



Child Protection Act of 2012: A Brief Legal Analysis

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Summary

On the December 7, 2012, the President signed the Child Protection Act of 2012, P.L. 112-206 (H.R. 6063), into law. The measure had previously passed the House under suspension of the rules and the Senate by unanimous consent. Its provisions are (1) increase the maximum penalty for certain child pornography offenses; (2) outlaw harassment of a child victim or witness while under a protective order; (3) grant the U.S. Marshals Service administrative subpoena authority in sex offender registration cases; (4) direct the U.S. Sentencing Commission to review the adequacy of federal sentencing guidelines that apply to federal sex offenders; and (5) bolster the Internet Crimes Against Children (ICAC) program.

Prior law punished the possession of child pornography in a federal enclave, facility, or Indian country or when shipped or transmitted in interstate commerce with imprisonment for not more than 10 years. P.L. 112-206 increases the maximum to 20 years.

Prior law permits federal courts to enter an order to protect the victims and witnesses in a federal criminal case from being harassed for “no legitimate purpose.” Violation of such an order is punishable as contempt of court. P.L. 112-206 punishes violations by imprisonment for not more than five years. It also creates a rebuttable presumption against the existence of a legitimate purpose, if the defendant publishes or distributes the picture or other identifying information of the victim or witness, other than for press or law enforcement purposes. Constitutional boundaries may cabin the breadth of the proscription.

Prior law allows administrative agencies to demand testimony or the production of documents necessary for regulatory purposes, without having to secure a warrant or court subpoena. In a few limited instances—such as health care fraud, child pornography, and U.S. Secret Service protection—federal law enforcement officials enjoy similar authority. P.L. 112-206 grants the U.S. Marshals Service the authority to use administrative subpoenas to unregistered sex offenders.

Prior law requires federal courts to begin the sentencing process by calculating the penalties recommended by the U.S. Sentencing Commission’s sentencing guidelines. P.L. 112-206 directs the commission to review the adequacy of the guidelines applicable for obstruction of justice when committed in conjunction with sexual abuse, sex offender registration, child pornography, sex trafficking, and Mann Act offenses.

Prior law instructs the Attorney General to create and implement a national strategy for child exploitation and interdiction. P.L. 112-206 bolsters that effort by (1) increasing from \$2 million to \$4 million the annual cap on private training of ICAC task force members; (2) authorizing appropriations of \$60 million for ICAC task forces for each fiscal year through FY2018; (3) insisting that the ICAC national coordinator be a member of the Senior Executive Service; (4) eliminating the possibility that the identification of high-priority suspects might be based solely on the volume of suspected criminal activity; and (5) instructing the Attorney General to report to the Judiciary Committees, within three months, on the establishment of the ICAC data system.

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Introduction

The Child Protection Act of 2012 re-enforces federal laws that seek to prevent and punish the sexual exploitation of children. The new law

- increases the penalty for federal child pornography offenses;¹
- outlaws the harassment of aged victims and witnesses;²
- grants federal marshals additional powers to track sex offenders;³
- calls for a reevaluation of the guidelines used to sentence those who intimidate children in order to obstruct prosecution of a sex offense;⁴ and
- bolsters the Justice Department’s Internet Crimes Against Children (ICAC) program.⁵

Legislative History

Many of the components of the Child Protection Act appeared first in earlier legislative proposals. In the House, its predecessors included the Protecting Children From Internet Pornographers Act of 2011 (H.R. 1981), introduced by Representative Lamar Smith for himself and Representative Wasserman Schultz.⁶ Companion bills in the Senate included the Protecting Children From Internet Pornographers Act of 2011 (S. 1308), introduced by Senator Hatch for himself and Senators Klobuchar and Rubio, and the Child Protection Act of 2012 (S. 3456), introduced by Senator Blumenthal for himself and Senators Whitehouse and Cornyn.

On July 31, 2012, the House Judiciary Committee approved the Child Protection Act (H.R. 6063),⁷ which passed under suspension of the rules on August 1, 2012.⁸ It passed the Senate by unanimous consent on November 26, 2012,⁹ and was signed by the President on December 7, 2012.¹⁰

¹ 18 U.S.C. 2252(b)(2), 2252A(b)(2).

² 18 U.S.C. 1514.

³ 18 U.S.C. 3486; 28 U.S.C. 566.

⁴ 28 U.S.C. 994 note.

⁵ 42 U.S.C. 17601 et seq.

⁶ See also, H.Rept. 112-281 (2011), and *Protecting Children From Internet Pornographers Act of 2011: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the House Comm. on the Judiciary*, 112th Cong., 1st Sess. (2011).

⁷ H.Rept. 112-638 (2012).

⁸ 158 *Cong. Rec.* H5619 (daily ed. Aug. 1, 2012); debate appears at 158 *Cong. Rec.* H5507-510 (daily ed. July 31, 2012).

⁹ 158 *Cong. Rec.* S6908 (daily ed. Nov. 26, 2012).

¹⁰ P.L. 112-206, 126 Stat. 1490 (2012).

Penalty for Possession of Child Pornography

It is a federal crime to knowingly transport, receive, sell, or possess child pornography, or to attempt or conspire to do so, under various jurisdictional circumstances.¹¹ The crimes are proscribed in two sections, whose principal difference is that one deals with pornography depicting activities of actual human beings and the other deals with pornography consisting of computer generated images as well.¹² Federal jurisdiction of the possession offenses exists under either section, if the offense occurs on a federal enclave, in a federal facility, in Indian country, or if the pornography has been “mailed or transported in or affecting interstate or foreign commerce by any means, including computer.”¹³

The transportation, receipt, or sales offenses under either section are punishable by imprisonment for not less than 5 years or more than 20 years.¹⁴ The Child Protection Act increases the maximum penalty for possession, attempted possession, or conspiracy to possess, from imprisonment for not more than 10 years to imprisonment for not more than 20 years, when the pornography depicts or purports to depict a child under 12 years of age or a prepubescent child.¹⁵ The increase is designed as a demand reduction measure and to reiterate that Congress considers possession of child pornography a serious offense that should be punished accordingly.¹⁶

¹¹ 18 U.S.C. 2252, 2252A.

¹² Section 2252 outlaws child pornography involving “visual depiction” of “a minor” (e.g., 18 U.S.C. 2252(a)(1) (“Any person who (1) knowingly transports ... any visual depiction, if – (A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and (B) such depiction is of such conduct ... shall be punished as provided in subsection (b) of this section”). A “minor” means “any person under the age of eighteen years,” 18 U.S.C. 2256(1).

Section 2252A, on the other hand, outlaws “child pornography” (e.g., 18 U.S.C. 2252A(a)(1) (“Any person who (1) knowingly ... transports ... any child pornography ... shall be punished as provided in subsection (b) of this section”). “Child pornography” means “any visual depiction ... of sexually explicit conduct, where - (A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct; (B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or (C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct,” 18 U.S.C. 2256(8).

¹³ E.g., 18 U.S.C. 2252(a)(4) (“Any person who ... (4) either - (A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction; or (B) knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if - (i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and (ii) such visual depiction is of such conduct; shall be punished as provided in subsection (b) of this section”).

¹⁴ 18 U.S.C. 2252(b)(1), 2252A(b)(1).

¹⁵ 18 U.S.C. 2252(b)(2), 2252A(b)(2).

¹⁶ H.Rept. 112-638, at 6-7 (2012) (“The decline in penalties [imposed for possession of child pornography] stems, in part, from the false belief that possession of child pornography is not a serious crime, or at least is not as serious as other child exploitation offenses. This belief is dangerously flawed.... The people who consume child pornography create the market for it, and thereby encourage the victimization of children.... The belief that mere possession of child pornograph[ic] images is not a serious crime also ignores the ongoing victimization that the children experience, often well into adulthood, knowing that their images continue to be shared on the Internet.... They are constantly ruminating (continued...)”).

Harassment of Child Victims or Witnesses

A person violates 18 U.S.C. 1512 when he

- kills or attempts to kill another person;¹⁷
- uses force or the threat of force against another person, or attempts to do so;¹⁸
- uses intimidation or threats against another person or attempts to do so;¹⁹ or
- intentionally harasses another person and thereby hinders, delays, prevents, or dissuades another from testifying or producing evidence, or attempt to so harass;²⁰

if he does so with the intent to influence a witness, or prevent a witness from testify or producing evidence, in a federal proceeding.

Section 1514 allows the court, at the behest of the prosecution, to issue a temporary restraining order and a subsequent protective order to prevent such a violation of Section 1512 or to prevent ongoing victim or witness harassment that has no legitimate purpose.²¹ Failure to comply with either a restraining order or a protective order constitutes contempt of court.²² There is no statutory definition of the term “no legitimate purpose.” At least one district court, however, has denied a government request under Section 1514 to order a defendant to take down a website that identified government witnesses and agents.²³

The Child Protection Act makes several changes in Section 1514. The House Judiciary Committee report explains the need for the modifications as follows:

Child pornography and exploitation prosecutions hinge often on the testimony of the child victim. Unfortunately, many children are abused by an acquaintance or even a family member and are often intimidated from telling their stories with threats that they will be punished or get in trouble if they tell.... Current fines and contempt citations are inadequate to protect minor witnesses and victims, especially in child sex abuse cases.... Although Federal law provides criminal penalties for physical violence, threats, and other egregious forms of witness intimidation, more subtle forms of intimidation directed to a child remain unaddressed. This section provides Federal courts with the means to control such

(...continued)

about who have seen those pictures. These children’s lives are thrown into permanent disarray to feed the appetites of the ‘mere’ possessors”).

¹⁷ 18 U.S.C. 1512(a)(1)(punishable as murder or manslaughter under 18 U.S.C. 1111 or 1112 or in the case of attempted murder by imprisonment for not more than 30 years, 18 U.S.C. 1512(a)(2)).

¹⁸ 18 U.S.C. 1512(a)(2)(punishable by imprisonment for not more than 30 years when physical force is used and not more than 20 years in the case of a threat to use physical force, 18 U.S.C. 1512(a)(3)).

¹⁹ 18 U.S.C. 1512(b)(punishable by imprisonment for not more than 20 years).

²⁰ 18 U.S.C. 1512(d)(punishable by imprisonment for not more than three years).

²¹ 18 U.S.C. 1514. “Harassment” means “a series of acts over a period of time, however short, indicating a continuity of purpose” that are “directed a specific person [and] that (A) causes substantial emotional distress in such person; and (B) serves no legitimate purpose,” 18 U.S.C. 1514(c)(1), (2).

²² 18 U.S.C. 402.

²³ *United States v. Carmichael*, 326 F.Supp.2d 1267, 1301 (M.D.Ala. 2004).

intimidation through effective protection orders and the felony penalty would add needed teeth to the law to strengthen the deterrent effect of a restraining order to prevent repeat intimidation.²⁴

The Child Protection Act thus amends Section 1514 to make a violation or attempted violation of a restraining order or protective order punishable by imprisonment for not more than five years and/or a fine of not more than \$250,000 (not more than \$500,000 for organizations).²⁵ The proscription applies to orders issued in conjunction with any federal criminal case or investigation.²⁶

The Child Protection Act also makes several other adjustments to Section 1514 that apply regardless of the nature of the federal criminal context in which they arise. Thus, where it was once limited to orders for the victims and witnesses in federal “criminal cases,” Section 1514 now permits protective orders in both criminal cases and criminal investigations.²⁷ Where the section once required action by the prosecutor, it now permits the court to act upon its own initiative as well.²⁸ It remains to be seen whether this permits a court to issue a protective order for the benefit of a defense witness.

Where the section once clearly applied to harassment of victims and witnesses, it may now clearly be invoked also to protect a member of the immediate family of a victim or witness.²⁹ Where harassment once required a series of acts, it may now consist of a single act.³⁰ Moreover, Section 1514 now affords child victims and witnesses greater security in the form of a protective order procedure that shields them not only from harassment (activities causing “substantial emotional distress for no legitimate purpose”), but from intimidation (activities causing “fear or apprehension” for no legitimate purpose).³¹

These new child-specific protective orders are more readily available than their adult counterparts. The court must issue a protective order when it “*finds evidence* that the conduct at issue [whether it takes the form of harassment or intimidation] is reasonably likely to adversely affect the willingness of the minor witness or victim to testify or otherwise participate in the Federal criminal case or investigation.”³² Protective orders covering adults, in contrast, require the court to *find* “*by a preponderance of the evidence* that harassment of an identified victim or witness in a Federal criminal case or investigation exists or that such order is necessary to prevent and restrain an offense under section 1512 of this title ...”³³

²⁴ H.Rept. 112-638, at 7-8 (2012).

²⁵ 18 U.S.C. 1514(c), 3571. The text of 18 U.S.C. 1514 with amending language in italics is appended.

²⁶ *Id.*

²⁷ 18 U.S.C. 1514(b)(1).

²⁸ *Id.*

²⁹ 18 U.S.C. 1514(d)(1)(G).

³⁰ 18 U.S.C. 1514(d)(1)(language added by the Child Protection Act in italics)(“(B)[T]the term ‘harassment’ means a *serious act* or course of conduct directed at a specific person ... (A) the term ‘course of conduct’ means a series of acts over a period of time, however short, indicating a continuity of purpose ... (F) *the term ‘serious act’ means a single act of threatening, retaliatory, harassing, or violent conduct that is reasonably likely to influence the willingness of a victim or witness to testify or participate in a Federal criminal case or investigation*”).

³¹ 18 U.S.C. 1514(d)(1)(B), (D).

³² 18 U.S.C. 1514(b)(2)(emphasis added).

³³ 18 U.S.C. 1514(b)(1)(emphasis added).

Finally, Section 1514 now creates a rebuttable presumption that Internet publication of identifying information relating to a child victim or witness satisfies the “no legitimate purpose” element of harassment or intimidation:

[A] court shall presume, subject to rebuttal by the person, that the distribution or publication using the Internet of a photograph of, or restricted personal information regarding, a specific person serves no legitimate purpose, unless that use is authorized by that specific person, is for news reporting purposes, is designed to locate that specific person (who has been reported to law enforcement as a missing person), or is part of a government-authorized effort to locate a fugitive or person of interest in a criminal, antiterrorism, or national security investigation.³⁴

“Restricted personal information” means the “the Social Security number, the home address, home phone number, mobile phone number, personal email, or home fax number of, and identifiable to,” an individual.³⁵ The case law suggests that the Constitution may cabin the scope of the court’s authority under Section 1514 in this context.³⁶

Administrative Subpoenas for the Marshals Service

Federal agencies may often issue administrative subpoenas in the performance of the regulatory duties without prior judicial approval.³⁷ In a regulatory context, the government ordinarily finds issuing an administrative subpoena more efficient than securing and executing a search warrant. On the other hand, individuals ordinarily find compliance with an administrative subpoena less intrusive than the government’s search of their property under a warrant. Consequently, an administrative subpoena in a regulatory context will usually survive judicial scrutiny as long as the subpoena is statutorily authorized, statutory requirements are met, and its demands are not unreasonable.³⁸

³⁴ 18 U.S.C. 1514(d)(2).

³⁵ 18 U.S.C. 1514(d)(1)(E), 119(b)(1).

³⁶ *United States v. Carmichael*, 326 F.Supp.2d 1267, 1278 & n.37 (M.D.Ala. 2004)(footnote 37 of the court’s opinion in brackets) (“The www.carmichaelcase.com website is not harassment as defined by the statute. While the website’s continuous presence on the internet could arguably be equivalent to a ‘series of acts over a period of time, 18 U.S.C.A. §1514(c)(2), the court cannot find that the website ‘serves no legitimate purpose.’ 18 U.S.C.A. §1514(c)(1)(B). It may be that the website only barely advances a legitimate purpose, but it cannot be said that it advances ‘no legitimate purpose.’ Accordingly, the court finds that a protective order is not warranted under the ‘harassment’ prong of 18 U.S.C.A. §1514(b)(1) because the elements of the statute are not met here. [Even if the government establishes that the statutory definition of ‘harassment’ were met here, the court would still deny the government’s motion on the grounds that Carmichael’s Fifth and Sixth Amendment right to investigate his case by using the website outweighs the government’s interest in protecting witnesses and agents from harassment]”); *United States v. White*, 638 F.Supp.2d 935, 954 (N.D.Ill. 2009)(“The posting of personal information about an individual involved in a judicial proceeding, even under circumstances that are intimidating or unsettling, cannot, absent a true threat or an incitement to imminent lawless action, be criminalized consistent with the First Amendment”).

³⁷ United States Department of Justice, *Report to Congress on the Use of Administrative Subpoena Authorities by Executive Branch Agencies and Entities*, at 4, available at http://www.justice.gov/archive/olp/rpt_to_congress.htm.

³⁸ *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 208 (1946); *United States v. Morton Salt Co.*, 338 U.S. 632, 652-53 (1950); *United States v. Powell*, 379 U.S. 48, 57-8 (1964).

Congress has approved the use of administrative subpoenas in criminal investigations in a few instances—Inspector General inquiries, and drug trafficking, health care fraud, and child abuse cases.³⁹

The Child Protection Act grants the Marshals Service the power to issue administrative subpoenas in order to track unregistered sex offenders.⁴⁰ Federal law requires individuals with a prior conviction for various federal, state, or foreign sex offenses to register with state, tribal, or territorial authorities.⁴¹ The Marshals Service is responsible for tracking and apprehending unregistered sex offenders.⁴² It was thought that administrative subpoenas would “allow the Marshals [Service] to access hotel, rental car, or airline records quickly, before the trail goes cold on a fugitive sex offender.”⁴³

Sentencing Guidelines

Federal courts must begin the sentencing process by determining the range of sentences recommended under the United States Sentencing Commission’s sentencing guidelines.⁴⁴ The sentences they impose will be upheld on review only if they are considered reasonable in light of the recommendations of the guidelines among other statutory sentencing factors.⁴⁵ The sentencing guidelines arrive at a recommended sentencing range for a particular offense through a score keeping system that takes into account the seriousness of the offense, the circumstances under which it was committed, and the offender’s criminal record.⁴⁶ Under the system, federal crimes are each assigned to a particular guideline that sets a base offense level for the offense. Offense levels are then added or subtracted based on the circumstances of a given case. The final sentencing level total translates to a sentencing range. The Sentencing Commission not only formulated the original guidelines but it periodically reviews and revises them.⁴⁷

In the words of the House Judiciary Committee report the Child Protection Act “instructs the U.S. Sentencing Commission to review, and increase if appropriate, the Sentencing Guidelines contained in Part J of Chapter 2, relating to penalties for witness intimidation in certain crimes against children offenses.”⁴⁸

³⁹ 21 U.S.C. 876; 18 U.S.C. 3486; 5 U.S.C.App.(III) 6; see generally, CRS Report RL33321, *Administrative Subpoenas in Criminal Investigations: A Brief Legal Analysis*.

⁴⁰ 18 U.S.C. 3486(a)(1)(A)(ii); 28 U.S.C. 566(e)(1)(C).

⁴¹ 42 U.S.C. 16911; see generally, CRS Report R42692, *Failure to Register as a Sex Offender: A Legal Analysis of 18 U.S.C. 2250*.

⁴² 42 U.S.C. 16941.

⁴³ H.Rept. 112-638, at 9 (2012).

⁴⁴ *Gall v. United States*, 552 U.S. 38, 49 (2007).

⁴⁵ *Id.* at 51.

⁴⁶ See generally, United States Sentencing Commission, *Guidelines Manual* (Nov. 1, 2012); see also, CRS Report R41696, *How the Federal Sentencing Guidelines Work: An Overview*.

⁴⁷ 28 U.S.C. 994(o), (p).

⁴⁸ H.Rept. 112-638, at 17 (2012). The Commission may read the statutory instruction to impose additional obligations: “Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements to ensure – (1) that the guidelines provide an additional penalty increase above the sentence otherwise applicable in Part J of Chapter 2 of the Guidelines Manual if the defendant was convicted of a violation of (continued...)”

Part J contains the sentencing guidelines for contempt of court, obstruction of justice, perjury, and bribery of witness, among others.⁴⁹ The obstruction of justice guideline now covers both witness tampering and in some cases lying to a federal officer or employee with respect to a matter within his or her agency's jurisdiction.⁵⁰ The guideline increases the applicable sentencing level when the lie relates to a sex offense.⁵¹ The guideline supplies no comparable sentencing level increase when the prosecution of a sex offense is obstructed by witness tampering under 18 U.S.C. 1512 rather than lying under 18 U.S.C. 1001.

The Sentencing Commission's review will be focused on the adequacy of sentencing treatment under the guidelines for obstruction of justice offenses committed in conjunction with sex trafficking,⁵² sexual abuse,⁵³ sex offender registration,⁵⁴ child pornography,⁵⁵ and Mann Act violations,⁵⁶ particularly when they involve children.

Internet Crimes Against Children (ICAC) Task Force Program

The Internet Crimes Against Children (ICAC) Task Force Program is a Justice Department program that assists state and local task forces devoted to investigating and prosecuting Internet sexual offenses against children—pornography, obscenity, and predatory enticement.⁵⁷ Congress had authorized appropriations for the program of \$60 million per year for each year from FY2009

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section 1591 of title 18, United States Code, or chapters 109A, 109B, 110, or 117 of title 18, United States Code; and (2) if the offense described in paragraph (1) involved causing or threatening to cause physical injury to a person under 18 years of age, in order to obstruct the administration of justice, an additional penalty increase above the sentence otherwise applicable in Part J of Chapter 2 of the Guidelines Manual," P.L. 112-206, 126 Stat. 1492 (2012).

⁴⁹ U.S.S.G. §§2J1.1, 2J1.2, 2J1.3, and 2J1.9, respectively.

⁵⁰ U.S.S.G. §2J1.2, *Commentary: Statutory Provisions*.

⁵¹ U.S.S.G. §2J1.2(b)(1)(A)(emphasis in the original)("If the (i) defendant was convicted under 18 U.S.C. 1001; and (ii) statutory maximum term of eight years' imprisonment applies because the matter relates to sex offenses under 18 U.S.C. 1591 or chapters 109A, 109B, 1110, or 117 of title 18, United States Code, increase by 4 levels").

⁵² 18 U.S.C. 1591.

⁵³ 18 U.S.C. ch. 109A which includes 18 U.S.C. 2241 (aggravated sexual abuse), 2242 (sexual abuse), 2243 (sexual abuse of a minor or ward), 2244 (abusive sexual contact), 2245 (sexual abuse resulting in death).

⁵⁴ 18 U.S.C. ch. 109B which consists of 18 U.S.C. 2250 (failure to register).

⁵⁵ 18 U.S.C. ch. 110, which includes 18 U.S.C. 2251 (sexual exploitation of children), 2251A (selling or buying children), 2252 (certain activities relating to material involving the sexual exploitation of minors), 2252A (certain activities relating to material containing child pornography), 2257 (recording keeping requirements), 2257A (recording keeping requirements for simulated sexual conduct), 2258 (failure to report child abuse), 2260 (production of sexually explicit depictions of a minor for importation into the United States), 2260A (penalties for register sex offenders).

⁵⁶ 18 U.S.C. ch. 117, which includes 18 U.S.C. 2421 (transportation generally), 2422 (coercion and enticement), 2423 (transportation of minors), 2424 (filing factual statement about alien individual), 2425 (use of interstate facilities to transmit information about a minor), 2426 (repeat offenders).

⁵⁷ 42 U.S.C. 17612. See generally, CRS Report RL34050, *Missing and Exploited Children: Background, Policies, and Issues*, by (name redacted).

through FY2013.⁵⁸ The Child Protection Act authorizes appropriations in the same amount for each year from FY2014 through FY2018.⁵⁹ The Child Protection Act also

- raises the cap on ICAC task force training from \$2 million to \$4 million per year;⁶⁰
- designates the head of the program as the National Coordinator for Child Exploitation Prevention and Interdiction and provides that the position shall be in the Senior Executive Service;⁶¹
- eliminates the volume of criminal activity as a possibly exclusive criterion for determining high-priority suspects identified in monthly ICAC data system reports;⁶² and
- directs the Attorney General to report to the House and Senate Judiciary Committees, within 90 days of passage, on the status of the establishment of the National Internet Crimes Against Children Data System.⁶³

18 U.S.C. 1514 (text) (amending language in italics)

(a)(1) A United States district court, upon application of the attorney for the Government, shall issue a temporary restraining order prohibiting harassment of a victim or witness in a Federal criminal case if the court finds, from specific facts shown by affidavit or by verified complaint, that there are reasonable grounds to believe that harassment of an identified victim or witness in a Federal criminal case exists or that such order is necessary to prevent and restrain an offense under section 1512 of this title, other than an offense consisting of misleading conduct, or under section 1513 of this title.

(2)(A) A temporary restraining order may be issued under this section without written or oral notice to the adverse party or such party's attorney in a civil action under this section if the court finds, upon written certification of facts by the attorney for the Government, that such notice should not be required and that there is a reasonable probability that the Government will prevail on the merits.

(B) A temporary restraining order issued without notice under this section shall be endorsed with the date and hour of issuance and be filed forthwith in the office of the clerk of the court issuing the order.

(C) A temporary restraining order issued under this section shall expire at such time, not to exceed 14 days from issuance, as the court directs; the court, for good cause shown before expiration of such order, may extend the expiration date of the order for up to 14 days or for such longer period agreed to by the adverse party.

⁵⁸ 42 U.S.C. 17617 (2006 ed. Supp.V).

⁵⁹ 42 U.S.C. 17617.

⁶⁰ 42 U.S.C. 17612(b)(4)(B).

⁶¹ 42 U.S.C. 17611(d)(1).

⁶² 42 U.S.C. 17615(e)(1)(B)(i).

⁶³ P.L. 112-206, 126 Stat. 1493-494 (2012).

(D) When a temporary restraining order is issued without notice, the motion for a protective order shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character, and when such motion comes on for hearing, if the attorney for the Government does not proceed with the application for a protective order, the court shall dissolve the temporary restraining order.

(E) If on two days notice to the attorney for the Government, excluding intermediate weekends and holidays, or on such shorter notice as the court may prescribe, the adverse party appears and moves to dissolve or modify the temporary restraining order, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(F) A temporary restraining order shall set forth the reasons for the issuance of such order, be specific in terms, and describe in reasonable detail (and not by reference to the complaint or other document) the act or acts being restrained.

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

(2) In the case of a minor witness or victim, the court shall issue a protective order prohibiting harassment or intimidation of the minor victim or witness if the court finds evidence that the conduct at issue is reasonably likely to adversely affect the willingness of the minor witness or victim to testify or

otherwise participate in the Federal criminal case or investigation. Any hearing regarding a protective order under this paragraph shall be conducted in accordance with paragraphs (1) and (3), except that the court may issue an ex parte emergency protective order in advance of a hearing if exigent circumstances are present. If such an ex parte order is applied for or issued, the court shall hold a hearing not later than 14 days after the date such order was applied for or is issued.

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

(4) A protective order shall set forth the reasons for the issuance of such order, be specific in terms, describe in reasonable detail the act or acts being restrained.

(5) The court shall set the duration of effect of the protective order for such period as the court determines

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

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

(d)(1) *As used in this section—*

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

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

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

(ii) *serves no legitimate purpose;*

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

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

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

(ii) *serves no legitimate purpose;*

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

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

(G) *the term “specific person” means a victim or witness in a Federal criminal case or investigation,*

and includes an immediate family member of such a victim or witness.

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

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