



**National Association
to Protect Children**

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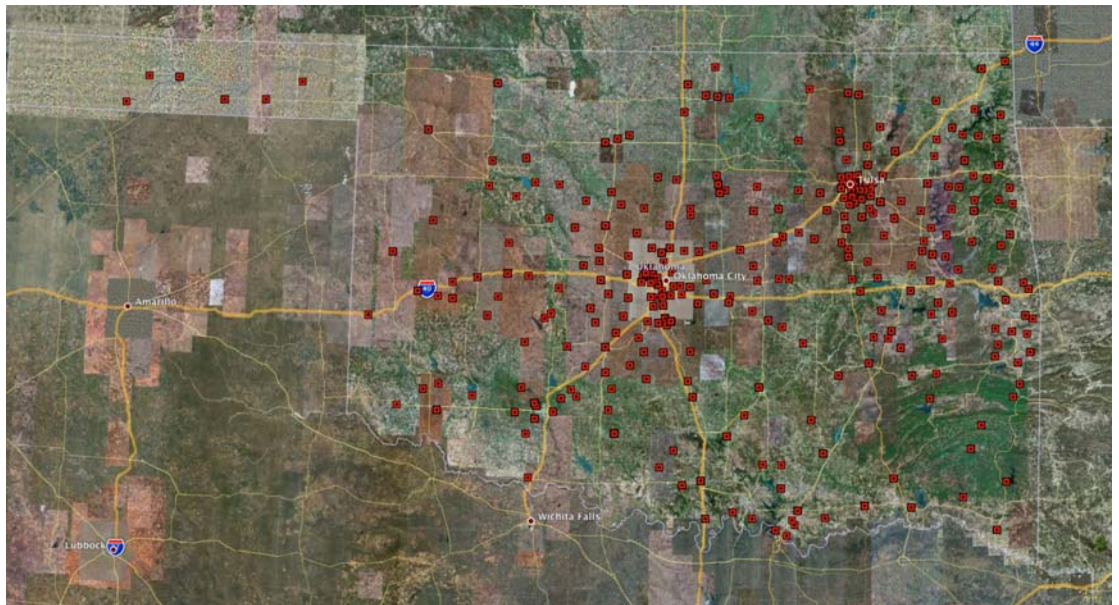
Honorable Tom Coburn, M.D.
United States Senate
172 Russell Senate Office Building
Washington, DC 20510

Dear Senator Coburn:

Thank you for your follow-up questions to our testimony on Senate Bill 1738, the "Combatting Child Exploitation Act of 2008." By this letter, I am providing answers to those questions, and if you have any others, please don't hesitate to contact us.

Additional Information: Oklahoma Child Pornography Trafficking

In addition to the answers below, I have taken the liberty of providing you with a Google Earth map (below and attached), which shows just a small sampling of child pornography trafficking in Oklahoma during the first part of 2008. Each dot you see here represents one or more computers in your state, seen by law enforcement actively engaged in distribution of child sexual assault movies and images between January 1, 2008 and April 15th. This map was produced by Operation Fairplay of the Wyoming Attorney General's Office, which serves as the nerve center for Internet Crimes Against Children task force communication nationally.



The most important point that I can emphasize to you about this map is that it does not just pinpoint the approximate locations of child pornography traffickers. Conservative estimates indicate that at least one of every three of these red dots could lead law enforcement directly to the location of a "contact offender"—giving them a chance to rescue a child from sexual abuse. Thus, this is an Oklahoma child rescue map. Tragically, the vast majority of these Oklahoma children **will not be**

helped. Across the U.S., law enforcement is investigating far less than two percent of known child exploitation leads like these. If this were a map showing bank robberies or house fires in progress, would we ignore them, as we are now?

S. 1738 Spending Levels

I would also like to ask your help in communicating to Senate colleagues the extreme cost-effectiveness of the funds authorized by this bill. We have repeatedly heard from Senate staffers that some Senators see this legislation as “too expensive.” We are forced to shadow box when we hear comments like these, because (of course) no one would assert publicly that just over \$100 million a year is too high a price to pay to rescue children and interdict a flourishing U.S. child exploitation market. In fact, testimony heard by the Senate Judiciary Committee, as well as in the House, has made it clear that the number of children—in Oklahoma or across the U.S.—whose abusers can be interdicted and who can be rescued is in direct correlation to the resources available to law enforcement. With each new investigator and forensic analyst, more cases can be worked and more children saved. The less we spend, the less children we save, it’s as simple as that. As a physician, I trust you appreciate that if anything, this legislation is not “expensive” enough.

My sincere hope is that you, who are known as a strong fiscal conservative, will rally to these children’s defense, and that you will exercise your authority as a budget hawk to bring other Senators along. Unlike other legislation, this bill has no money for nonprofits, for “awareness” campaigns or for any program with outcomes that are difficult to measure. This bill simply gives law enforcement the tools it desperately needs to go after known predators.

ANSWERS TO QUESTIONS

QUESTION 1

Through what type of grant system have the ICAC Task Forces been funded in the past? Why would a formula grant method, as proposed in S. 1738, be an effective method to fund these Task Forces, rather than a competitive application process? Wouldn’t a competitive process be an incentive to the states to ensure proper focus of the Task Forces, as well as to provide state funds to enhance the resources of the Task Forces?

- a. How much funding do states currently contribute to ICAC Task Forces, if any?**
- b. Will the amount states contribute change if S. 1738 is enacted in its current form?**

ANSWER:

S. 1738 Increases Competitiveness

Currently, the ICACs are funded through an ostensibly competitive process, however, we believe S. 1738 increases competitiveness and accountability in the program. It also would increase incentives for states to participate and leverage federal dollars. As operated now, the meagerly-funded, OJJDP staff-driven ICAC task force program has lacked the structure and permanence needed to be taken very seriously by state and local governments. This has the inevitable affect of limiting serious applicants, which substantially limits competition.

S. 1738 provides a base of formula funding, consistent with other well-established law enforcement grant programs. But it also apportions funding based on performance and adds extensive new performance measurements and reporting requirements for all grant applicants. There is no doubt S. 1738 will dramatically improve accountability and competitiveness.

S. 1738 Increases State Investment

To my knowledge, our organization, the National Association to Protect Children, is the only entity in the U.S. that has worked for and won dedicated state appropriations for the ICAC program. Over the past year, we have been instrumental in securing \$5.5 million in new appropriations in California, Tennessee and Virginia. I mention this to stress that we have a clear commitment to the duty of states to contribute. This new funding from just three states amounts to approximately one third of the entire federal program. However cash and in-kind contributions by ICAC task force grantees have long been greater than federal dollars, and these too will grow under S. 1738.

The legislation requires local funding matches, which is not currently a requirement. This created some consternation among some ICAC task forces, who feared that they might lose funding due to lack of local support. However, the bill's sponsors have been consistent in calling for this provision.

QUESTION 2

Are forensic laboratories used in Internet crimes against children completely separate from forensic laboratories used by state and local law enforcement for investigation of other types of crimes? If an allowable use in S. 1738 for grants for ICAC task forces is to “establish and support forensic labs utilized in Internet crimes against children investigations,” is it necessary to establish in Title II, Section 201, a separate authorization of \$56 million over 8 years only for regional computer forensic labs?

- a. In addition, do grants such as the Paul Coverdell Forensic Sciences Improvement grant program provide funding for forensic lab use in child exploitation cases?**
- b. Further, would this grant program overlap the grant funds already provided by the U.S. Secret Service to NCMEC's Exploited Children's Division (ECD) for “forensic and technical assistance” to NCMEC, federal, state and local law enforcement?**

ANSWER:

Forensic capacity the greatest bottleneck

It is important to note at the outset that lack of computer forensic capacity is the single greatest bottleneck limiting investigation and prosecution of child pornography at the federal, state and local level. Delays across the country commonly run 8 months or more, leaving children in danger and greatly reducing the number of cases that can be worked and prosecuted.

Forensic labs generally not separate now

At the federal level, we know of no law enforcement computer forensic labs specifically dedicated to child exploitation. This has been an ongoing source of problems for investigators, who frequently complain that white collar crime or terrorism-related cases take priority at federal labs over theirs. At the state and local level, specialization gets greater the more decentralized forensics become, so that a given forensic analyst, posted to an ICAC, might work only child exploitation cases. However, due to severe lack of resources everywhere, the norm appears to be that even local agents working with ICACs are frequently expected to drop child rape and torture cases to work ID theft. We toured an ICAC recently in California where a huge area of cubicles were devoted to ID theft and fraud cases, and only three to crimes against children.

S. 1738 now allows greater flexibility in forensic capacity-building

As introduced, S. 1738 specifically authorized funding for new “bricks and mortar” RCFL labs dedicated exclusively to child exploitation. This was, admittedly, far from ideal, but it was an

attempt to mandate that the FBI make child exploitation a priority and to enforce that mandate by preventing commingling of cases within RCFL labs. The Department of Justice opposed this provision, either because they wanted greater flexibility, did not want to be told by Congress how to set up and run their labs, or both. The current version of the bill allows that funding to be used more flexibly to create dedicated forensic capacity, whether labs or more decentralized resources. We think this makes the most sense, and new accountability and reporting requirements have been added to the bill to keep federal agencies honest.

S. 1738 distinguishes between forensic capacity-building in the ICAC program and through the FBI because these are clearly distinct and complementary programs, both in dire need of their own resources. Law enforcement turf conflicts being what they are, this is the only realistic approach.

“Overlap” not operative concern now

Law enforcement now has evidence that can locate hundreds of thousands of criminals in the U.S. who are actively engaged in child pornography trafficking. Experience shows that a substantial percentage of these criminals (very conservatively estimated at 1 in 3) have sexually assaulted children directly. *All of them* are contributing to a criminal economy far more evil than any drug market. Yet, fewer than two percent of these suspects—and a negligible number of known crimes—are even being investigated nationally. Law enforcement at every level is overwhelmed, with forensic backlogs everywhere. The forensic resources authorized by S. 1738 will be “a drop in the bucket,” and could not possibly result in any duplication.

QUESTION 3

S. 1738 also states that an allowable use for ICAC Task Force grant money is to “conduct and assist with education programs to help children and parents protect themselves from Internet predators.” What other federal programs currently exist to support this type of initiative?

ANSWER:

Education is currently an allowable use

It is natural that law enforcement officers who see the horrors of child pornography and online enticement want to occasionally share their knowledge with their own communities. This typically takes the form of presentations to PTAs or the news media, and appears to be a limited and positive activity. We know of no case where ICACs have diverted significant funds from law enforcement to education.

No expertise on education programs

We do not have subject matter expertise in federally-funded Internet safety education programs.

QUESTION 4

Under S. 1738, ICAC Task Force grant funds may also be used to “conduct and attend training sessions related to successful investigations and prosecutions of Internet crimes against children.” What other federally-funded programs currently exist to provide such training? Is there a need for more training resources for ICAC Task Forces, and, if so, why?

ANSWER:

The problem of lack of training is now critical everywhere

The lack of adequate training opportunities—both for (1) child exploitation investigation and (2) computer forensics—is at a crisis stage. ICAC task forces are severely frustrated in their efforts to recruit law enforcement partners (e.g. local police and sheriff’s departments), because they cannot get them the most basic training. We often hear task force leaders complain that they are embarrassed and frustrated because they have convinced law enforcement agencies to participate in a regional effort only to find themselves unable to deliver on the next step. When training is available, long waits and waiting lists are common.

Lack of training opportunities also impacts ICAC task force staff directly. With technology changing rapidly, law enforcement professionals are often ten steps behind the criminals. In addition, we see a widespread need for training to local law enforcement agencies, who often do not know how to handle a child pornography referral, even if it is “tied up with a bow,” by an ICAC. Local police agencies are often unsure about how to handle subpoenas and warrants or conduct searches of a suspect’s home in these cases. As an example, Operation Fairplay or the Oklahoma ICAC could send out scores of high-priority child exploitation leads to law enforcement agencies across Oklahoma next week, but if these police and sheriff’s departments have not received training, they are unlikely to respond adequately.

Existing training programs inadequate also

OJJDP currently contracts with Fox Valley Technical College in Wisconsin to conduct much of the ICAC training. We hear considerable criticism from ICACs nationwide about the quality of this program. ICACs wait many months for training classes, often to find themselves on waiting lists. Some complain of jumping through undue bureaucratic hoops. OJJDP and Fox Valley’s preoccupation with centralizing and controlling training is akin to trying to feed an entire nation of law enforcement agencies through a straw.

Denying training resources will hurt children

However, it would be a mistake to insist that all of these bureaucratic problems be solved before reinforcements are sent to investigators in the field. Please remember, doctor, that these men and women are like emergency room physicians on high alert. They see unspeakable suffering daily, triage as fast as they can, and still go home at night knowing that there are thousands of children out there they cannot rescue. Giving them training resources right now is one of the best ways we have to help them get “more hands on deck.”

Additional resources for training will greatly help diversify opportunities and encourage competition.

QUESTION 5

**Are there significant sources of private funds available to combat online child exploitation?
What are the primary groups responsible for such funding?**

ANSWER:

Private funding is not a realistic or acceptable solution

No. Congress saw fit to appropriate approximately \$36 million last year to the National Center for Missing and Exploited Children (NCMEC) for private sector activity that is tangentially-related to law enforcement. This is, as you know, three and a half times the entire appropriation for the FBI’s Innocent Images National Initiative and over twice the entire ICAC Task Force program. However,

NCMEC is not a law enforcement agency, it is a private nonprofit corporation, and it cannot arrest or prosecute anyone. Nor is it appropriate to look to regulated industries who may wish to contribute to Internet safety or online child protection initiatives as a source of revenue for core government services. The crisis of child exploitation is an urgent and serious law enforcement problem, not a charity cause, and it can only be combated by law enforcement.

QUESTION 6

The Project Safe Childhood (PSC) program is a joint effort of federal, state, and local law enforcement, ICAC Task Forces, federal agencies, NCMEC along with community leaders, designed to protect children from online exploitation and abuse. In addition, the Child Exploitation and Obscenity section of the DOJ's criminal division, in partnership with the FBI's Innocent Images Initiative, also integrates with the PSC Task Forces. Does this bill create overlap and confusion concerning the responsibilities and focus of various programs responding to child exploitation?

- a. **PSC was only established in 2006. Was there a significant lack of communication among federal agencies, state and local law enforcement, ICAC Task Forces and NCMEC such that PSC was needed for coordination?**
- b. **What improvements were made in combating child exploitation with the installation of PSC Task Forces?**
- c. **How do the responsibilities of PSC Task Forces, ICAC Task Forces and the DOJ's Child Exploitation and Obscenity section differ?**

ANSWER:

Project Safe Childhood is a marketing program, not an operational entity

Project Safe Childhood is universally understood in the field to be a marketing program of the Department of Justice, not an operational entity. Since its inception, PSC was an attempt to re-brand and publicize already-existing efforts within and outside the Department of Justice without committing real funding. For the most part, it was launched and has operated without its own funding, leadership or staff.

S. 1738 might be characterized as creating “overlap and confusion” by persons who are unhappy that it does not originate from or fall neatly under the PSC umbrella, but there is no reason why S. 1738 isn't entirely consistent with PSC, nor why PSC could not become the overarching banner for all of the initiatives in S. 1738, if the Department of Justice desires to make it so.

Lack of communication and coordination

Yes, there was and continues to be a “significant lack of communication” among federal, state and local entities, bordering on dysfunctional. PSC is helping alleviate that somewhat, but it will require the much more aggressive planning and coordination in S. 1738.

PSC Improvements and CEOS

The one concrete and very positive result of PSC has been to make prosecution of child exploitation a greater priority of U.S. Attorneys and to require better reporting and accountability for federal prosecution of child exploitation crimes by these federal prosecutors. The Child Exploitation and Obscenity Section (CEOS) is a natural partner in that effort.

Differences Between PSC Task Forces, ICAC Task Forces, CEOS

We see no reason for concern that these three entities are duplicative, if that is the basis of this question. The ICAC Task Force program is an enormously-successful catalyst for recruiting law enforcement to enter the anti-child exploitation arena and for building capacity. CEOS is the Department of Justice's program to provide expert assistance to federal prosecutors, similar to specialized criminal units within any state Attorney General's office. We cannot provide you with tangible information on what the Project Safe Childhood "task forces" do, though they don't spend much taxpayer money doing it.

QUESTION 7

What is necessary to allow Mr. Waters' program (Operation Fairplay) to be used in every state for law enforcement to increase the information they have on child exploitation suspects and the ability to track them? Which states have already begun using Operation Fairplay? How are officers in those states trained on the software?

ANSWER:

Background

Operation Fairplay performs two primary functions: (a) it is an online "undercover infrastructure," allowing law enforcement agents to use very powerful software in a dynamic, real-time setting; and (b) it is the largest and most powerful case deconfliction platform for anti-child exploitation work in the world. The program has succeeded far beyond expectations, in large part because Wyoming has encouraged innovation in ways that the federal government has not.

You should know that not all governmental and nongovernmental agencies involved in this issue wish to see these two functions—strong law enforcement coordination and a dynamic undercover infrastructure—thrive, or if they do, whether they are capable of setting aside their own narrow perceived interests to allow it to happen. There are important debates over this issue going on now behind the scenes—in a vacuum of federal planning, oversight and leadership.

Issues at stake include: (1) who controls deconfliction data and access to it; (2) which law enforcement agencies are allowed to participate and on what terms; (3) whether such a system remains in an appropriate law enforcement setting or is outsourced or privatized; (4) whether to support continued research and development through Operation Fairplay (the only entity that has consistently pioneered new solutions); and (5) whether to allow public release of statistical information about the magnitude of child exploitation.

S. 1738 contains strong provisions to foster cooperation and accountability on these issues.

Necessary preconditions for Operation Fairplay to be used in every state:

1. Adequate and secure funding for Operation Fairplay research and development and basic operations.
2. A stable platform for undercover infrastructure. This exists now through Wyoming and is functioning very well. Whether or not it remains in Wyoming over the long term, it is essential that it be housed in a secure law-enforcement or governmental setting. We see no realistic or desirable option over the next 5 years but that it remain with Wyoming. Any

attempt by DOJ to recreate it and pressure participating agencies to use the new system before it is equal or better (in all respects) would be tantamount to vandalism.

3. A stable platform for case deconfliction. This also exists now, thanks to the State of Wyoming, and is functioning very well. Again, if it is moved in accordance with DOJ plans, it is essential that it be housed in a secure law-enforcement or governmental setting (as required by S. 1738). DOJ has stated its plans to move this platform from Wyoming to RISS (Regional Information Sharing Systems). While this could be a good solution, we stress that this will have very negative results if it is not well-integrated with the Wyoming “undercover infrastructure.” It is not clear there is willpower to do this at present.
4. A focus on proactive investigations. All ICACs, overwhelmed by leads they cannot hope to investigate, should be prioritizing proactively based on (a) the likelihood of finding a child victim or an offender with access to children; (b) the likelihood of finding a major producer or distributor of child pornography; and (c) the seriousness of the offense. Operation Fairplay gives investigators incredibly powerful software tools to do that.

However, under current OJJDP policies, ICACs are strongly pressured to work CyberTipline leads from NCMEC first. This is the result of two things: (1) ICACs are pressured by OJJDP to work CyberTipline leads as a condition of their grants, for reasons that appear to be as much political as bureaucratic; and (2) ICACs feel pressure to account for how they did or did not respond to CyberTipline leads, because their reports to OJJDP must track this activity. By contrast, ICACs are not pressured to work Operation Fairplay leads, even though these leads are far more numerous and virtually all are distribution crimes. Nor do ICACs have to account for whether they work them or not; they are simply treated as invisible in most cases. Thus, the typical ICAC ignores a mountain of Operation Fairplay leads every day of the week—leads which could be mined for extremely high-priority suspects—while working for the most part reactively on a mixed-bag of CyberTipline leads. None but the most aggressive and independent ICACs will begin to use Operation Fairplay to any significant degree until this problem is fixed, which S. 1738 does in large measure.

5. Training on Grid Sleuth, Operation Fairplay’s main software application, is desperately needed. Wyoming has been training law enforcement agencies from around the nation *out of its own pocket*, due to lack of funding.

We are not subject matter experts in more detailed questions about Operation Fairplay participants and training.

QUESTION 8

It has been noted by several witnesses that law enforcement is doing what they can with the resources they currently have, but that more resources are needed. S. 1738 proposes to provide additional funds for agents and personnel for FBI, ICE and the U.S. Postal Inspection Service. If these agencies have been in such dire need of funds solely to combat child exploitation, have they not requested these funds in appropriations bills? If not, why not?

In 2006, Rep. Joe Barton (R-TX) made the following impassioned plea to Department of Justice officials, making it clear, as he did on other occasions, that Congress would support increased appropriations requests if asked by the administration:

“I think the Congress will work with the Administration to find a way. Instead of having a couple of hundred FBI agents, dozens or so specialists at DOJ... let’s put *thousands*. If we’re serious about this, let’s put some real muscle. And again, I am not negative on what you’re doing. But if I’ve got to put out a major forest fire, I don’t send one firefighter, no matter how good he is. I mobilize the entire operation.”

Rep. Barton is a principal co-sponsor of counterpart legislation to S. 1738 in the House. We believe the administration’s budget priorities speak for themselves.

Thank you again for the opportunity to provide you with information.

Sincerely,

Grier Weeks
Executive Director
National Association to Protect Children

cc: Sen. Biden, Sen. Hatch, Rep. Barton, Rep. Wasserman Schultz, Senate Judiciary Committee

Child Pornography Distribution in Oklahoma Seen by Law Enforcement, Jan. 1-April 15, 2008

Source: Operation Fairplay, Wyoming Attorney General's Office

