



**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

*Washington, D.C. 20530*

January 11, 2008

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This letter presents the views of the Department of Justice (DOJ) on S. 1738, the "Combating Child Exploitation Act of 2007". S. 1738 would: establish a new Special Counsel for Child Exploitation Prevention and Interdiction (Special Counsel) within the Office of the Deputy Attorney General (ODAG) focusing on child exploitation; statutorily establish the existing Internet Crimes Against Children (ICAC) task force program; create an ICAC data network center; mandate a funding formula for ICAC task forces; authorize funds for the ICAC task force program; authorize additional resources to address computer forensics in child exploitation cases; authorize funds for additional Federal law enforcement agents focusing on child exploitation crimes; and require additional reporting on efforts to combat child exploitation.

While DOJ supports the legislation's goals of improving law enforcement's ability to investigate and prosecute child exploitation cases, DOJ is concerned that S. 1738 would: unnecessarily create a new level of bureaucracy within DOJ; inappropriately limit the Attorney General's discretion in awarding ICAC task force grants; and limit the efficiency and flexibility of DOJ efforts to conduct computer forensics in child exploitation cases. Finally, S. 1738 does not expressly authorize appropriations for additional Federal prosecutors commensurate with authorizations for additional Federal law enforcement agents devoted to these cases. DOJ's specific comments are set forth below.

**Section 2. Findings.**

Section 2(6) of the bill states that the 46 ICAC task forces, now 59, "form the backbone of America's national readiness to combat child exploitation." The ICAC task forces play a key role in addressing child exploitation in this country. They have many partners in this effort, however, both among Federal law enforcement agencies and non-governmental organizations such as the National Center for Missing & Exploited Children (NCMEC). Indeed, ICAC task forces and these partners comprise the Project Safe Childhood (PSC) initiative, implemented under the leadership of former Attorney General Gonzales, with PSC task forces in each Federal judicial district led by the local United States Attorney. DOJ thus recommends that "form the

backbone of America's national readiness to combat child exploitation” be replaced with, “play a key role in America's fight against child exploitation.” DOJ also recommends that the findings recognize that PSC provides an effective framework for Federal, State, and local law enforcement to combat online child exploitation together.

### **Section 3. Definitions.**

Section 3(1) of the bill defines “child exploitation,” but this definition omits online enticement offenses. As online enticement offenses (typically prosecuted under 18 U.S.C. § 2422(b) or analogous State statutes) are inextricably intertwined with other online child sexual exploitation offenses, DOJ strongly recommends that “sexually explicit conduct with a minor, or any similar offense under Federal or State law” be replaced with, “sexually explicit conduct with a minor, enticement of a minor to engage in criminal sexual activity, or any similar offense under Federal or State law.” Additionally, DOJ recommends that the definition be expanded to include child sex trafficking offenses or offenses where offenders travel to engage with sex with minors, as these offenses may involve use of the Internet to facilitate their commission.

Section 3 does not define “child obscenity,” a term used in sections 202, 204, 205, and 206 of the bill. DOJ recognizes that “child obscenity” is used in 18 U.S.C. § 2516(1)(c) to characterize offenses under 18 U.S.C. § 1466A, without a definition; nevertheless, for clarity DOJ recommends that the term be defined here as “a visual depiction proscribed by 18 U.S.C. § 1466A.”

### **Section 101. Establishment of Special Counsel for Child Exploitation Prevention and Interdiction.**

Section 101 would establish a Special Counsel for Child Exploitation Prevention and Interdiction within ODAG notwithstanding the recent effectiveness of DOJ’s efforts. Virtually all of the duties the Special Counsel would perform are currently being handled, without special authorization, by other Department components, notably the Office of Legal Policy (OLP), the Criminal Division (particularly that Division’s Child Exploitation and Obscenity Section (CEOS)), and the Office of Justice Programs (OJP). Each of these components has a unique and important role in coordinating DOJ’s policies and strategies concerning the prevention, investigation, and prosecution of child exploitation cases, with the involvement of ODAG, the Office of the Attorney General and the Executive Office for United States Attorneys when needed.

DOJ strongly believes that establishing a new position to conduct these tasks would be unnecessary and could lead to duplication of effort. For example, section 101(b)(1) would require the Special Counsel to coordinate DOJ’s policies and strategies concerning child exploitation cases. This task is handled primarily by OLP and CEOS, with input from the Attorney General’s Advisory Committee Working Group on Child Exploitation, made up of sitting U.S. Attorneys. ODAG is currently able to convene stakeholders both inside and outside of DOJ to promote coordination, training, digital forensics solutions and prevention efforts. Most of the duties set out in section 102 are carried out ably by the affected components without leadership assistance. The current arrangement provides the necessary flexibility to most

efficiently carry out DOJ's stated priority under PSC: to combat technology facilitated exploitation and abuse of children.

Four recent examples from DOJ's existing policy and strategy development process demonstrate that the proposed Special Counsel is unnecessary. First, DOJ's components listed above jointly developed and implemented PSC, launched in May 2006. The contributions of all these components, working closely together with their law enforcement partners, resulted in a comprehensive approach to addressing online child sexual exploitation crimes. This approach already has had a great impact nationwide. For example:

- In FY 2007, the FBI opened a total of 2,443 new investigations, a 14 percent increase over the 2,135 investigations opened in Fiscal Year (FY) 2006;
- In U.S. Attorney's Offices, there were 2,118 cases filed in FY 2007 (against 2,218 defendants); this represents a 27.8 percent increase over FY 2006 (1,657 cases filed against 1,760 defendants);
- The Internet Crimes Against Children task forces report 2,345 arrests for FY 2007; although not all data is in, this represents a significant increase from the 2,046 arrests last year;
- 309 children depicted in child pornography images have so far been identified in Calendar Year 2007 through the work of NCMC, in cooperation with law enforcement at all levels. This is in addition to the 886 identified in all preceding years.

Second, these components routinely work collaboratively to identify and propose necessary amendments to existing law. These efforts have resulted in several key provisions of the Adam Walsh Child Protection and Safety Act of 2006 (Adam Walsh Act) as well as several legislative proposals currently under consideration in Congress. Third, these components, together with non-Department partners such as NCMC, already conduct critical training for Federal, State, and local law enforcement and prosecutors, especially under the rubric of PSC. Fourth, these components, again working with their law enforcement partners, have developed an effective strategy to investigate and prosecute violations of the new Federal crime for failure to register as a sex offender, enacted as part of the Adam Walsh Act. In FY 2007, the U.S. Attorney's Offices charged 162 defendants with this offense; while the majority of cases involving these defendants remain pending, 12 were convicted during the fiscal year. Additionally, according to the U.S. Marshals Service, in FY 2007 818 investigations involving this offense were opened, with 175 fugitives arrested.

As outlined above, DOJ has a demonstrated record of success in developing, coordinating, and implementing effective policies and strategies to address child exploitation crimes. The extra level of bureaucracy the proposed Special Counsel would create is thus unnecessary. For all these reasons, DOJ strongly recommends that section 101 of the bill be deleted in its entirety.

Should this provision not be deleted, DOJ recommends that section 101(a) of the bill be amended to permit the Attorney General to designate officials within DOJ to conduct the duties specified in section 101(b), rather than requiring that they be vested in a Special Counsel in

ODAG. If this change were made, conforming changes to the headings of Title I of the bill as well as to the heading of section 101 and to section 101(b) of the bill would also be necessary.

### **Section 102. Establishment of ICAC Task Force Program.**

This section would legislatively establish the current ICAC Task Force Program, which DOJ's Office of Juvenile Justice and Delinquency Prevention (OJJDP) within DOJ's Office of Justice Programs created under the authority of the FY 1998 Justice Appropriations Act, Public Law 105-119. It is critical that the ICAC Task Force Program remain within OJJDP, due to the demonstrated record of success that office has had in administering the program. This success also obviates the need to specify that the program be established "under the general authority of the Attorney General" as the program is highly visible to the Attorney General and has consistently enjoyed the Attorney General's support. Accordingly, DOJ recommends that this section of the bill be revised to read, "There is established within the Office of Juvenile Justice and Delinquency Prevention within the Office of Justice Programs of the Department of Justice an Internet Crimes Against Children...." Additionally, DOJ recommends that the bill refer to "the ICAC Task Force Program" rather than to the "ICAC Task Force." Finally, in order to clarify that this section merely legislatively establishes a program that has existed for many years, we recommend adding the following sentence to the end of section 102(a): "The ICAC Task Force Program legislatively established under this section is intended to continue the success of the current ICAC Task Force Program established in 1998."

### **Section 103 and 104. Purpose and Duties of ICAC Task Forces.**

These sections of the bill state the purposes and duties of ICAC task forces and are generally consistent with what existing ICAC task forces currently do. DOJ recommends, however, that the bill explicitly recognize that ICAC task forces are partners in PSC. This could be done by adding a new section 103(6): "(6) participating fully in DOJ's Project Safe Childhood initiative combating technology-facilitated sexual exploitation crimes against children;" and renumbering the remaining subparagraphs.

Additionally, sections 103 and 104 should include a provision stating that the purpose and duties of the ICAC task forces can include other appropriate measures to protect children from Internet crimes. Such language would preserve each task force's ability to tailor its activities to the particular needs and circumstances of its own jurisdiction, as this flexibility has been a key part of the success of the ICAC Task Force Program. The new provisions in section 103(10) following the renumbering described above and new section 104(12), could read, "other measures, as appropriate, to protect children from Internet crimes against children."

### **Section 105. National ICAC Data Network Center.**

Section 105 of the bill would establish a National Internet Crimes Against Children Data Network Center (Center), which appears intended to facilitate the efficient use of scarce investigative resources by providing a case management system that will help deconflict investigations conducted by ICAC task forces, Federal law enforcement agencies, and other State and local law enforcement agencies. DOJ is concerned with section 105(c)(3) of the bill, which

would require the Center to develop and maintain “a secure intelligence data storage and analysis system” to be used by ICAC task forces and other law enforcement agencies. To effectively track and coordinate investigations, law enforcement does need to develop or acquire an application, but not a network. The need for a network is increasingly and effectively filled by RISS (Regional Information Sharing Systems), a national program of regionally oriented services designed to enhance the ability of local, State, Federal, and tribal criminal justice agencies to exchange information. RISS is secure, staffed, and, in large measure, run by local law enforcement. It is familiar to State and local law enforcement across the nation. Indeed, DOJ is currently looking at using RISS as the platform for a law enforcement information sharing environment for child exploitation investigations and is likewise seeking the best application to operate on that network. Authorization for the ICAC's to work with RISS to stand up an information sharing system would--without starting from scratch--build on the effectiveness of the current infrastructure and improve child exploitation investigatory efforts.

DOJ understands that the current ICAC data network does not operate an intelligence database, but rather maintains Internet Protocol addresses and screen names of persons under investigation, and the name of the law enforcement officer investigating them. The current ICAC data network thus helps conciliate investigations by allowing an ICAC officer investigating a particular online identity quickly to determine whether another ICAC task force officer is already investigating that online identity. DOJ understands that the current ICAC data network does not contain other case-specific information. Accordingly, if Congressional intent is simply to legislatively establish the ICAC data network that currently exists, section 105(c)(3) should be stricken.

Additionally, the bill would make the Special Counsel responsible for directing and overseeing the Center. As noted above, DOJ strongly recommends that the Special Counsel position not be established. DOJ thus recommends that OJJDP, which administers ICAC task force grants, also administer the grants for this Center.

#### **Section 106. ICAC Grant Program.**

Section 106(a) of the bill would establish a funding formula for ICAC task force grants that is not consistent with the Administration's proposal to consolidate the more than 70 grant programs now administered by DOJ into four flexible and competitive grant programs that can better deliver taxpayer dollars where they are most needed. If the Administration's approach is not adopted, it should be noted that adding a formula component to the program would likewise reduce the Attorney General's ability to invest funds in task forces with sound plans for producing measurable results. DOJ does not believe it appropriate to require each ICAC task force to receive, at a minimum, one percent of the total grant funds as would be required by section 106(a)(2)(B)(i). Rather, the Attorney General should have discretion to direct the funds where they are most needed and will be most effective.

Additionally, the matching requirement at section 106(a)(2)(C)(ii) may have the unintended consequence of decreasing the ability of certain ICAC task forces to receive grants that would enhance the ability of State and local law enforcement to combat Internet crimes against children, and to themselves distribute grant funds to affiliated entities. The ICAC Task

Force Program is designed to help State and local law enforcement agencies develop an effective response to these crimes. Any provision that would deny funds to task forces and affiliated entities that are unable to contribute matching funds is inadvisable; it would deny funds to those task forces that most need help.

### **Section 201. Additional Regional Computer Forensic Labs.**

Section 201 of the bill would recognize that there is a computer forensics backlog that affects child exploitation investigations. It would address this backlog by authorizing \$7 million per year that the Attorney General can use to add capacity at existing Regional Computer Forensics Laboratories or to establish new ones.

DOJ welcomes Congressional efforts to address this backlog, which seriously delays the investigation and prosecution of child exploitation cases. Indeed, the computer forensics backlog is one of the most serious impediments that investigators and prosecutors face in these cases.

DOJ is currently developing a proposal to reduce the computer forensics backlog in child exploitation cases. Given DOJ's pending work to improve the computer forensic process, DOJ requests that Congress defer any decisions about additional resources until it has had a chance to review the new framework. DOJ would be pleased to work with Congress to revise the language of section 201 accordingly.

Should, however, section 201 remain unchanged, the heading of subsection (d) should be revised to track the contents of that subsection.

### **Sections 203-205. Additional FBI, ICE, and USPIS Agents.**

It may be appropriate for Congress to consider permitting these funds to be used for recruiting expenses to assist law enforcement agencies in attracting agents with the requisite skills and interest to work these extremely challenging cases.

Additionally, in section 205 the heading should be changed from "Combating Trafficking..." to "Combating Child Exploitation..." and the reference in subsection (a) to "agents" should be to "postal inspectors."

### **Sections 206 and 207. Reports.**

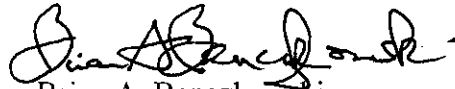
Section 206 of the bill would require the Attorney General, in consultation with the Secretary of Homeland Security and the Postmaster General, to prepare an annual report to Congress on the resources used to investigate and prosecute child exploitation cases.

Section 207 of the bill would require the Comptroller General to prepare a report to Congress on Federal, State, and local efforts to combat child exploitation and the average sentences for offenders and each individual offender's sentence. DOJ queries what particular expertise the Comptroller General has in this area. Moreover, DOJ believes that the term "child sex offender" used in the section is unclear, as it could refer to a child who committed a sex

offense, and that it should be replaced with a term such as “person convicted of a child exploitation offense.” Finally, the bill appears to require preparation of a report listing each such individual defendant's sentence throughout the United States; if that is indeed what the drafters intended, such a report would be difficult and burdensome to prepare.

Please do not hesitate to contact this office if we may be of additional assistance. The Office of Management and Budget has advised us that from the standpoint of the Administration’s program, there is no objection to the submission of this letter.

Sincerely,



Brian A. Benczkowski  
Principal Deputy Assistant Attorney General

cc: The Honorable Arlen Specter  
Ranking Minority Member