

KILAH DAVENPORT CHILD PROTECTION ACT OF 2013

DECEMBER 9, 2013.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3627]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3627) to require the Attorney General to report on State law penalties for certain child abusers, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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Purpose and Summary

H.R. 3627, the “Kilah Davenport Child Protection Act of 2013,” directs the Justice Department to issue reports regarding the penalties for violations of laws prohibiting child abuse in the 50 states, the District of Columbia, and the U.S. territories, including whether they provide enhanced penalties when the victim has suffered serious bodily injury, or permanent or protracted loss or impairment of any mental or emotional function. The bill also makes a technical change to 18 U.S.C. §117 to allow prior convictions for the abuse of a child to trigger the Federal offense of domestic assault by an habitual offender in areas of the country where the Federal Government has increased responsibility—*i.e.*, in Indian country, and the special maritime and territorial jurisdiction.

Background and Need for the Legislation

The Kilah Davenport Child Protection Act of 2013 is named after a young girl from North Carolina who was brutally beaten by her stepfather in May 2012. Kilah, who was three at the time of the attack, suffered a coma, a broken collarbone, a fractured skull, brain damage, and paralysis. Kilah’s stepfather was charged with felony child abuse and faces 44 to 92 months in prison. He is currently being held on a \$1 million bond.

Kilah’s story, however, is not unique. Each year, an approximate 3.5 million cases of child abuse are reported, involving six million children.¹ Children under the age of one are most likely to be victimized, and the vast majority of this abuse—an estimated 80 percent—is committed by parents.² Studies have found that child abuse cases are less likely to have charges filed than most other felonies, and have lower incarceration rates than other crimes.³

The picture is even worse in Indian country, where Indian children experience child abuse at significantly higher rates than the rest of the population. One study estimates that 14 Indian children per 1,000 are victims of abuse, as compared to 9 per 1,000 non-Indian children.⁴

Because the majority of child abuse cases are handled at the state level, this bill will help to highlight how these cases are handled across the country by requiring the Justice Department to issue a report on the criminal penalties for child abuse in the 50 states, the District of Columbia, and the U.S. territories. In addition, because there are some parts of the country where the Federal Government has an increased role to play in enforcing justice—such as Indian country and the special maritime and territorial jurisdiction—the Kilah Davenport Protection Act helps to strengthen the Federal response to child abuse, and all forms of domestic abuse, by allowing prior convictions for the abuse of a child to trigger the Federal offense of domestic assault by an habitual offender.

¹ *Child Abuse: Statistics and Facts*, SAFE HORIZON, <http://www.safehorizon.org/index/what-we-do-2/child-abuse—incest-55/child-abuse-statistics—facts-304.html>.

² *Id.*

³ Theodore P. Cross, Wendy A. Walsh, Monique Simone & Lisa M. Jones, *Prosecution of Child Abuse: A Meta-Analysis of Rates of Criminal Justice Decisions*, 4 TRAUMA, VIOLENCE & ABUSE 323, 336 (discussing charges for child abuse versus other crimes).

⁴ *Child Maltreatment in Indian Country*, NATIVE AMERICAN CHILDREN’S ALLIANCE, http://www.nativechildalliance.org/Fact_Sheet.pdf.

Hearings

The Committee on the Judiciary held no hearings on H.R. 3627.

Committee Consideration

On December 4, 2013, the Committee met in open session and ordered the bill H.R. 3627 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 there were no recorded votes during the Committee's consideration of H.R. 3627.

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. 3627, 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, December 9, 2013.

Hon. BOB GOODLATTE, 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. 3627, the "Kilah Dav-enport Child Protection Act of 2013."

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

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 3627—Kilah Davenport Child Protection Act of 2013.

As ordered reported by the House Committee on the Judiciary
on December 4, 2013.

CBO estimates that implementing H.R. 3627 would have no significant cost to the Federal Government. Enacting the bill could affect direct spending and revenues; therefore, pay-as-you-go procedures apply. However, CBO estimates that any effects would be insignificant.

H.R. 3627 would broaden the coverage of current laws that address domestic assaults by certain repeat offenders. As a result, the government might be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that the bill would apply to a relatively small number of offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 3627 could be subject to criminal fines, the Federal Government might collect additional fines if the legislation 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.

H.R. 3627 also would require the Department of Justice (DoJ) to prepare a report, within 180 days of the bill's enactment and again 3 years after enactment, on the penalties for child abuse in States, the District of Columbia, and U.S. territories. Based on the costs of similar activities currently carried out by DoJ, CBO estimates that implementing H.R. 3627 would not have a significant effect on spending by the department.

H.R. 3627 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of State, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

Duplication of Federal Programs

No provision of H.R. 3627 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that H.R. 3627 specifically directs to be completed no specific rule makings within the meaning of 5 U.S.C. 551.

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. 3627 directs the Department of Justice to issue reports on the penalties for violations of laws prohibiting child abuse in the 50 states, the District of Columbia, and the U.S. territories, and amends 18 U.S.C. § 117 to allow prior convictions for assault, acts of sexual abuse, or serious violent felonies against a child of the person or in the person's care to be used as prior convictions that trigger this offense.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3627 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 "Kilah Davenport Child Protection Act of 2013."

Section 2. Attorney General Report. This section requires the Department of Justice to issue a report within 180 day of enactment, and again 3 years thereafter, regarding the penalties for violations of laws prohibiting child abuse in the 50 states, the District of Columbia, and the U.S. territories, including whether they provide enhanced penalties when the victim has suffered serious bodily injury, or permanent or protracted loss or impairment of any mental or emotional function.

Section 3. Expansion of Predicate for Increased Penalties for Certain Domestic Assaults. This section amends 18 U.S.C. § 117 (domestic assault by an habitual offender in the special maritime and territorial jurisdiction and in Indian country) to allow prior convictions for assault, acts of sexual abuse, or serious violent felonies against a child of the person or in the person's care to be used as prior convictions that trigger this offense.

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 (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

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PART I—CRIMES

* * * * *

CHAPTER 7—ASSAULT

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§ 117. Domestic assault by an habitual offender

(a) IN GENERAL.—Any person who commits a domestic assault within the special maritime and territorial jurisdiction of the United States or Indian country and who has a final conviction on at least 2 separate prior occasions in Federal, State, or Indian tribal court proceedings for offenses that would be, if subject to Federal jurisdiction—

(1) any assault, sexual abuse, or serious violent felony against a spouse or intimate partner, or against a child of or in the care of the person committing the domestic assault; or

* * * * *

Dissenting Views

INTRODUCTION

H.R. 3627 would allow prior convictions for assault, acts of sexual abuse, or serious violent felonies against a child of the person or in the person’s care to be used to trigger sentences of up to 5 years or, if substantial bodily injury results, up to 10 years for habitual domestic abuse. The legislation also requires the Department of Justice to periodically report on the penalties for violations of laws prohibiting child abuse in the 50 states, the District of Columbia, and the U.S. territories. This bill would only apply the increased penalties to people within the special maritime and territorial jurisdiction of the United States or in Indian country and would therefore have a negligible impact on child abuse. For this reason, and those stated below, I respectfully dissent.

DESCRIPTION AND BACKGROUND

Child abuse is a serious and widespread problem. In 2011, approximately 681,000 children were victims of maltreatment, and approximately 3.3 million children received preventative services from Child Protective Services agencies in the United States.¹ Furthermore, four to seven children die every day in America from abuse and neglect,² and more than 78% of reported child fatalities

¹Children’s Bureau, U.S. Department of Health and Human Services, Child Maltreatment 2011 (2012), available at <http://www.acf.hhs.gov/sites/default/files/cb/cm11.pdf>.

²*Id.*; U.S. Government Accountability Office, Child maltreatment: strengthening national data on child fatalities could aid in prevention (GAO–11–599) (2011), available at <http://www.gao.gov/new.items/d11599.pdf>

as a result of abuse and neglect were caused by one or more of the child victim's parents.³

In addition to harming children directly, child abuse contributes to future crime. Children who experience child abuse and neglect are about 9 times more likely to become involved in criminal activity.⁴

H.R. 3627, the "Kilah Davenport Child Protection Act of 2013," was introduced by Rep. Robert Pittenger (R-NC) on December 2, 2013. No hearings have been held on the bill. As discussed above, the bill would allow prior convictions for assault, acts of sexual abuse, or serious violent felonies against a child of the offender or in the offender's care to be used to trigger penalties for habitual domestic abuse. It also includes a noncontroversial reporting requirement. The provision that increases penalties for habitual offenders is of concern for three reasons. First, the bill will apply to so few cases of child abuse that it will have a negligible effect; this bill only applies to offenses committed on Federal land and by people with two prior convictions. Second, the Judiciary Committee should have held a hearing on this bill to receive testimony about whether judges are being too lenient on three-time child abuse offenders on Federal land. Without a hearing, the Committee has not established the requisite evidence to demonstrate that this bill is the most appropriate means of addressing the problem. Finally, Congress should focus its efforts on the prevention of child abuse through evidence-based prevention and intervention programs, not through the expansion of the Federal criminal law.

CONCERNS WITH H.R. 3627

I. THE BILL WILL HAVE A NEGLIGIBLE EFFECT ON CHILD ABUSE

The approach of H.R. 3627 is to allow sentences of up to 10 years for those convicted for the third time for domestic abuse which, with this bill, will include child abuse. However, the bill only applies to those offenses committed in national parks, military bases, Indian country, and on other Federal land. That means that of all of the cases of child abuse committed nationally, this bill unfortunately reaches only a negligible portion of the cases—those committed on Federal land by people with two prior offenses.

Moreover, by increasing the penalties for third offenses, this bill implies that Federal judges are not appropriately sentencing defendants convicted for a third time of these heinous offenses.

II. THE JUDICIARY COMMITTEE SHOULD HAVE HELD A HEARING ON THIS ISSUE BEFORE PASSING THIS LEGISLATION

As described above, child abuse is a serious problem, and in order to determine the appropriateness of expanding Federal criminal laws in this area, the Judiciary Committee should have had a hearing on this issue. We have received no evidence suggesting that Federal judges impose such lenient sentences on these third-time offenders that the offenders keep getting released from prison

³Children's Bureau, U.S. Department of Health and Human Services, Child Maltreatment 2011 (2012), available at <http://www.acf.hhs.gov/sites/default/files/cb/cm11.pdf>.

⁴U.S. Department of Health and Human Services, Long-Term Consequences of Child Abuse and Neglect (2013), available at http://www.childwelfare.gov/pubs/factsheets/long_term_consequences.cfm.

and abusing again. Further, we have received no evidence that this bill would have even applied to the Kilah Davenport case, which does not appear to have occurred on Federal land or have been committed by a third-time offender.

III. CONGRESS SHOULD FOCUS ON PREVENTION OF CHILD ABUSE

If our goal is to actually reduce the ravages of child abuse, we should not limit our efforts to the negligible number of prosecutable cases involving third offenses, and on Federal lands. Most child abuse is not reported at all, and many cases that are reported are difficult to prosecute because family members may be unwilling to testify against one another. Instead, Congress needs to focus Federal efforts on supporting programs that will prevent these crimes from happening in the first place.

Congress should enact the type of meaningful legislation proven to actually reduce child abuse—and save money in the process—like nurse family partnerships. Nurse family partnerships are an evidence-based community health program that provide home visits from registered nurses to low-income, first-time moms from pregnancy until the child turns 2 years old.⁵ In medical and scientific journals, nurse family partnerships are most often cited as the most effective intervention to prevent child abuse and neglect.⁶

IV. AMENDMENT OFFERED

I offered an amendment to remove the criminal penalties from H.R. 3627, which would have alleviated the concerns discussed above. If the amendment had been accepted, the bill would have required only the report from the Attorney General on the penalties for violations of laws prohibiting child abuse in the 50 states, the District of Columbia, and the U.S. territories. The amendment failed by voice vote.

CONCLUSION

Although child abuse is a serious problem, we have not established the requisite evidence to demonstrate that this bill is the most appropriate means of addressing the problem.

For the foregoing reasons, I respectfully dissent.

ROBERT C. “BOBBY” SCOTT.



⁵Nurse Family Partnership, Overview Fact Sheet, available at http://www.nursefamilypartnership.org/assets/PDF/Fact-sheets/NFP_Overview.aspx.

⁶Nurse Family Partnership, Research Trials and Outcomes Fact Sheet, available at http://www.nursefamilypartnership.org/assets/PDF/Fact-sheets/NFP_Research_Outcomes.aspx.