools and constant training to use these new tools.

The PROTECT Act also established the National Coordinator for Child Exploitation and Prevention and Interdiction position within the Justice Department. The Coordinator is charged with formulating and implementing a national strategy to combat child exploitation, and with submitting the strategy and relevant reports to Congress.

VI. NATIONAL INTERNET CRIMES AGAINST CHILDREN DATA SYSTEM (NIDS)

Section 105 of the PROTECT our Children Act of 2008 directed the Justice Department to establish a National Internet Crimes Against Children Data System (NIDS). NIDS is a law enforcement system that is intended to be a dynamic online platform for undercover investigations. This single system is envisioned to create a one-stop shop for investigators to access all available investigative software, to de-conflict overlapping investigations, and to refer suspects or "leads" to the appropriate investigative agency.

To date, the NIDS system has yet to be fully implemented by the Department. In 2009, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) made $900,000 of Recovery Act funds available for grants to develop NIDS; however this solicitation was eventually withdrawn. In 2010, OJJDP awarded a grant for "needs assessment and developmental activities" for NIDS. In 2011, OJJDP awarded $500,000 "for the construction, maintenance, and housing of an Internet Crimes Against Children Data System (IDS)," compliant with the PROTECT Our Children Act of 2008. A preliminary demonstration of this "IDS" system shows that it can perform the basic deconfliction functions. There remains a question as to whether this system can perform the more advanced capabilities mandated by the Act.

Section 105 of the PROTECT Act prescribes how investigative software included in the NIDS system defines and handles "high-priority suspects," and therefore guides not only how high-priority referrals are made to state and local law enforcement agencies, but

also governs software development (i.e., how high-priority referrals are viewed and flagged automatically). Section 105 instructs that high-priority suspects are determined "by the volume of suspected criminal activity or other indicators of seriousness of offense or dangerousness to the community or a potential local victim."

Although the NIDS system is not yet fully implemented, the "volume" criteria has already influenced the development of software used for online child exploitation investigations, which directs users towards high-volume traders of child pornography. This can cause dangerous offenders that don't trigger the high volume criteria to go undetected.

H.R. 6063 is supported by the National Center for Missing and Exploited Children; the Major City Chiefs of Police; Futures Without Violence; the Fraternal Order of Police; the International Association of Chiefs of Police; the National Alliance to End Sexual Violence; the National District Attorneys Association; the National White Collar Crime Center (NWC3); the National Sheriffs' Association; the Surviving Parents Coalition; the Rape Abuse Incest National Network (RAINN); PROTECT; the Florida Council Against Sexual Violence; Jewish Women International; Men Can Stop Rape; the National Criminal Justice Training Center at Fox Valley Technical College; the Texas Association Against Sexual Assault; and the California Protective Parents Association.

Hearings

No hearings were held on H.R. 6063.

Committee Consideration

On July 10, 2012, the Committee met in open session and ordered the bill H.R. 6063 favorably reported without amendment by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R. 6063.

1. An amendment by Mr. Scott to delete language from Section 3 that modifies the definitions of "harassment" and "intimidation" under 18 U.S.C. § 1514 as amended by Section 3. Defeated 12–13.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.			
Mr. Coble		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Issa			
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan		X	
Mr. Poe	X		
Mr. Chaffetz			
Mr. Griffin			
Mr. Marino		X	
Mr. Gowdy			
Mr. Ross		X	
Ms. Adams		X	
Mr. Quayle			
Mr. Amodei		X	
Mr. Conyers, Jr., Ranking Member	X		
Mr. Berman	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Cohen			
Mr. Johnson, Jr.	X		
Mr. Pierluisi			
Mr. Quigley			
Ms. Chu	X		
Mr. Deutch			
Ms. Sánchez	X		
Mr. Polis	X		
Total	12	13	

2. An amendment by Mr. Scott to require Attorney General approval of an administrative subpoena sought to apprehend an unregistered sex offender pursuant to the amendments made by Section 4 of the bill to 18 U.S.C. § 3486 and to limit such subpoena authority to the apprehension of fugitive sex offenders who have been convicted of certain offenses against a minor. Defeated 10–18.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.			
Mr. Coble		X	
Mr. Gallegly			
Mr. Goodlatte			

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa		X	
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Jordan		X	
Mr. Poe			
Mr. Chaffetz			
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy			
Mr. Ross		X	
Ms. Adams		X	
Mr. Quayle			
Mr. Amodei		X	
Mr. Conyers, Jr., Ranking Member	X		
Mr. Berman	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Cohen			
Mr. Johnson, Jr.	X		
Mr. Pierluisi			
Mr. Quigley		X	
Ms. Chu	X		
Mr. Deutch			
Ms. Sánchez	X		
Mr. Polis	X		
Total	10	18	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 6063 the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 30, 2012.

Hon. LAMAR SMITH, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6063, the "Child Protection Act of 2012."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Martin von Gnechten, who can be reached at 226–2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 6063—Child Protection Act of 2012.

As ordered reported by the House Committee on the Judiciary on July 10, 2012.

SUMMARY

H.R. 6063 would amend certain laws that establish Federal crimes related to child pornography and would reauthorize funding through 2018 for the Internet Crimes Against Children (ICAC) Task Force Program. CBO estimates that implementing the bill would cost $121 million over the 2013–2017 period, assuming appropriation of the authorized amounts. Enacting H.R. 6063 could affect direct spending and revenues; therefore, pay-as-you-go procedures apply. However, CBO estimates that any net effects would be insignificant in any year.

H.R. 6063 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 6063 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

By Fiscal Year, in Millions of Dollars—						
	2013	2014	2015	2016	2017	2013–2017
SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	*	60	60	60	60	240
Estimated Outlays	*	7	24	39	51	121

Notes: Current law authorizes $60 million annually through fiscal year 2013 for the Internet Crimes Against Children Task Force Program.

* = less than $500,000.

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 6063 will be enacted near the start of 2013 and that the authorized amounts will be appropriated each year beginning with fiscal year 2014.

Current law authorizes appropriations of $60 million a year through fiscal year 2013 for grants and technical assistance to ICAC task forces. (Funding for the ICAC Task Force Program in 2012 totals about $30 million, CBO estimates.) H.R. 6063 would extend the $60 million authorization level through 2018. The legislation also would raise the cap on grant funding for ICAC training programs from $2 million to $4 million annually for each organization. Based on historical patterns for ICAC and similar programs, CBO estimates that fully funding grants to ICAC task forces would cost $121 million over the 2014–2017 period.

CBO estimates that implementing other provisions of H.R. 6063 would have an insignificant impact on Federal spending. Those provisions would:

- Increase the maximum prison sentence from 10 years to 20 years for child pornography offenses involving children under the age of 12;
- Direct the U.S. Sentencing Commission to review Federal sentencing guidelines related to certain child abuse crimes;
- Allow the U.S. Marshals Service to issue administrative subpoenas to investigate unregistered sex offenders; and
- Require the Department of Justice to submit a report to the Congress on the National Internet Crimes Agaist Children Data System within 90 days after enactment.

PAY-AS-YOU-GO CONSIDERATIONS

Enacting H.R. 6063 could affect direct spending and revenues; however, CBO estimates that any net effects would be insignificant for each year. Under the legislation, district courts would be required to issue protective orders to prevent harassment or intimidation of a minor victim or witness. The bill could increase direct spending by extending witness protective services, which are funded through a mandatory appropriation, to those individuals. Any such increases would be insignificant because of the small number of witnesses and victims likely to be affected.

In addition, because those prosecuted and convicted under H.R. 6063 would be subject to increased criminal fines, the Federal Government might collect additional fines if the bill is enacted. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the small number of cases likely to be affected.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 6063 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on State, local, or tribal governments.

PREVIOUS CBO ESTIMATE

On October 12, 2011, CBO transmitted a cost estimate for H.R. 1981, the Protecting Children from Internet Pornographers Act, as ordered reported by the House Committee on the Judiciary on July 27, 2011. Provisions of both bills related to administrative subpoenas, protection of child witnesses, and review of sentencing guidelines are similar, and the estimated costs for those provisions are the same.

ESTIMATE PREPARED BY:

Federal Costs: Martin von Gnechten
Impact on State, Local, and Tribal Governments: Sandra Trevino
Impact on the Private Sector: Marin Randall

ESTIMATE APPROVED BY:

Theresa Gullo
Deputy Assistant Director for Budget Analysis

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 6063 provides additional investigative and prosecutorial tools and enhanced penalties to combat the proliferation of Internet child pornography and child exploitation offenses.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 6063 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Section 1. Short Title.

This section cites the short title of the bill as the "Child Protection Act of 2012."

Section 2. Enhanced Penalties for Possession of Child Pornography.

This section increases the maximum penalty from 10 to 20 years for offenses under sections 2252(b)(2) and 2252A(b)(2) of Title 18 involving prepubescent minors or minors under the age of 12.

Section 3. Protection of Child Witnesses.

This section amends section 1514 of title 18 (providing for protection of victims or witnesses) to expand protection of minor victims and witnesses from harassment or intimidation. This section allows a Federal court to issue a protective order if it determines that harassment or intimidation exists specifically in the case of a minor witness and that the intimidation would affect the willingness of the witness to testify in an ongoing investigation or Federal criminal matter. Protective orders for minor witnesses can be issued for 3 years or until the witnesses' 18th birthday, whichever is longer (protective orders for adults are capped at 3 years in length).

This section also permits courts to issue protection orders to restrict the harassing or intimidating distribution of a witness's restricted personal information on the Internet.

This section also fills a gap in current law by creating criminal penalties of a fine, imprisonment up to 5 years, or both, for knowing and intentional violations of any protective order issued under Section 1514. Under the statute as currently written, there is no criminal enforcement capability for protective orders issued, and violators likely face nothing more than a contempt citation.

This section also instructs the U.S. Sentencing Commission to review, and increase if appropriate, the Sentencing Guidelines contained in Part J of Chapter 2, relating to penalties for witness intimidation in certain crimes against children offenses.

Section 4. Subpoenas to Facilitate the Arrest of Fugitive Sex Offenders.

This section amends section 556 of title 28 (governing the powers and duties of the U.S. Marshals Service) to authorize the U.S. Marshals Service to issue administrative subpoenas in investigations of unregistered sex offenders. This section also makes a conforming amendment to section 3486 of title 18 (governing administrative subpoena authority) to authorize such authority for the USMS in apprehending unregistered sex offenders.

Unlike the administrative subpoena authority exercised by the U.S. Secret Service and the FBI under 18 U.S.C. § 3486, which is used at the *beginning* of a criminal investigation, the administrative subpoena authority authorized by this section for the Marshals Service will only be used after the *conclusion* of a criminal investigation—i.e., after a guilty verdict for a sex offense that carries with it a registration requirement and after the sex offender has absconded or violated his registration requirements and an arrest warrant has been issued by a judge.

Section 5. Increase in Funding Limitation for Training Courses for ICAC Task Forces.

This section increases the cap in training funding grants from $2 million to $4 million to ensure sufficient funding for the organizations that provide critical training to the ICAC Task Forces.

Section 6. National Coordinator for Child Exploitation Prevention and Interdiction.

This section clarifies Congress' original intent from the PROTECT our Children Act of 2008 that the National Coordinator should be a high-ranking official within the Justice Department with expertise in child exploitation investigations or prosecutions.

Section 7. Reauthorization of ICAC Task Forces.

This section extends the current authorization level of $60 million a year for the Task Forces for an additional 5 years through fiscal year 2018.

Section 8. Clarification of "High-Priority Suspect."

This section amends Section 105 of the PROTECT Our Children Act of 2008 to omit "volume" as a specifically enumerated indicator that must be established to identify a person as a high-priority suspect for purposes of the NIDS system.

Section 9. Report to Congress.

This section directs the Attorney General to submit a report to the House and Senate Judiciary Committees on the status of the Department's implementation of the NIDS system within 90 days of enactment of this Act.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

PART I—CRIMES

* * * * * * *

CHAPTER 73—OBSTRUCTION OF JUSTICE

* * * * * * *

§ 1514. Civil action to restrain harassment of a victim or witness

(a) * * *

(b)(1) A United States district court, upon motion of the attorney for the Government, *or its own motion,* shall issue a protective order prohibiting harassment of a victim or witness in a Federal criminal case *or investigation* if the court, after a hearing, finds by a preponderance of the evidence that harassment of an identified victim or witness in a Federal criminal case *or investigation* exists or that such order is necessary to prevent and restrain an offense under section 1512 of this title, other than an offense consisting of misleading conduct, or under section 1513 of this title.

(2) In the case of a minor witness or victim, the court shall issue a protective order prohibiting harassment or intimidation of the minor victim or witness if the court finds evidence that the conduct at issue is reasonably likely to adversely affect the willingness of the minor witness or victim to testify or otherwise participate in the Federal criminal case or investigation. Any hearing regarding a protective order under this paragraph shall be conducted in accordance with paragraphs (1) and (3), except that the court may issue an ex parte emergency protective order in advance of a hearing if exigent circumstances are present. If such an ex parte order is applied for or issued, the court shall hold a hearing not later than 14 days after the date such order was applied for or is issued.

[(2)**]** *(3)* At the hearing referred to in paragraph (1) of this subsection, any adverse party named in the complaint shall have the right to present evidence and cross-examine witnesses.

[(3)**]** *(4)* A protective order shall set forth the reasons for the issuance of such order, be specific in terms, describe in reasonable detail **[**(and not by reference to the complaint or other document)**]** the act or acts being restrained.

[(4)**]** *(5)* The court shall set the duration of effect of the protective order for such period as the court determines necessary to prevent harassment of the victim or witness but in no case for a period in excess of three years from the date of such order's issuance. The attorney for the Government may, at any time within ninety days before the expiration of such order, apply for a new protective order under this section*, except that in the case of a minor victim or witness, the court may order that such protective order expires on the later of 3 years after the date of issuance or the date of the eighteenth birthday of that minor victim or witness*.

[(c) As used in this section—

[(1) the term "harassment" means a course of conduct directed at a specific person that—

[(A) causes substantial emotional distress in such person; and

[(B) serves no legitimate purpose; and

[(2) the term "course of conduct" means a series of acts over a period of time, however short, indicating a continuity of purpose.**]**

(c) Whoever knowingly and intentionally violates or attempts to violate an order issued under this section shall be fined under this title, imprisoned not more than 5 years, or both.

(d)(1) As used in this section—

(A) the term "course of conduct" means a series of acts over a period of time, however short, indicating a continuity of purpose;

(B) the term "harassment" means a serious act or course of conduct directed at a specific person that—

(i) causes substantial emotional distress in such person; and

(ii) serves no legitimate purpose;

(C) the term "immediate family member" has the meaning given that term in section 115 and includes grandchildren;

(D) the term "intimidation" means a serious act or course of conduct directed at a specific person that—

(i) causes fear or apprehension in such person; and

(ii) serves no legitimate purpose;

(E) the term "restricted personal information" has the meaning give that term in section 119;

(F) the term "serious act" means a single act of threatening, retaliatory, harassing, or violent conduct that is reasonably likely to influence the willingness of a victim or witness to testify or participate in a Federal criminal case or investigation; and

(G) the term "specific person" means a victim or witness in a Federal criminal case or investigation, and includes an immediate family member of such a victim or witness.

(2) For purposes of subparagraphs (B)(ii) and (D)(ii) of paragraph (1), a court shall presume, subject to rebuttal by the person, that the distribution or publication using the Internet of a photograph of, or restricted personal information regarding, a specific person serves no legitimate purpose, unless that use is authorized by that specific person, is for news reporting purposes, is designed to locate that specific person (who has been reported to law enforcement as a missing person), or is part of a government-authorized effort to locate a fugitive or person of interest in a criminal, antiterrorism, or national security investigation.

* * * * * * *

CHAPTER 110—SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN

* * * * * * *

§ 2252. Certain activities relating to material involving the sexual exploitation of minors

(a) * * *

(b)(1) * * *

(2) Whoever violates, or attempts or conspires to violate, paragraph (4) of subsection (a) shall be fined under this title or imprisoned not more than 10 years, or both, but if *any visual depiction involved in the offense involved a prepubescent minor or a minor who had not attained 12 years of age, such person shall be fined under this title and imprisoned for not more than 20 years, or if* such person has a prior conviction under this chapter, chapter 71, chapter 109A, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or chapter 117, or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.

* * * * * * *

§ 2252A. Certain activities relating to material constituting or containing child pornography

(a) * * *

(b)(1) * * *

(2) Whoever violates, or attempts or conspires to violate, subsection (a)(5) shall be fined under this title or imprisoned not more

than 10 years, or both, but, if *any image of child pornography involved in the offense involved a prepubescent minor or a minor who had not attained 12 years of age, such person shall be fined under this title and imprisoned for not more than 20 years, or if* such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.

* * * * * * *

PART II—CRIMINAL PROCEDURE

* * * * * * *

CHAPTER 223—WITNESSES AND EVIDENCE

* * * * * * *

§ 3486. Administrative subpoenas

(a) AUTHORIZATION.—(1)(A) In any investigation of—

(i)(I) a Federal health care offense; or (II) a Federal offense involving the sexual exploitation or abuse of children, the Attorney General; **[**or**]**

(ii) an unregistered sex offender conducted by the United States Marshals Service, the Director of the United States Marshals Service; or

[(ii)**]** *(iii)* an offense under section 871 or 879, or a threat against a person protected by the United States Secret Service under paragraph (5) or (6) of section 3056, if the Director of the Secret Service determines that the threat constituting the offense or the threat against the person protected is imminent, the Secretary of the Treasury,

may issue in writing and cause to be served a subpoena requiring the production and testimony described in subparagraph (B).

* * * * * * *

(D) As used in this **[**paragraph, the term**]** *paragraph—*

(i) the term "Federal offense involving the sexual exploitation or abuse of children" means an offense under section 1201, 1591, 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423, in which the victim is an individual who has not attained the age of 18 years**[**.**]***; and*

(ii) the term "sex offender" means an individual required to register under the Sex Offender Registration and Notification Act (42 U.S.C. 16901 et seq.).

* * * * * * *

(6)(A) A **[**United State**]** *United States* district court for the district in which the summons is or will be served, upon application of the United States, may issue an ex parte order that no person or entity disclose to any other person or entity (other than to an

attorney in order to obtain legal advice) the existence of such summons for a period of up to 90 days.

* * * * * * *

(9) A subpoena issued under paragraph (1)(A)(i)(II) or [(1)(A)(ii)] *(1)(A)(iii)* may require production as soon as possible, but in no event less than 24 hours after service of the subpoena.

(10) As soon as practicable following the issuance of a subpoena under [paragraph (1)(A)(ii)] *paragraph (1)(A)(iii)*, the Secretary of the Treasury shall notify the Attorney General of its issuance.

* * * * * * *

SECTION 566 OF TITLE 28, UNITED STATES CODE

§ 566 Powers and duties

(a) * * *

* * * * * * *

(e)(1) The United States Marshals Service is authorized to—

(A) provide for the personal protection of Federal jurists, court officers, witnesses, and other threatened persons in the interests of justice where criminal intimidation impedes on the functioning of the judicial process or any other official proceeding; [and]

(B) investigate such fugitive matters, both within and outside the United States, as directed by the Attorney General[.]*; and*

(C) issue administrative subpoenas inaccordance with section 3486 of title 18, solely for the purpose ofinvestigating unregistered sex offenders (as defined in such section3486).

* * * * * * *

PROTECT OUR CHILDREN ACT OF 2008

* * * * * * *

TITLE I—NATIONAL STRATEGY FOR CHILD EXPLOITATION PREVENTION AND INTERDICTION

SEC. 101. ESTABLISHMENT OF NATIONAL STRATEGY FOR CHILD EXPLOITATION PREVENTION AND INTERDICTION.

(a) * * *

* * * * * * *

(d) APPOINTMENT OF HIGH-LEVEL OFFICIAL.—

(1) IN GENERAL.—The Attorney General shall designate a senior official at the Department of Justice [to be responsible] *with experience in investigating or prosecuting child exploitation cases as the National Coordinator for Child Exploitation Prevention and Interdiction who shall be responsible* for coordinating the development of the National Strategy established under subsection (a). *The National Coordinator for Child Ex-*

ploitation Prevention and Interdiction shall be a position in the Senior Executive Service.

* * * * * * *

SEC. 102. ESTABLISHMENT OF NATIONAL ICAC TASK FORCE PROGRAM.

(a) * * *

(b) NATIONAL PROGRAM.—

(1) * * *

* * * * * * *

(4) TRAINING.—

(A) * * *

(B) LIMITATION.—In establishing training courses under this paragraph, the Attorney General may not award any one entity other than a law enforcement agency more than **[**$2,000,000**]** *$4,000,000* annually to establish and conduct training courses for ICAC task force members and other law enforcement officials.

* * * * * * *

SEC. 105. NATIONAL INTERNET CRIMES AGAINST CHILDREN DATA SYSTEM.

(a) * * *

* * * * * * *

(e) COLLECTION AND REPORTING OF DATA.—

(1) IN GENERAL.—The National Internet Crimes Against Children Data System established under subsection (a) shall ensure the following:

(A) * * *

(B) HIGH-PRIORITY SUSPECTS.—Every 30 days, at minimum, the National Internet Crimes Against Children Data System shall—

(i) identify high-priority suspects, as such suspects are determined by **[**the volume of suspected criminal activity or other**]** indicators of seriousness of offense or dangerousness to the community or a potential local victim; and

* * * * * * *

SEC. 107. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this title—

(1) * * *

* * * * * * *

(4) $60,000,000 for fiscal year 2012; **[**and**]**

(5) $60,000,000 for fiscal year 2013**[**.**]***;*

(6) $60,000,000 for fiscal year 2014;

(7) $60,000,000 for fiscal year 2015;

(8) $60,000,000 for fiscal year 2016;

(9) $60,000,000 for fiscal year 2017; and

(10) $60,000,000 for fiscal year 2018.

* * * * * * *

Dissenting Views

I. INTRODUCTION

H.R. 6063, the "Child Protection Act of 2012," seeks to protect children from pornography and other forms of exploitation, but unfortunately falls short of this goal and presents several serious concerns. By creating a rebuttable presumption that shifts the burden of proof from the prosecution to the accused, the bill raises constitutional concerns. H.R. 6063 also establishes a new criminal offense that enhances penalties for both juveniles and adults for simple possession of child pornography, which will have significant negative consequences. In addition, the bill authorizes judges to issue protective orders in order to protect child victims and witnesses even though such authorization is unnecessary as current law effectively provides these protections and remedies for violations. Finally, the bill empowers the U.S. Marshals Service to issue administrative subpoenas and, as a result, removes crucial oversight by the Attorney General and presents the potential for abuse and misuse of such authority.

For these reasons, and those described below, we respectfully dissent and urge our colleagues to oppose this legislation.

II. DESCRIPTION OF THE BILL AND BACKGROUND

H.R. 6063 amends several provisions of the PROTECT Our Children Act of 2008,[1] which directs the United States Department of Justice to establish several critical initiatives to address juvenile pornography. The bill also amends title 18 of the United States Code. H.R. 6063 is a revised version of H.R. 1981, the "Protecting Children From Internet Pornographers Act of 2011," which was ordered reported by the Judiciary Committee earlier this Congress.[2] H.R. 1981 failed to move to the House floor after significant concerns were raised about that legislation.[3] While H.R. 6063 omits some of the more controversial aspects of H.R. 1981, it still contains several problematic provisions. This explains why organizations such as the American Civil Liberties Union, the Federal Public Defenders Association, the National Association of Criminal Defense Lawyers, and Human Rights Watch oppose this legislation.[4]

The following is a detailed summary of the bill's substantive provisions. Section 2 of the bill doubles the maximum penalty from ten to 20 years for simple possession of any visual depiction or image of child pornography involving a prepubescent minor or a minor under 12 years old. This new increased penalty would also apply to attempts and conspiracies to commit such crimes.

The arguments for increasing penalties for these types of offenses are: (1) the perception that criminal possession of child pornography should be treated more seriously, and (2) some Federal courts have issued lesser sentences for child pornography offenses than what appeared to be warranted. It should be noted, however, that the current maximum penalty, with enhancements applied

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[1] Pub. L. No. 110–401 (2008).
[2] H.R. Rep. No. 112–281, pt. 1 (2011).
[3] *See, e.g.,* Doak Jantzen, *House Panel Approves ISP Snooping Bill H.R. 1981,* N.Y. DAILY NEWS, July 29, 2011.
[4] Email from Jesselyn McCurdy, American Civil Liberties Union, to Nicole Pittman *et al.* (July 9, 2012, 5:50 PM) (on file with Committee on the Judiciary, Democratic staff).

under the Sentencing Guidelines, may already may result in a prison term in excess of 20 years. In addition, there is simply no evidence that an individual possessing child pornography, when the maximum penalty is 10 years, would be deterred should the penalty be increased to 20 years. Similarly, there is no evidence that increased penalties deter recidivism. Thus, this increase serves no productive criminal justice purpose.

Section 3(a) of the bill aims to increase protections for child victims and witnesses by requiring a court to issue protective orders when it finds evidence of harassment or intimidation that may adversely affect the willingness of a minor to testify or assist in the investigation of a case. Nevertheless, Federal law already allows courts to issue protection orders as a means of controlling witness harassment or intimidation,[5] although some believe that these laws do not adequately address more subtle forms of harassment or intimidation directed at children.[6] Section 3(b) directs the United States Sentencing Commission to review and increase, if appropriate, the current Federal Sentencing Guidelines and policy statements for certain specified crimes.

Section 4 grants the United States Marshals Service (USMS) administrative subpoena power in cases involving unregistered sex offenders.[7] This provision is not only problematic, but unnecessary. First, it would effectively allow the USMS to circumvent the normal, judicially-supervised subpoena protocol. The direct impact of section 4 is that it would remove crucial oversight by the Attorney General and thereby present the possibility for abuse and misuse of such authority. Second, section 4 is not needed because the Attorney General already has the authority to issue administrative subpoenas in investigations of Federal offenses involving the sexual exploitation of children. We can see no reason to authorize the Marshals Service to circumvent the existing protocol.

Section 5 increases the funding limitation for training courses for Internet Crimes Against Children (ICAC) Task Forces, which help state and local law enforcement agencies develop effective responses to cyber enticement and child pornography cases. Developed in 1998, the ICAC program, in conjunction with Fox Valley College, the University of Massachusetts, Georgetown University, and the University of New Hampshire, developed online tools, including RoundUp, that identify offenders through their use of peer2peer file sharing networks to download or trade child pornography. RoundUp has access to a digital library of 400,000 images collected by the National Center for Missing and Exploited Children, Immigrations and Customs Enforcement (ICE), the Federal Bureau of Investigation (FBI), and other law enforcement agencies. To date, approximately 1,500 law enforcement officers have been trained to use RoundUp and other systems of online tools.

The PROTECT Our Children Act of 2008 established a national ICAC Task Force Program and authorized funding for technical

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[5] 18 U.S.C. § 1512.

[6] *See* Unofficial Tr. of Markup of H.R. 6063, the "Child Protection Act of 2012," by the H. Comm. on the Judiciary, 112th Cong. 34 (2012) (statement of Rep. Lamar Smith (R–TX)) [hereinafter Markup Transcript], available at http://judiciary.house.gov/hearings/Markups%202012/PDF/Mark%2007102012/7%2010%2012%20HR%203796%20HR%204362%20HR%206063%20HR%206029% 20HR%206062%20HR%201950%20HR%206080%20HR%203803.pdf.

[7] Persons convicted of certain sex-related Federal crimes are required to register with the Federal Gqovernment. *See* Adam Walsh Child Protection and Safety Act of 2006, Title I, Pub. L. No. 109–248, 120 Stat. 587 (codified at 42 U.S.C. 16901 *et seq.).*

training programs for ICAC investigators. Unfortunately, the Act imposed a $2 million annual cap for training expenditures, which has stifled the Program's ability to adequately train ICAC investigators at a time when rapid technological changes in the Internet and communications have increasingly enabled pedophiles to hide from law enforcement. Continual training of ICAC investigators and upgrades in investigative tools are necessary. The removal of the funding cap would allow the Department of Justice to award funding based on the training needs of the ICAC task forces. There are currently 68 coordinated task forces representing more than 2,000 Federal, state and local law enforcement and prosecutorial agencies.

Section 6 amends section 101(d)(1) of the PROTECT Our Children Act of 2008 [8] to strengthen the qualification requirements for the individual who serves as the National Coordinator for Child Exploitation Prevention and Interdiction. It also specifies that this position would be in the Senior Executive Service. Section 7 amends section 107(a) of the Act to authorize funding in the amount of $60 million for each of fiscal years 2014 through 2018. Section 8 makes a clarifying amendment to section 105(e)(1)(B)(I) of the Act.

Section 9 directs the Attorney General, not later than 90 days after the date of enactment of H.R. 6063 to submit to the House and Senate Committees on the Judiciary a report on the status of the Attorney General's establishment of the National Internet Crimes Against Children Data System required under section 105 of the PROTECT Our Children Act of 2008.

III. PRINCIPAL CONCERNS WITH H.R. 6063

A. H.R. 6063 Includes an Unconstitutional Provision That Shifts the Burden of Proof to the Defendant

Section 3(d)(2) of the bill provides for a rebuttable presumption that "the distribution or publication, using the Internet, of a photograph of, or restricted personal information regarding, a specific person serves no legitimate purpose." This provision would shift the burden of proof from the accuser to the accused in a criminal charge of violating a protective order by harassment or intimidation, thereby requiring that the defendant prove that such distribution or publication is for a legitimate purpose. Under current law, the burden is on the accuser to establish this element of the charge of harassment or intimidation. It is not the defendant's burden to do so.[9]

The Due Process Clauses of the Fifth and Fourteenth Amendments "protect the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." [10] This "bedrock 'axiomatic and elementary' [constitutional] principle" [11] bars the prosecution from using evidentiary presumptions in a jury charge that have the ef-

[8] 42 U.S.C. § 17611(d)(1).
[9] Coffin v. United States, 165 U.S. 432 (1895) ("the presumption of innocence is evidence in favor of the accused introduced by law in [their] behalf").
[10] In re Winship, 397 U.S. 358, 364 (1979).
[11] *Id.* at 363.

fect of relieving the government of its burden of persuasion beyond a reasonable doubt of every essential element of a crime.[12]

The seminal cases with regard to the creation of mandatory presumptions are *Sandstrom* v. *Montana,*[13] and *Francis v. Franklin.*[14] In *Francis,* for example, the presumption at issue provided that the "acts of a person of sound mind and discretion are presumed to be the product of the person's will, but the presumption may be rebutted. A person of sound mind and discretion is presumed to intend the natural and probable consequences of his acts but the presumption may be rebutted."[15] The government argued in *Francis* that the constitutional issue was vitiated by the defendant's ability to rebut the presumption. The Supreme Court, however, found this argument unavailing.[16] As Justice Brennan explained, "A mandatory presumption instructs the jury that it must infer the presumed fact if the State proves certain predicate facts."[17] Such a presumption can be conclusive or rebuttable.[18] The key is whether it is mandatory, i.e., whether the jury must make such a presumption (possibly subject to rebuttal) if the state proves certain facts. In light of the fact that section 3(d)(2) of the bill explicitly mandates that the court "shall presume" that there was "no legitimate purpose," this provision appears to be the kind of "mandatory, rebuttable"[19] presumption that the Court repudiated in *Sandstrom* and *Francis.*[20]

An irrebuttable or conclusive presumption relieves the government of its burden of persuasion by removing the presumed element from the case entirely if the government proves the predicate facts.[21] A mandatory rebuttable presumption does not remove the presumed element from the case if the government proves the predicate facts, but it nonetheless relieves the government of the affirmative burden of persuasion on the presumed element by instructing the jury that it must find the presumed element unless the defendant persuades the jury not to make such a finding.[22] A mandatory rebuttable presumption is perhaps less onerous from the defendant's perspective, but it is no less unconstitutional. The cases make clear that "[s]uch shifting of the burden of persuasion with respect to a fact which the State deems so important that it must be either proved or presumed is impermissible under the Due Process Clause."[23]

Representative Robert C. "Bobby" Scott (D–VA) offered an amendment to remove the rebuttable presumption provision from the bill,[24] but it was defeated by a vote of 12 to 13, with one Majority member voting in favor.[25]

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[12] Sandstrom v. Montana, 442 U.S. 510, 520–24 (1979).
[13] 442 U.S. 510 (1979).
[14] 471 U.S. 307 (1985).
[15] *Francis,* 471 U.S. at 315.
[16] *Francis,* 471 U.S. at 315–316.
[17] *Id.* at 314.
[18] *Id.* at 314 n. 2.
[19] *See Sandstrom,* 442 U.S. 520–524; *Francis,* 471 U.S. at 317.
[20] *Id.*
[21] *Id.* at 317.
[22] *Id.*
[23] *Francis,* 471 U.S. at 317 (quoting Patterson v. New York, 432 U.S. 197, 215 (1977)).
[24] *See* Markup Transcript at 37.
[25] *Id.* at 69.

B. H.R. 6063 Unnecessarily Increases Penalties for Simple Possession of Child Pornography

H.R. 6063 substantially increases penalties for simple possession of child pornography based on the misunderstanding that Federal courts are increasingly issuing lower sentences for child pornography offenses. The bill's proponents, for example, claim that the rate of within-Guideline range sentences for child pornography possession dropped from 62.6% to 39.6% from 2006 to 2010. In reality, however, average sentence lengths in these cases substantially increased from 96.7 months in 2006 to 117.8 months in 2009.[26] In 2010, the U.S. Sentencing Commission changed its reporting categories to break out the average sentence length for defendants convicted of "child pornography" offenses, which includes only possession, receipt, and distribution of child pornography. Average sentence length for this new category was 118 months in 2010 and is 141 months in the first quarter of 2012.[27] During that same period, the number of possession cases receiving sentencing departures jumped from 61 (25.6%) to 394 (44%).

The bill's proponents also fail to realize that judges depart downward from current sentencing guideline levels to determine a just and appropriate sentence pursuant to the 1984 Sentencing Reform Act's directive to consider all of the facts and circumstances in a case.

The question is whether such departures reflect rational sentencing in the face of irrational sentencing policies, or a tendency of Federal judges to be lenient on the sexual exploitation of children. The evidence suggests the former. In its haste to simply increase punishments through statutory and mandated sentencing guideline schemes, Congress has created irrationalities that judges are required under law to reconcile. Under the current scheme for punishing child pornography offenses, mere possession of child pornography through a file sharing arrangement of unsolicited and even unintended receipt of child pornography images can, based on the number of such images and the ages of the children depicted, result in as much time as intentional distribution or production of such images. In determining the appropriate sentence, a judge must consider actual culpability and the impact of a defendant's actions. It is with respect to these mere possession cases where there have been downward departures. Even with such departures, however, sentences for child pornography cases have increased an average of over 500% in the past 15 years.[28] Accordingly, we believe such departures reflect rational sentencing in the face of irrational sentencing policies, not a tendency of Federal judges to be lenient on the sexual exploitation of children.

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[26] *See* U.S. Sentencing Commission, 1996–2009 Sourcebook of Federal Sentencing Statistics, table 13.

[27] Before 2010, the Commission reported average sentence length for defendants convicted of "Pornography/Prostitution" offenses, which included not only possession, receipt and distribution of child pornography, but direct exploitation of minors. Average sentence length in these cases skyrocketed from 29.1 months in 1996 to 117.8 months in 2009.

[28] *See* U.S. Sentencing Commission, 1996–2009 Sourcebook of Federal Sentencing Statistics, table 13.

C. Existing Federal Laws Provide Adequate Protection for All Witnesses, Including Children

For several reasons, we question the necessity of the provision that seeks to protect child victims and witnesses, not only in child exploitation cases but in any criminal investigation or prosecution, by making it a crime to violate a civil protective order. First, Federal laws already provide judges with the power to protect witnesses, including child witnesses, with harsh penalties to address witness harassment or intimidation.[29] Moreover, judges have contempt powers to enforce their orders. In fact, one provision in this bill authorizes judges to issue protective orders *sua sponte,* while another provision (establishing the new criminal offense for violating such an order) is left up to the prosecutor. Thus, even if a judge does not find that a violation of the court order has occurred, the prosecutor can charge and prosecute an alleged violation. At best, such a provision is redundant, and is certainly unnecessary for the court or the prosecutor to protect victims or witnesses from harassment or intimidation.

Second, this provision is yet another example of the general problem of over-criminalization and over-federalization of crime. In recent years, there has been bipartisan concern regarding the over-criminalization of activities and over-federalization of crime.[30] There are now more than 4,000 Federal criminal offenses together with an estimated 300,000 Federal regulations that impose criminal penalties, often without clearly setting out what will subject a person to criminal liability.[31] Accordingly, we should avoid adding more crimes and penalties to the Federal law that are unjustifiably punitive, ambiguous, or superfluous.

Third, our resources would be better spent ensuring that children do not become victims and that victims will receive justice. A recent Government Accountability Office (GAO) study identified the difficulties that law enforcement agencies encounter in developing the evidence as they investigate sexual exploitation cases.[32] For example, computer forensics is a painstaking and tedious undertaking, particularly given the vast number of computers and data systems. As a result, a great backlog due to manpower shortages has evolved. Moreover, research indicates that there is a direct correlation between reducing crime and prosecuting more cases, but not with increasing punishments in the few cases that are prosecuted.[33]

This bill was introduced on June 29, 2012, and pushed through Committee markup just 12 days later on July 10, 2012. The better

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[29] 18 U.S.C. §§ 1512, 1513 and 1514.

[30] *See Over-Criminalization of Conduct/Over-Federalization of Criminal Law: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary,* 111th Cong. (2009) (statements of Crime Subcomm. Chairman Robert C. "Bobby" Scott, Crime Subcomm. Ranking Member Louie Gohmert (R–TX), Representative Sheila Jackson Lee (D–TX) and Representative Ted Poe (R–TX)); *see also Reining in Overcriminalization: Assessing the Problem, Proposing Solutions: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary,* 111th Cong. (2010) (statements of Crime Subcomm. Chairman Robert C. Bobby Scott, Crime Subcomm. Ranking Member Louie Gohmert, Committee Chair John Conyers, Jr. (D–MI), and Representative Ted Poe).

[31] *Id.*

[32] U.S. Government Accountability Office, Combating Child Pornography: Steps Are Needed To Ensure That Tips To Law Enforcement Are Useful and Forensic Examinations Are Cost Effective, GAO–11–334 (2011).

[33] *See, e.g.,* Ryan S. King *et al.,* Incarceration and Crime: A Complex Relationship, The Sentencing Project (2005); Alfred Blumstein & James Q. Wilson, Expert Q & A, The Pew Center on the States (Apr. 2008).

approach would have been to hold a hearing and obtain evidence of existing funding levels and other gaps in our efforts to protect children. It is yet another attempt to address a serious problem by enhancing criminal penalties on both juveniles and adults without any evidence justifying their need and effectiveness.

Representative Scott offered an amendment to strike the language establishing a new criminal offense for violations or attempts to violate a civil protective order.[34] In offering this amendment, Representative Scott cited provisions of current law that effectively provide these protections as well as remedies for violations. He also voiced concerns that the authority to enforce these protection orders adds nothing to the court's power to protect victims or witnesses, as the discretion to apply the statute is given to prosecutors. Finally, Representative Scott raised concerns about the possibility of a violation being triggered by a minor or harmless and unintentional act, such as a phone call or a posting of a family photo album that includes a victim's or witness' picture, which, while a violation of the court order, does not involve an attempt to intimidate or harass a witness. Unfortunately, this amendment failed on a voice vote.

D. Authorizing the Use of Administrative Subpoenas by the U.S. Marshals Service Is Unwarranted

We oppose section 4(a) of the bill, which would authorize the USMS to issue administrative subpoenas in cases involving unregistered sex offenders. This unprecedented expansion of administrative subpoena power circumvents the normal, judicially-supervised subpoena process and grants the USMS unfettered authority to investigate cases in which child pornography is not an issue.

Under current law, the Attorney General already has the authority to issue administrative subpoenas in investigations of "a Federal offense involving the sexual exploitation or abuse of children."[35] Section 4(a), however, would allow the USMS to issue administrative subpoenas, not to investigate actual offenses against children, but to investigate nonregistration of former offenders "even if [the nonregistered offender] is not suspected of any new sex crime,"[36] and even though research shows that there is no difference in recidivism rates between former offenders who comply with registration requirements and former offenders who do not.[37]

Further, this provision would allow the USMS itself to issue subpoenas without oversight from either the Attorney General or the courts. This broad delegation of unsupervised power to lower-level executive officials is without precedent. As a result of this provision, the USMS would have more authority than the Secret Service has when confronted with an imminent threat against a President. There is simply no exigency warranting giving such extraordinary power to the USMS. As former Assistant Attorney General Robert

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[34] *See* Markup Transcript at 32.

[35] 18 U.S.C. § 3486(a)(1)(A)(i)(II).

[36] Letter from Laura W. Murphy, Dir., American Civil Liberties Union, Washington Legislative Office to Chairman Lamar Smith and Ranking Member John Conyers, Jr., H. Comm. on the Judiciary (July 20, 2011) (conveying the ACLU's opposition to H.R. 1981).

[37] *Reauthorization of the Adam Walsh Act: Hearing Before the H. Comm. on the Judiciary,* 112th Cong. 63 (2011) (statement of Dawn Dorna, Deputy Dir., Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking Office, U.S. Dep't of Justice).

Raben explained about the authority given the Attorney General to issue administrative subpoenas in health care fraud cases:

> The administrative subpoena power . . . reflects a delicate balancing of law enforcement, oversight, and privacy needs and issues, all within the limited context of health care fraud investigations. This [provision] . . . was part of a special health care fraud and abuse initiative. . . . [It] was not anticipated to serve as a vehicle by which to expand administrative subpoena authority to other Cabinet officers for special types of investigations unrelated to health care fraud.[38]

Even if it could be demonstrated that the USMS needs this extraordinary power, the appropriate way to grant this authority would be to have the cabinet-level Attorney General—not the lower-level director of the USMS—issue these administrative subpoenas, as is done with the Secret Service. Although Representative Scott offered an amendment to effectuate this safeguard, the Committee defeated it. Representative Scott also offered an amendment to strike the administrative subpoena provisions from the legislation. That amendment was also defeated.

IV. CONCLUSION

While we appreciate the legislative intent of H.R. 6063, which is to provide greater protections to children who are victims of sexual abuse, the bill not only fails to obtain that objective, but presents serious constitutional concerns and includes problematic provisions. In its haste to rush this legislation through the deliberative process, the Majority has ended up with a bill that is unconstitutional, unnecessary, and duplicative of existing Federal law. As reported, the bill includes an unconstitutional rebuttable presumption. H.R. 6063 is also unnecessary as a comprehensive statutory scheme already exists to assist judges and law enforcement officials in protecting witnesses in Federal criminal proceedings. In addition, existing Federal criminal laws carry heavy penalties and provide all of the necessary authority judges need to enter and enforce protective orders for the protection of all witnesses, including children. Finally, current law, for good reason, limits administrative subpoena authority to both the Attorney General and the Secretary of the Treasury. We do not see the need to extend that authority to the U.S. Marshals Service in cases of child exploitation, and we prefer to adhere to the current policy of ensuring adequate oversight by having the Director of the Marshals Service certify the need to the Attorney General. The subpoena authorized in this bill provides none of the oversight protections against abuse or misuse.

[38] Letter from Robert Raben, Ass't Att'y Gen., to Rep Henry Hyde (R–IL), Chairman, H. Comm on the Judiciary (June 9, 2000), *quoted in* H.R. Rep. 106–669, at 14–15 (2000).

For these reasons, we respectfully dissent and urge our colleagues to oppose this bill.

JOHN CONYERS, JR.
ROBERT C. "BOBBY" SCOTT.
MELVIN L. WATT.

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