

Public Law 110-401
110th Congress

An Act

To require the Department of Justice to develop and implement a National Strategy Child Exploitation Prevention and Interdiction, to improve the Internet Crimes Against Children Task Force, to increase resources for regional computer forensic labs, and to make other improvements to increase the ability of law enforcement agencies to investigate and prosecute child predators.

Oct. 13, 2008
[S. 1738]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Providing Resources, Officers, and Technology To Eradicate Cyber Threats to Our Children Act of 2008” or the “PROTECT Our Children Act of 2008”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Providing Resources, Officers, and Technology To Eradicate Cyber Threats to Our Children Act of 2008.
42 USC 17601 note.

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.

TITLE I—NATIONAL STRATEGY FOR CHILD EXPLOITATION PREVENTION AND INTERDICTION

- Sec. 101. Establishment of National Strategy for Child Exploitation Prevention and Interdiction.
- Sec. 102. Establishment of National ICAC Task Force Program.
- Sec. 103. Purpose of ICAC task forces.
- Sec. 104. Duties and functions of task forces.
- Sec. 105. National Internet Crimes Against Children Data System.
- Sec. 106. ICAC grant program.
- Sec. 107. Authorization of appropriations.

TITLE II—ADDITIONAL MEASURES TO COMBAT CHILD EXPLOITATION

- Sec. 201. Additional regional computer forensic labs.

TITLE III—EFFECTIVE CHILD PORNOGRAPHY PROSECUTION

- Sec. 301. Prohibit the broadcast of live images of child abuse.
- Sec. 302. Amendment to section 2256 of title 18, United States Code.
- Sec. 303. Amendment to section 2260 of title 18, United States Code.
- Sec. 304. Prohibiting the adaptation or modification of an image of an identifiable minor to produce child pornography.

TITLE IV—NATIONAL INSTITUTE OF JUSTICE STUDY OF RISK FACTORS

- Sec. 401. NIJ study of risk factors for assessing dangerousness.

TITLE V—SECURING ADOLESCENTS FROM ONLINE EXPLOITATION

- Sec. 501. Reporting requirements of electronic communication service providers and remote computing service providers.
- Sec. 502. Reports.
- Sec. 503. Severability.

SEC. 2. DEFINITIONS.

42 USC 17601.

In this Act, the following definitions shall apply:

(1) **CHILD EXPLOITATION.**—The term “child exploitation” means any conduct, attempted conduct, or conspiracy to engage in conduct involving a minor that violates section 1591, chapter 109A, chapter 110, and chapter 117 of title 18, United States Code, or any sexual activity involving a minor for which any person can be charged with a criminal offense.

(2) **CHILD OBSCENITY.**—The term “child obscenity” means any visual depiction proscribed by section 1466A of title 18, United States Code.

(3) **MINOR.**—The term “minor” means any person under the age of 18 years.

(4) **SEXUALLY EXPLICIT CONDUCT.**—The term “sexually explicit conduct” has the meaning given such term in section 2256 of title 18, United States Code.

TITLE I—NATIONAL STRATEGY FOR CHILD EXPLOITATION PREVENTION AND INTERDICTION

42 USC 17611.

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

(a) **IN GENERAL.**—The Attorney General of the United States shall create and implement a National Strategy for Child Exploitation Prevention and Interdiction.

Deadlines.

(b) **TIMING.**—Not later than 1 year after the date of enactment of this Act and on February 1 of every second year thereafter, the Attorney General shall submit to Congress the National Strategy established under subsection (a).

(c) **REQUIRED CONTENTS OF NATIONAL STRATEGY.**—The National Strategy established under subsection (a) shall include the following:

(1) Comprehensive long-range, goals for reducing child exploitation.

(2) Annual measurable objectives and specific targets to accomplish long-term, quantifiable goals that the Attorney General determines may be achieved during each year beginning on the date when the National Strategy is submitted.

(3) Annual budget priorities and Federal efforts dedicated to combating child exploitation, including resources dedicated to Internet Crimes Against Children task forces, Project Safe Childhood, FBI Innocent Images Initiative, the National Center for Missing and Exploited Children, regional forensic computer labs, Internet Safety programs, and all other entities whose goal or mission is to combat the exploitation of children that receive Federal support.

(4) A 5-year projection for program and budget goals and priorities.

(5) A review of the policies and work of the Department of Justice related to the prevention and investigation of child exploitation crimes, including efforts at the Office of Justice Programs, the Criminal Division of the Department of Justice, the Executive Office of United States Attorneys, the Federal Bureau of Investigation, the Office of the Attorney General, the Office of the Deputy Attorney General, the Office of Legal

Policy, and any other agency or bureau of the Department of Justice whose activities relate to child exploitation.

(6) A description of the Department's efforts to coordinate with international, State, local, tribal law enforcement, and private sector entities on child exploitation prevention and interdiction efforts.

(7) Plans for interagency coordination regarding the prevention, investigation, and apprehension of individuals exploiting children, including cooperation and collaboration with—

- (A) Immigration and Customs Enforcement;
- (B) the United States Postal Inspection Service;
- (C) the Department of State;
- (D) the Department of Commerce;
- (E) the Department of Education;
- (F) the Department of Health and Human Services;

and

(G) other appropriate Federal agencies.

(8) A review of the Internet Crimes Against Children Task Force Program, including—

(A) the number of ICAC task forces and location of each ICAC task force;

(B) the number of trained personnel at each ICAC task force;

(C) the amount of Federal grants awarded to each ICAC task force;

(D) an assessment of the Federal, State, and local cooperation in each task force, including—

(i) the number of arrests made by each task force;

(ii) the number of criminal referrals to United States attorneys for prosecution;

(iii) the number of prosecutions and convictions from the referrals made under clause (ii);

(iv) the number, if available, of local prosecutions and convictions based on ICAC task force investigations; and

(v) any other information demonstrating the level of Federal, State, and local coordination and cooperation, as such information is to be determined by the Attorney General;

(E) an assessment of the training opportunities and technical assistance available to support ICAC task force grantees; and

(F) an assessment of the success of the Internet Crimes Against Children Task Force Program at leveraging State and local resources and matching funds.

(9) An assessment of the technical assistance and support available for Federal, State, local, and tribal law enforcement agencies, in the prevention, investigation, and prosecution of child exploitation crimes.

(10) A review of the backlog of forensic analysis for child exploitation cases at each FBI Regional Forensic lab and an estimate of the backlog at State and local labs.

(11) Plans for reducing the forensic backlog described in paragraph (10), if any, at Federal, State and local forensic labs.

(12) A review of the Federal programs related to child exploitation prevention and education, including those related

to Internet safety, including efforts by the private sector and nonprofit entities, or any other initiatives, that have proven successful in promoting child safety and Internet safety.

(13) An assessment of the future trends, challenges, and opportunities, including new technologies, that will impact Federal, State, local, and tribal efforts to combat child exploitation.

(14) Plans for liaisons with the judicial branches of the Federal and State governments on matters relating to child exploitation.

(15) An assessment of Federal investigative and prosecution activity relating to reported incidents of child exploitation crimes, which shall include a number of factors, including—

(A) the number of high-priority suspects (identified because of the volume of suspected criminal activity or because of the danger to the community or a potential victim) who were investigated and prosecuted;

(B) the number of investigations, arrests, prosecutions and convictions for a crime of child exploitation; and

(C) the average sentence imposed and statutory maximum for each crime of child exploitation.

(16) A review of all available statistical data indicating the overall magnitude of child pornography trafficking in the United States and internationally, including—

(A) the number of computers or computer users, foreign and domestic, observed engaging in, or suspected by law enforcement agencies and other sources of engaging in, peer-to-peer file sharing of child pornography;

(B) the number of computers or computer users, foreign and domestic, observed engaging in, or suspected by law enforcement agencies and other reporting sources of engaging in, buying and selling, or other commercial activity related to child pornography;

(C) the number of computers or computer users, foreign and domestic, observed engaging in, or suspected by law enforcement agencies and other sources of engaging in, all other forms of activity related to child pornography;

(D) the number of tips or other statistical data from the National Center for Missing and Exploited Children's CyberTipline and other data indicating the magnitude of child pornography trafficking; and

(E) any other statistical data indicating the type, nature, and extent of child exploitation crime in the United States and abroad.

(17) Copies of recent relevant research and studies related to child exploitation, including—

(A) studies related to the link between possession or trafficking of child pornography and actual abuse of a child;

(B) studies related to establishing a link between the types of files being viewed or shared and the type of illegal activity; and

(C) any other research, studies, and available information related to child exploitation.

(18) A review of the extent of cooperation, coordination, and mutual support between private sector and other entities

and organizations and Federal agencies, including the involvement of States, local and tribal government agencies to the extent Federal programs are involved.

(19) The results of the Project Safe Childhood Conference or other conferences or meetings convened by the Department of Justice related to combating child exploitation.

(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 for coordinating the development of the National Strategy established under subsection (a).

(2) DUTIES.—The duties of the official designated under paragraph (1) shall include—

(A) acting as a liaison with all Federal agencies regarding the development of the National Strategy;

(B) working to ensure that there is proper coordination among agencies in developing the National Strategy;

(C) being knowledgeable about budget priorities and familiar with all efforts within the Department of Justice and the FBI related to child exploitation prevention and interdiction; and

(D) communicating the National Strategy to Congress and being available to answer questions related to the strategy at congressional hearings, if requested by committees of appropriate jurisdictions, on the contents of the National Strategy and progress of the Department of Justice in implementing the National Strategy.

SEC. 102. ESTABLISHMENT OF NATIONAL ICAC TASK FORCE PROGRAM. 42 USC 17612.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Department of Justice, under the general authority of the Attorney General, a National Internet Crimes Against Children Task Force Program (hereinafter in this title referred to as the “ICAC Task Force Program”), which shall consist of a national program of State and local law enforcement task forces dedicated to developing effective responses to online enticement of children by sexual predators, child exploitation, and child obscenity and pornography cases.

(2) INTENT OF CONGRESS.—It is the purpose and intent of Congress that the ICAC Task Force Program established under paragraph (1) is intended to continue the ICAC Task Force Program authorized under title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, and funded under title IV of the Juvenile Justice and Delinquency Prevention Act of 1974.

(b) NATIONAL PROGRAM.—

(1) STATE REPRESENTATION.—The ICAC Task Force Program established under subsection (a) shall include at least 1 ICAC task force in each State.

(2) CAPACITY AND CONTINUITY OF INVESTIGATIONS.—In order to maintain established capacity and continuity of investigations and prosecutions of child exploitation cases, the Attorney General, shall, in establishing the ICAC Task Force Program under subsection (a) consult with and consider all 59 task forces in existence on the date of enactment of this

Consultation.

Act. The Attorney General shall include all existing ICAC task forces in the ICAC Task Force Program, unless the Attorney General makes a determination that an existing ICAC does not have a proven track record of success.

(3) ONGOING REVIEW.—The Attorney General shall—

(A) conduct periodic reviews of the effectiveness of each ICAC task force established under this section; and

Notification.

(B) have the discretion to establish a new task force if the Attorney General determines that such decision will enhance the effectiveness of combating child exploitation provided that the Attorney General notifies Congress in advance of any such decision and that each state maintains at least 1 ICAC task force at all times.

(4) TRAINING.—

(A) IN GENERAL.—The Attorney General may establish national training programs to support the mission of the ICAC task forces, including the effective use of the National Internet Crimes Against Children Data System.

(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 annually to establish and conduct training courses for ICAC task force members and other law enforcement officials.

(C) REVIEW.—The Attorney General shall—

(i) conduct periodic reviews of the effectiveness of each training session authorized by this paragraph; and

(ii) consider outside reports related to the effective use of Federal funding in making future grant awards for training.

42 USC 17613.

SEC. 103. PURPOSE OF ICAC TASK FORCES.

The ICAC Task Force Program, and each State or local ICAC task force that is part of the national program of task forces, shall be dedicated toward—

(1) increasing the investigative capabilities of State and local law enforcement officers in the detection, investigation, and apprehension of Internet crimes against children offenses or offenders, including technology-facilitated child exploitation offenses;

(2) conducting proactive and reactive Internet crimes against children investigations;

(3) providing training and technical assistance to ICAC task forces and other Federal, State, and local law enforcement agencies in the areas of investigations, forensics, prosecution, community outreach, and capacity-building, using recognized experts to assist in the development and delivery of training programs;

(4) increasing the number of Internet crimes against children offenses being investigated and prosecuted in both Federal and State courts;

(5) creating a multiagency task force response to Internet crimes against children offenses within each State;

(6) participating in the Department of Justice's Project Safe Childhood initiative, the purpose of which is to combat

technology-facilitated sexual exploitation crimes against children;

(7) enhancing nationwide responses to Internet crimes against children offenses, including assisting other ICAC task forces, as well as other Federal, State, and local agencies with Internet crimes against children investigations and prosecutions;

(8) developing and delivering Internet crimes against children public awareness and prevention programs; and

(9) participating in such other activities, both proactive and reactive, that will enhance investigations and prosecutions of Internet crimes against children.

SEC. 104. DUTIES AND FUNCTIONS OF TASK FORCES.

42 USC 17614.

Each State or local ICAC task force that is part of the national program of task forces shall—

(1) consist of State and local investigators, prosecutors, forensic specialists, and education specialists who are dedicated to addressing the goals of such task force;

(2) work consistently toward achieving the purposes described in section 103;

(3) engage in proactive investigations, forensic examinations, and effective prosecutions of Internet crimes against children;

(4) provide forensic, preventive, and investigative assistance to parents, educators, prosecutors, law enforcement, and others concerned with Internet crimes against children;

(5) develop multijurisdictional, multiagency responses and partnerships to Internet crimes against children offenses through ongoing informational, administrative, and technological support to other State and local law enforcement agencies, as a means for such agencies to acquire the necessary knowledge, personnel, and specialized equipment to investigate and prosecute such offenses;

(6) participate in nationally coordinated investigations in any case in which the Attorney General determines such participation to be necessary, as permitted by the available resources of such task force;

(7) establish or adopt investigative and prosecution standards, consistent with established norms, to which such task force shall comply;

Standards.

(8) investigate, and seek prosecution on, tips related to Internet crimes against children, including tips from Operation Fairplay, the National Internet Crimes Against Children Data System established in section 105, the National Center for Missing and Exploited Children’s CyberTipline, ICAC task forces, and other Federal, State, and local agencies, with priority being given to investigative leads that indicate the possibility of identifying or rescuing child victims, including investigative leads that indicate a likelihood of seriousness of offense or dangerousness to the community;

(9) develop procedures for handling seized evidence;

Procedures.

(10) maintain—

Reports.

(A) such reports and records as are required under this title; and

Records.

(B) such other reports and records as determined by the Attorney General; and

(11) seek to comply with national standards regarding the investigation and prosecution of Internet crimes against children, as set forth by the Attorney General, to the extent such standards are consistent with the law of the State where the task force is located.

42 USC 17615.

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

(a) **IN GENERAL.**—The Attorney General shall establish, consistent with all existing Federal laws relating to the protection of privacy, a National Internet Crimes Against Children Data System. The system shall not be used to search for or obtain any information that does not involve the use of the Internet to facilitate child exploitation.

(b) **INTENT OF CONGRESS.**—It is the purpose and intent of Congress that the National Internet Crimes Against Children Data System established in subsection (a) is intended to continue and build upon Operation Fairplay developed by the Wyoming Attorney General's office, which has established a secure, dynamic undercover infrastructure that has facilitated online law enforcement investigations of child exploitation, information sharing, and the capacity to collect and aggregate data on the extent of the problems of child exploitation.

(c) **PURPOSE OF SYSTEM.**—The National Internet Crimes Against Children Data System established under subsection (a) shall be dedicated to assisting and supporting credentialed law enforcement agencies authorized to investigate child exploitation in accordance with Federal, State, local, and tribal laws, including by providing assistance and support to—

(1) Federal agencies investigating and prosecuting child exploitation;

(2) the ICAC Task Force Program established under section 102;

(3) State, local, and tribal agencies investigating and prosecuting child exploitation; and

(4) foreign or international law enforcement agencies, subject to approval by the Attorney General.

(d) **CYBER SAFE DECONFLICTION AND INFORMATION SHARING.**—The National Internet Crimes Against Children Data System established under subsection (a)—

(1) shall be housed and maintained within the Department of Justice or a credentialed law enforcement agency;

(2) shall be made available for a nominal charge to support credentialed law enforcement agencies in accordance with subsection (c); and

(3) shall—

(A) allow Federal, State, local, and tribal agencies and ICAC task forces investigating and prosecuting child exploitation to contribute and access data for use in resolving case conflicts;

(B) provide, directly or in partnership with a credentialed law enforcement agency, a dynamic undercover infrastructure to facilitate online law enforcement investigations of child exploitation;

(C) facilitate the development of essential software and network capability for law enforcement participants; and

(D) provide software or direct hosting and support for online investigations of child exploitation activities, or, in the alternative, provide users with a secure connection to an alternative system that provides such capabilities, provided that the system is hosted within a governmental agency or a credentialed law enforcement agency.

(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) REAL-TIME REPORTING.—All child exploitation cases involving local child victims that are reasonably detectable using available software and data are, immediately upon their detection, made available to participating law enforcement agencies.

(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

(ii) report all such identified high-priority suspects to participating law enforcement agencies.

(C) ANNUAL REPORTS.—Any statistical data indicating the overall magnitude of child pornography trafficking and child exploitation in the United States and internationally is made available and included in the National Strategy, as is required under section 101(c)(16).

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the ability of participating law enforcement agencies to disseminate investigative leads or statistical information in accordance with State and local laws.

(f) MANDATORY REQUIREMENTS OF NETWORK.—The National Internet Crimes Against Children Data System established under subsection (a) shall develop, deploy, and maintain an integrated technology and training program that provides—

(1) a secure, online system for Federal law enforcement agencies, ICAC task forces, and other State, local, and tribal law enforcement agencies for use in resolving case conflicts, as provided in subsection (d);

(2) a secure system enabling online communication and collaboration by Federal law enforcement agencies, ICAC task forces, and other State, local, and tribal law enforcement agencies regarding ongoing investigations, investigatory techniques, best practices, and any other relevant news and professional information;

(3) a secure online data storage and analysis system for use by Federal law enforcement agencies, ICAC task forces, and other State, local, and tribal law enforcement agencies;

(4) secure connections or interaction with State and local law enforcement computer networks, consistent with reasonable and established security protocols and guidelines;

(5) guidelines for use of the National Internet Crimes Against Children Data System by Federal, State, local, and tribal law enforcement agencies and ICAC task forces; and

Guidelines.

(6) training and technical assistance on the use of the National Internet Crimes Against Children Data System by Federal, State, local, and tribal law enforcement agencies and ICAC task forces.

Establishment.

(g) NATIONAL INTERNET CRIMES AGAINST CHILDREN DATA SYSTEM STEERING COMMITTEE.—The Attorney General shall establish a National Internet Crimes Against Children Data System Steering Committee to provide guidance to the Network relating to the program under subsection (f), and to assist in the development of strategic plans for the System. The Steering Committee shall consist of 10 members with expertise in child exploitation prevention and interdiction prosecution, investigation, or prevention, including—

(1) 3 representatives elected by the local directors of the ICAC task forces, such representatives shall represent different geographic regions of the country;

(2) 1 representative of the Department of Justice Office of Information Services;

(3) 1 representative from Operation Fairplay, currently hosted at the Wyoming Office of the Attorney General;

(4) 1 representative from the law enforcement agency having primary responsibility for hosting and maintaining the National Internet Crimes Against Children Data System;

(5) 1 representative of the Federal Bureau of Investigation's Innocent Images National Initiative or Regional Computer Forensic Lab program;

(6) 1 representative of the Immigration and Customs Enforcement's Cyber Crimes Center;

(7) 1 representative of the United States Postal Inspection Service; and

(8) 1 representative of the Department of Justice.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of the fiscal years 2009 through 2016, \$2,000,000 to carry out the provisions of this section.

42 USC 17616.

SEC. 106. ICAC GRANT PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Attorney General is authorized to award grants to State and local ICAC task forces to assist in carrying out the duties and functions described under section 104.

(2) FORMULA GRANTS.—

(A) DEVELOPMENT OF FORMULA.—At least 75 percent of the total funds appropriated to carry out this section shall be available to award or otherwise distribute grants pursuant to a funding formula established by the Attorney General in accordance with the requirements in subparagraph (B).

(B) FORMULA REQUIREMENTS.—Any formula established by the Attorney General under subparagraph (A) shall—

(i) ensure that each State or local ICAC task force shall, at a minimum, receive an amount equal to 0.5 percent of the funds available to award or otherwise distribute grants under subparagraph (A); and

(ii) take into consideration the following factors:

(I) The population of each State, as determined by the most recent decennial census performed by the Bureau of the Census.

(II) The number of investigative leads within the applicant's jurisdiction generated by Operation Fairplay, the ICAC Data Network, the CyberTipline, and other sources.

(III) The number of criminal cases related to Internet crimes against children referred to a task force for Federal, State, or local prosecution.

(IV) The number of successful prosecutions of child exploitation cases by a task force.

(V) The amount of training, technical assistance, and public education or outreach by a task force related to the prevention, investigation, or prosecution of child exploitation offenses.

(VI) Such other criteria as the Attorney General determines demonstrate the level of need for additional resources by a task force.

(3) DISTRIBUTION OF REMAINING FUNDS BASED ON NEED.—

(A) IN GENERAL.—Any funds remaining from the total funds appropriated to carry out this section after funds have been made available to award or otherwise distribute formula grants under paragraph (2)(A) shall be distributed to State and local ICAC task forces based upon need, as set forth by criteria established by the Attorney General. Such criteria shall include the factors under paragraph (2)(B)(ii).

Criteria.

(B) MATCHING REQUIREMENT.—A State or local ICAC task force shall contribute matching non-Federal funds in an amount equal to not less than 25 percent of the amount of funds received by the State or local ICAC task force under subparagraph (A). A State or local ICAC task force that is not able or willing to contribute matching funds in accordance with this subparagraph shall not be eligible for funds under subparagraph (A).

(C) WAIVER.—The Attorney General may waive, in whole or in part, the matching requirement under subparagraph (B) if the State or local ICAC task force demonstrates good cause or financial hardship.

(b) APPLICATION.—

(1) IN GENERAL.—Each State or local ICAC task force seeking a grant under this section shall submit an application to the Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may reasonably require.

(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall—

(A) describe the activities for which assistance under this section is sought; and

(B) provide such additional assurances as the Attorney General determines to be essential to ensure compliance with the requirements of this title.

(c) ALLOWABLE USES.—Grants awarded under this section may be used to—

(1) hire personnel, investigators, prosecutors, education specialists, and forensic specialists;

(2) establish and support forensic laboratories utilized in Internet crimes against children investigations;

(3) support investigations and prosecutions of Internet crimes against children;

(4) conduct and assist with education programs to help children and parents protect themselves from Internet predators;

(5) conduct and attend training sessions related to successful investigations and prosecutions of Internet crimes against children; and

(6) fund any other activities directly related to preventing, investigating, or prosecuting Internet crimes against children.

(d) REPORTING REQUIREMENTS.—

(1) ICAC REPORTS.—To measure the results of the activities funded by grants under this section, and to assist the Attorney General in complying with the Government Performance and Results Act (Public Law 103-62; 107 Stat. 285), each State or local ICAC task force receiving a grant under this section shall, on an annual basis, submit a report to the Attorney General that sets forth the following:

(A) Staffing levels of the task force, including the number of investigators, prosecutors, education specialists, and forensic specialists dedicated to investigating and prosecuting Internet crimes against children.

(B) Investigation and prosecution performance measures of the task force, including—

(i) the number of investigations initiated related to Internet crimes against children;

(ii) the number of arrests related to Internet crimes against children; and

(iii) the number of prosecutions for Internet crimes against children, including—

(I) whether the prosecution resulted in a conviction for such crime; and

(II) the sentence and the statutory maximum for such crime under State law.

(C) The number of referrals made by the task force to the United States Attorneys office, including whether the referral was accepted by the United States Attorney.

(D) Statistics that account for the disposition of investigations that do not result in arrests or prosecutions, such as referrals to other law enforcement.

(E) The number of investigative technical assistance sessions that the task force provided to nonmember law enforcement agencies.

(F) The number of computer forensic examinations that the task force completed.

(G) The number of law enforcement agencies participating in Internet crimes against children program standards established by the task force.

(2) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall submit a report to Congress on—

(A) the progress of the development of the ICAC Task Force Program established under section 102; and

(B) the number of Federal and State investigations, prosecutions, and convictions in the prior 12-month period related to child exploitation.

SEC. 107. AUTHORIZATION OF APPROPRIATIONS.

42 USC 17617.

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

- (1) \$60,000,000 for fiscal year 2009;
- (2) \$60,000,000 for fiscal year 2010;
- (3) \$60,000,000 for fiscal year 2011;
- (4) \$60,000,000 for fiscal year 2012; and
- (5) \$60,000,000 for fiscal year 2013.

(b) **AVAILABILITY.**—Funds appropriated under subsection (a) shall remain available until expended.

TITLE II—ADDITIONAL MEASURES TO COMBAT CHILD EXPLOITATION

SEC. 201. ADDITIONAL REGIONAL COMPUTER FORENSIC LABS.

42 USC 17631.

(a) **ADDITIONAL RESOURCES.**—The Attorney General shall establish additional computer forensic capacity to address the current backlog for computer forensics, including for child exploitation investigations. The Attorney General may utilize funds under this title to increase capacity at existing regional forensic laboratories or to add laboratories under the Regional Computer Forensic Laboratories Program operated by the Federal Bureau of Investigation.

(b) **PURPOSE OF NEW RESOURCES.**—The additional forensic capacity established by resources provided under this section shall be dedicated to assist Federal agencies, State and local Internet Crimes Against Children task forces, and other Federal, State, and local law enforcement agencies in preventing, investigating, and prosecuting Internet crimes against children.

(c) **NEW COMPUTER FORENSIC LABS.**—If the Attorney General determines that new regional computer forensic laboratories are required under subsection (a) to best address existing backlogs, such new laboratories shall be established pursuant to subsection (d).

(d) **LOCATION OF NEW LABS.**—The location of any new regional computer forensic laboratories under this section shall be determined by the Attorney General, in consultation with the Director of the Federal Bureau of Investigation, the Regional Computer Forensic Laboratory National Steering Committee, and other relevant stakeholders.

(e) **REPORT.**—Not later than 1 year after the date of enactment of this Act, and every year thereafter, the Attorney General shall submit a report to the Congress on how the funds appropriated under this section were utilized.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated for fiscal years 2009 through 2013, \$2,000,000 to carry out the provisions of this section.

TITLE III—EFFECTIVE CHILD PORNOGRAPHY PROSECUTION

SEC. 301. PROHIBIT THE BROADCAST OF LIVE IMAGES OF CHILD ABUSE.

Section 2251 of title 18, United States Code is amended—

(1) in subsection (a), by—

(A) inserting “or for the purpose of transmitting a live visual depiction of such conduct” after “for the purpose of producing any visual depiction of such conduct”;

(B) inserting “or transmitted” after “if such person knows or has reason to know that such visual depiction will be transported”;

(C) inserting “or transmitted” after “if that visual depiction was produced”; and

(D) inserting “or transmitted” after “has actually been transported”; and

(2) in subsection (b), by—

(A) inserting “or for the purpose of transmitting a live visual depiction of such conduct” after “for the purpose of producing any visual depiction of such conduct”;

(B) inserting “or transmitted” after “person knows or has reason to know that such visual depiction will be transported”;

(C) inserting “or transmitted” after “if that visual depiction was produced”; and

(D) inserting “or transmitted” after “has actually been transported”.

SEC. 302. AMENDMENT TO SECTION 2256 OF TITLE 18, UNITED STATES CODE.

Section 2256(5) of title 18, United States Code is amended by—

(1) striking “and” before “data”;

(2) after “visual image” by inserting “, and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format”.

SEC. 303. AMENDMENT TO SECTION 2260 OF TITLE 18, UNITED STATES CODE.

Section 2260(a) of title 18, United States Code, is amended by—

(1) inserting “or for the purpose of transmitting a live visual depiction of such conduct” after “for the purpose of producing any visual depiction of such conduct”; and

(2) inserting “or transmitted” after “imported”.

SEC. 304. PROHIBITING THE ADAPTATION OR MODIFICATION OF AN IMAGE OF AN IDENTIFIABLE MINOR TO PRODUCE CHILD PORNOGRAPHY.

(a) OFFENSE.—Subsection (a) of section 2252A of title 18, United States Code, is amended—

(1) in paragraph (5), by striking “; or” at the end and inserting a semicolon;

(2) in paragraph (6), by striking the period at the end and inserting “; or”; and

(3) by inserting after paragraph (6) the following:

“(7) knowingly produces with intent to distribute, or distributes, by any means, including a computer, in or affecting interstate or foreign commerce, child pornography that is an adapted or modified depiction of an identifiable minor.”

(b) PUNISHMENT.—Subsection (b) of section 2252A of title 18, United States Code, is amended by adding at the end the following:

“(3) Whoever violates, or attempts or conspires to violate, subsection (a)(7) shall be fined under this title or imprisoned not more than 15 years, or both.”

TITLE IV—NATIONAL INSTITUTE OF JUSTICE STUDY OF RISK FACTORS

SEC. 401. NIJ STUDY OF RISK FACTORS FOR ASSESSING DANGEROUSNESS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the National Institute of Justice shall prepare a report to identify investigative factors that reliably indicate whether a subject of an online child exploitation investigation poses a high risk of harm to children. Such a report shall be prepared in consultation and coordination with Federal law enforcement agencies, the National Center for Missing and Exploited Children, Operation Fairplay at the Wyoming Attorney General’s Office, the Internet Crimes Against Children Task Force, and other State and local law enforcement.

Deadline.
Reports.

(b) CONTENTS OF ANALYSIS.—The report required by subsection (a) shall include a thorough analysis of potential investigative factors in on-line child exploitation cases and an appropriate examination of investigative data from prior prosecutions and case files of identified child victims.

(c) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the National Institute of Justice shall submit a report to the House and Senate Judiciary Committees that includes the findings of the study required by this section and makes recommendations on technological tools and law enforcement procedures to help investigators prioritize scarce resources to those cases where there is actual hands-on abuse by the suspect.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$500,000 to the National Institute of Justice to conduct the study required under this section.

TITLE V—SECURING ADOLESCENTS FROM ONLINE EXPLOITATION

SEC. 501. REPORTING REQUIREMENTS OF ELECTRONIC COMMUNICATION SERVICE PROVIDERS AND REMOTE COMPUTING SERVICE PROVIDERS.

(a) IN GENERAL.—Chapter 110 of title 18, United States Code, is amended by inserting after section 2258 the following:

18 USC 2258A. **“SEC. 2258A. REPORTING REQUIREMENTS OF ELECTRONIC COMMUNICATION SERVICE PROVIDERS AND REMOTE COMPUTING SERVICE PROVIDERS.**

“(a) DUTY TO REPORT.—

“(1) IN GENERAL.—Whoever, while engaged in providing an electronic communication service or a remote computing service to the public through a facility or means of interstate or foreign commerce, obtains actual knowledge of any facts or circumstances described in paragraph (2) shall, as soon as reasonably possible—

“(A) provide to the CyberTipline of the National Center for Missing and Exploited Children, or any successor to the CyberTipline operated by such center, the mailing address, telephone number, facsimile number, electronic mail address of, and individual point of contact for, such electronic communication service provider or remote computing service provider; and

“(B) make a report of such facts or circumstances to the CyberTipline, or any successor to the CyberTipline operated by such center.

“(2) FACTS OR CIRCUMSTANCES.—The facts or circumstances described in this paragraph are any facts or circumstances from which there is an apparent violation of—

“(A) section 2251, 2251A, 2252, 2252A, 2252B, or 2260 that involves child pornography; or

“(B) section 1466A.

“(b) CONTENTS OF REPORT.—To the extent the information is within the custody or control of an electronic communication service provider or a remote computing service provider, the facts and circumstances included in each report under subsection (a)(1) may include the following information:

“(1) INFORMATION ABOUT THE INVOLVED INDIVIDUAL.—Information relating to the identity of any individual who appears to have violated a Federal law described in subsection (a)(2), which may, to the extent reasonably practicable, include the electronic mail address, Internet Protocol address, uniform resource locator, or any other identifying information, including self-reported identifying information.

“(2) HISTORICAL REFERENCE.—Information relating to when and how a customer or subscriber of an electronic communication service or a remote computing service uploaded, transmitted, or received apparent child pornography or when and how apparent child pornography was reported to, or discovered by the electronic communication service provider or remote computing service provider, including a date and time stamp and time zone.

“(3) GEOGRAPHIC LOCATION INFORMATION.—

“(A) IN GENERAL.—Information relating to the geographic location of the involved individual or website, which may include the Internet Protocol address or verified billing address, or, if not reasonably available, at least 1 form of geographic identifying information, including area code or zip code.

“(B) INCLUSION.—The information described in subparagraph (A) may also include any geographic information provided to the electronic communication service or remote computing service by the customer or subscriber.

“(4) IMAGES OF APPARENT CHILD PORNOGRAPHY.—Any image of apparent child pornography relating to the incident such report is regarding.

“(5) COMPLETE COMMUNICATION.—The complete communication containing any image of apparent child pornography, including—

“(A) any data or information regarding the transmission of the communication; and

“(B) any images, data, or other digital files contained in, or attached to, the communication.

“(c) FORWARDING OF REPORT TO LAW ENFORCEMENT.—

“(1) IN GENERAL.—The National Center for Missing and Exploited Children shall forward each report made under subsection (a)(1) to any appropriate law enforcement agency designated by the Attorney General under subsection (d)(2).

“(2) STATE AND LOCAL LAW ENFORCEMENT.—The National Center for Missing and Exploited Children may forward any report made under subsection (a)(1) to an appropriate law enforcement official of a State or political subdivision of a State for the purpose of enforcing State criminal law.

“(3) FOREIGN LAW ENFORCEMENT.—

“(A) IN GENERAL.—The National Center for Missing and Exploited Children may forward any report made under subsection (a)(1) to any appropriate foreign law enforcement agency designated by the Attorney General under subsection (d)(3), subject to the conditions established by the Attorney General under subsection (d)(3).

“(B) TRANSMITTAL TO DESIGNATED FEDERAL AGENCIES.—If the National Center for Missing and Exploited Children forwards a report to a foreign law enforcement agency under subparagraph (A), the National Center for Missing and Exploited Children shall concurrently provide a copy of the report and the identity of the foreign law enforcement agency to—

“(i) the Attorney General; or

“(ii) the Federal law enforcement agency or agencies designated by the Attorney General under subsection (d)(2).

“(d) ATTORNEY GENERAL RESPONSIBILITIES.—

“(1) IN GENERAL.—The Attorney General shall enforce this section.

“(2) DESIGNATION OF FEDERAL AGENCIES.—The Attorney General shall designate promptly the Federal law enforcement agency or agencies to which a report shall be forwarded under subsection (c)(1).

“(3) DESIGNATION OF FOREIGN AGENCIES.—The Attorney General shall promptly—

“(A) in consultation with the Secretary of State, designate the foreign law enforcement agencies to which a report may be forwarded under subsection (c)(3);

“(B) establish the conditions under which such a report may be forwarded to such agencies; and

“(C) develop a process for foreign law enforcement agencies to request assistance from Federal law enforcement agencies in obtaining evidence related to a report referred under subsection (c)(3).

Lists.

“(4) REPORTING DESIGNATED FOREIGN AGENCIES.—The Attorney General shall maintain and make available to the Department of State, the National Center for Missing and Exploited Children, electronic communication service providers, remote computing service providers, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a list of the foreign law enforcement agencies designated under paragraph (3).

“(5) SENSE OF CONGRESS REGARDING DESIGNATION OF FOREIGN AGENCIES.—It is the sense of Congress that—

“(A) combating the international manufacturing, possession, and trade in online child pornography requires cooperation with competent, qualified, and appropriately trained foreign law enforcement agencies; and

“(B) the Attorney General, in cooperation with the Secretary of State, should make a substantial effort to expand the list of foreign agencies designated under paragraph (3).

“(6) NOTIFICATION TO PROVIDERS.—If an electronic communication service provider or remote computing service provider notifies the National Center for Missing and Exploited Children that the electronic communication service provider or remote computing service provider is making a report under this section as the result of a request by a foreign law enforcement agency, the National Center for Missing and Exploited Children shall—

“(A) if the Center forwards the report to the requesting foreign law enforcement agency or another agency in the same country designated by the Attorney General under paragraph (3), notify the electronic communication service provider or remote computing service provider of—

“(i) the identity of the foreign law enforcement agency to which the report was forwarded; and

“(ii) the date on which the report was forwarded;

or

“(B) notify the electronic communication service provider or remote computing service provider if the Center declines to forward the report because the Center, in consultation with the Attorney General, determines that no law enforcement agency in the foreign country has been designated by the Attorney General under paragraph (3).

“(e) FAILURE TO REPORT.—An electronic communication service provider or remote computing service provider that knowingly and willfully fails to make a report required under subsection (a)(1) shall be fined—

“(1) in the case of an initial knowing and willful failure to make a report, not more than \$150,000; and

“(2) in the case of any second or subsequent knowing and willful failure to make a report, not more than \$300,000.

“(f) PROTECTION OF PRIVACY.—Nothing in this section shall be construed to require an electronic communication service provider or a remote computing service provider to—

“(1) monitor any user, subscriber, or customer of that provider;

“(2) monitor the content of any communication of any person described in paragraph (1); or

“(3) affirmatively seek facts or circumstances described in sections (a) and (b).

“(g) CONDITIONS OF DISCLOSURE INFORMATION CONTAINED WITHIN REPORT.—

“(1) IN GENERAL.—Except as provided in paragraph (2), a law enforcement agency that receives a report under subsection (c) shall not disclose any information contained in that report.

“(2) PERMITTED DISCLOSURES BY LAW ENFORCEMENT.—

“(A) IN GENERAL.—A law enforcement agency may disclose information in a report received under subsection (c)—

“(i) to an attorney for the government for use in the performance of the official duties of that attorney;

“(ii) to such officers and employees of that law enforcement agency, as may be necessary in the performance of their investigative and recordkeeping functions;

“(iii) to such other government personnel (including personnel of a State or subdivision of a State) as are determined to be necessary by an attorney for the government to assist the attorney in the performance of the official duties of the attorney in enforcing Federal criminal law;

“(iv) if the report discloses a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law;

“(v) to a defendant in a criminal case or the attorney for that defendant, subject to the terms and limitations under section 3509(m) or a similar State law, to the extent the information relates to a criminal charge pending against that defendant;

“(vi) subject to subparagraph (B), to an electronic communication service provider or remote computing provider if necessary to facilitate response to legal process issued in connection to a criminal investigation, prosecution, or post-conviction remedy relating to that report; and

“(vii) as ordered by a court upon a showing of good cause and pursuant to any protective orders or other conditions that the court may impose.

“(B) LIMITATIONS.—

“(i) LIMITATIONS ON FURTHER DISCLOSURE.—The electronic communication service provider or remote computing service provider shall be prohibited from disclosing the contents of a report provided under subparagraph (A)(vi) to any person, except as necessary to respond to the legal process.

“(ii) EFFECT.—Nothing in subparagraph (A)(vi) authorizes a law enforcement agency to provide child pornography images to an electronic communications service provider or a remote computing service.

“(3) PERMITTED DISCLOSURES BY THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN.—The National Center for Missing and Exploited Children may disclose information received in a report under subsection (a) only—

“(A) to any Federal law enforcement agency designated by the Attorney General under subsection (d)(2);

“(B) to any State, local, or tribal law enforcement agency involved in the investigation of child pornography, child exploitation, kidnapping, or enticement crimes;

“(C) to any foreign law enforcement agency designated by the Attorney General under subsection (d)(3); and

“(D) to an electronic communication service provider or remote computing service provider as described in section 2258C.

“(h) PRESERVATION.—

“(1) IN GENERAL.—For the purposes of this section, the notification to an electronic communication service provider or a remote computing service provider by the CyberTipline of receipt of a report under subsection (a)(1) shall be treated as a request to preserve, as if such request was made pursuant to section 2703(f).

“(2) PRESERVATION OF REPORT.—Pursuant to paragraph (1), an electronic communication service provider or a remote computing service shall preserve the contents of the report provided pursuant to subsection (b) for 90 days after such notification by the CyberTipline.

“(3) PRESERVATION OF COMMINGLED IMAGES.—Pursuant to paragraph (1), an electronic communication service provider or a remote computing service shall preserve any images, data, or other digital files that are commingled or interspersed among the images of apparent child pornography within a particular communication or user-created folder or directory.

“(4) PROTECTION OF PRESERVED MATERIALS.—An electronic communications service or remote computing service preserving materials under this section shall maintain the materials in a secure location and take appropriate steps to limit access by agents or employees of the service to the materials to that access necessary to comply with the requirements of this subsection.

“(5) AUTHORITIES AND DUTIES NOT AFFECTED.—Nothing in this section shall be construed as replacing, amending, or otherwise interfering with the authorities and duties under section 2703.

18 USC 2258B.

“SEC. 2258B. LIMITED LIABILITY FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS, REMOTE COMPUTING SERVICE PROVIDERS, OR DOMAIN NAME REGISTRAR.

“(a) IN GENERAL.—Except as provided in subsection (b), a civil claim or criminal charge against an electronic communication service provider, a remote computing service provider, or domain name registrar, including any director, officer, employee, or agent of such electronic communication service provider, remote computing service provider, or domain name registrar arising from the performance of the reporting or preservation responsibilities of such electronic communication service provider, remote computing service provider, or domain name registrar under this section, section 2258A, or section 2258C may not be brought in any Federal or State court.

“(b) INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT.—Subsection (a) shall not apply to a claim if the electronic communication service provider, remote computing service provider, or domain

name registrar, or a director, officer, employee, or agent of that electronic communication service provider, remote computing service provider, or domain name registrar—

“(1) engaged in intentional misconduct; or

“(2) acted, or failed to act—

“(A) with actual malice;

“(B) with reckless disregard to a substantial risk of causing physical injury without legal justification; or

“(C) for a purpose unrelated to the performance of any responsibility or function under this section, sections 2258A, 2258C, 2702, or 2703.

“(c) **MINIMIZING ACCESS.**—An electronic communication service provider, a remote computing service provider, and domain name registrar shall—

“(1) minimize the number of employees that are provided access to any image provided under section 2258A or 2258C; and

“(2) ensure that any such image is permanently destroyed, upon a request from a law enforcement agency to destroy the image.

“SEC. 2258C. USE TO COMBAT CHILD PORNOGRAPHY OF TECHNICAL ELEMENTS RELATING TO IMAGES REPORTED TO THE CYBERTIPLINE.

18 USC 2258C.

“(a) **ELEMENTS.**—

“(1) **IN GENERAL.**—The National Center for Missing and Exploited Children may provide elements relating to any apparent child pornography image of an identified child to an electronic communication service provider or a remote computing service provider for the sole and exclusive purpose of permitting that electronic communication service provider or remote computing service provider to stop the further transmission of images.

“(2) **INCLUSIONS.**—The elements authorized under paragraph (1) may include hash values or other unique identifiers associated with a specific image, Internet location of images, and other technological elements that can be used to identify and stop the transmission of child pornography.

“(3) **EXCLUSION.**—The elements authorized under paragraph (1) may not include the actual images.

“(b) **USE BY ELECTRONIC COMMUNICATION SERVICE PROVIDERS AND REMOTE COMPUTING SERVICE PROVIDERS.**—Any electronic communication service provider or remote computing service provider that receives elements relating to any apparent child pornography image of an identified child from the National Center for Missing and Exploited Children under this section may use such information only for the purposes described in this section, provided that such use shall not relieve that electronic communication service provider or remote computing service provider from its reporting obligations under section 2258A.

“(c) **LIMITATIONS.**—Nothing in subsections (a) or (b) requires electronic communication service providers or remote computing service providers receiving elements relating to any apparent child pornography image of an identified child from the National Center for Missing and Exploited Children to use the elements to stop the further transmission of the images.

“(d) **PROVISION OF ELEMENTS TO LAW ENFORCEMENT.**—The National Center for Missing and Exploited Children shall make available to Federal, State, and local law enforcement involved in the investigation of child pornography crimes elements, including hash values, relating to any apparent child pornography image of an identified child reported to the National Center for Missing and Exploited Children.

“(e) **USE BY LAW ENFORCEMENT.**—Any Federal, State, or local law enforcement agency that receives elements relating to any apparent child pornography image of an identified child from the National Center for Missing and Exploited Children under section (d) may use such elements only in the performance of the official duties of that agency to investigate child pornography crimes.

18 USC 2258D. **“SEC. 2258D. LIMITED LIABILITY FOR THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN.**

“(a) **IN GENERAL.**—Except as provided in subsections (b) and (c), a civil claim or criminal charge against the National Center for Missing and Exploited Children, including any director, officer, employee, or agent of such center, arising from the performance of the CyberTipline responsibilities or functions of such center, as described in this section, section 2258A or 2258C of this title, or section 404 of the Missing Children’s Assistance Act (42 U.S.C. 5773), or from the effort of such center to identify child victims may not be brought in any Federal or State court.

“(b) **INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT.**—Subsection (a) shall not apply to a claim or charge if the National Center for Missing and Exploited Children, or a director, officer, employee, or agent of such center—

“(1) engaged in intentional misconduct; or

“(2) acted, or failed to act—

“(A) with actual malice;

“(B) with reckless disregard to a substantial risk of causing injury without legal justification; or

“(C) for a purpose unrelated to the performance of any responsibility or function under this section, section 2258A or 2258C of this title, or section 404 of the Missing Children’s Assistance Act (42 U.S.C. 5773).

“(c) **ORDINARY BUSINESS ACTIVITIES.**—Subsection (a) shall not apply to an act or omission relating to an ordinary business activity, including general administration or operations, the use of motor vehicles, or personnel management.

“(d) **MINIMIZING ACCESS.**—The National Center for Missing and Exploited Children shall—

“(1) minimize the number of employees that are provided access to any image provided under section 2258A; and

“(2) ensure that any such image is permanently destroyed upon notification from a law enforcement agency.

18 USC 2258E. **“SEC. 2258E. DEFINITIONS.**

“In sections 2258A through 2258D—

“(1) the terms ‘attorney for the government’ and ‘State’ have the meanings given those terms in rule 1 of the Federal Rules of Criminal Procedure;

“(2) the term ‘electronic communication service’ has the meaning given that term in section 2510;

“(3) the term ‘electronic mail address’ has the meaning given that term in section 3 of the CAN-SPAM Act of 2003 (15 U.S.C. 7702);

“(4) the term ‘Internet’ has the meaning given that term in section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note);

“(5) the term ‘remote computing service’ has the meaning given that term in section 2711; and

“(6) the term ‘website’ means any collection of material placed in a computer server-based file archive so that it is publicly accessible, over the Internet, using hypertext transfer protocol or any successor protocol.”

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) REPEAL OF SUPERCEDED PROVISION.—Section 227 of the Crime Control Act of 1990 (42 U.S.C. 13032) is repealed.

(2) TECHNICAL CORRECTIONS.—Section 2702 of title 18, United States Code, is amended—

(A) in subsection (b)(6), by striking “section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032)” and inserting “section 2258A”; and

(B) in subsection (c)(5), by striking “section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032)” and inserting “section 2258A”.

(3) TABLE OF SECTIONS.—The table of sections for chapter 110 of title 18, United States Code, is amended by inserting after the item relating to section 2258 the following:

“2258A. Reporting requirements of electronic communication service providers and remote computing service providers.

“2258B. Limited liability for electronic communication service providers and remote computing service providers.

“2258C. Use to combat child pornography of technical elements relating to images reported to the CyberTipline.

“2258D. Limited liability for the National Center for Missing and Exploited Children.

“2258E. Definitions.”.

SEC. 502. REPORTS.

(a) ATTORNEY GENERAL REPORT ON IMPLEMENTATION, INVESTIGATIVE METHODS AND INFORMATION SHARING.—Not later than 12 months after the date of enactment of this Act, the Attorney General shall submit a report to the Committee on the Judiciary of Senate and the Committee on the Judiciary of the House of Representatives on—

(1) the structure established in this Act, including the respective functions of the National Center for Missing and Exploited Children, Department of Justice, and other entities that participate in information sharing under this Act;

(2) an assessment of the legal and constitutional implications of such structure;

(3) the privacy safeguards contained in the reporting requirements, including the training, qualifications, recruitment and screening of all Federal and non-Federal personnel implementing this Act; and

(4) information relating to the aggregate number of incidents reported under section 2258A(b) of title 18, United States Code, to Federal and State law enforcement agencies based on the reporting requirements under this Act and the aggregate number of times that elements are provided to

communication service providers under section 2258C of such title.

(b) GAO AUDIT AND REPORT ON EFFICIENCY AND EFFECTIVENESS.—Not later than 2 years after the date of enactment of this Act, the Comptroller General shall conduct an audit and submit a report to the Committee on the Judiciary of the Senate and to the Committee on the Judiciary of the House of Representatives on—

(1) the efforts, activities, and actions of the CyberTipline of the National Center for Missing and Exploited Children, or any successor to the CyberTipline, and the Attorney General in achieving the goals and purposes of this Act, as well as in carrying out any responsibilities or duties assigned to each such individual or agency under this Act;

(2) any legislative, administrative, or regulatory changes that the Comptroller General recommends be taken by or on behalf of the Attorney General to better achieve such goals and purposes, and to more effectively carry out such responsibilities and duties;

(3) the effectiveness of any actions taken and efforts made by the CyberTipline of the National Center for Missing and Exploited Children, or any successor to the CyberTipline and the Attorney General to—

(A) minimize duplicating the efforts, materials, facilities, and procedures of any other Federal agency responsible for the enforcement, investigation, or prosecution of child pornography crimes; and

(B) enhance the efficiency and consistency with which Federal funds and resources are expended to enforce, investigate, or prosecute child pornography crimes, including the use of existing personnel, materials, technologies, and facilities; and

(4) any actions or efforts that the Comptroller General recommends be taken by the Attorney General to reduce duplication of efforts and increase the efficiency and consistency with which Federal funds and resources are expended to enforce, investigate, or prosecute child pornography crimes.

18 USC 2251
note.

SEC. 503. SEVERABILITY.

If any provision of this title or amendment made by this title is held to be unconstitutional, the remainder of the provisions of this title or amendments made by this title—

(1) shall remain in full force and effect; and

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(2) shall not be affected by the holding.

Approved October 13, 2008.

LEGISLATIVE HISTORY—S. 1738 (H.R. 3845):
CONGRESSIONAL RECORD, Vol. 154 (2008):
Sept. 25, considered and passed Senate.
Sept. 27, considered and passed House.

