

CHILD SEX CRIMES WIRETAPPING ACT OF 1999

OCTOBER 2, 2000.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3484]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill
(H.R. 3484) amending title 18, United States Code, to provide that
certain sexual crimes against children are predicate crimes for the
interception of communications, and for other purposes, having con-
sidered the same, reports favorably thereon without amendment
and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 3484 is designed to enable law enforcement officials to better protect children from sex predators by giving them an additional tool to use in child sex crime investigations. H.R. 3484 would add three crimes as new wiretap predicates. The crimes added by the bill are: 18 U.S.C. § 2252A, which deals with child pornography; 18 U.S.C. § 2422, which deals with coercion and enticement to engage in prostitution or other illegal sexual activity; and 18 U.S.C. § 2423, relating to transportation of minors to engage in prostitution or other illegal sexual activity.

BACKGROUND AND NEED FOR THE LEGISLATION

Under current law, law enforcement agencies may only seek court authority to use a wiretap in investigations of a limited number of crimes. The crimes as to which a wiretap may be used to investigate, commonly called “wiretap predicates,” are set forth in 18 U.S.C. § 2516(1). In every case, law enforcement authorities must seek a court order authorizing the use of the wiretap. Some crimes involving the sexual exploitation of children are already wiretap predicates, but several are not.

In recent years, due to the dramatic increase in the use of the Internet by persons intent on luring children into sexual activities, law enforcement agencies have been turning their attention with greater frequency to statutes that involve enticing children. Predators often engage children in conversations in “chat rooms” in order to entice them into sex. Some send child pornography to their potential victims in order to lower their natural defenses to the sexual advances of adults. After these contacts are made, predators will often travel to meet their prey, or encourage the child to travel to meet them. Fortunately, acts that involve enticing a person to travel in interstate or foreign commerce in order to engage in illegal sexual activities and traveling in interstate commerce for illegal sexual purposes are already crimes under Federal law. The benefit of these statutes in cases where the victim is a child is that the government does not have to wait until the abuse of the child occurs to act. Catching and punishing predators who are enticing children to engage in sex, stops them before they can inflict greater harm on the child.

The Federal crimes that punish the acts which sex predators commonly use to entice children into engaging in sex with them are not wiretap predicates. Yet many times, some aspect of the interaction between the predator and the child will occur over the telephone. If law enforcement is unable to monitor the predator’s conversation with the child they are put at a disadvantage in their effort to apprehend the predator before he meets with and physically harms the child. H.R. 3484 would fill this gap in the investigative resources available to law enforcement in these investigations.

The bill will add three crimes as new wiretap predicates. The crimes added by the bill are: 18 U.S.C. § 2252A, which deals with child pornography; 18 U.S.C. § 2422, which deals with coercion and enticement to engage in prostitution or other illegal sexual activity; and 18 U.S.C. § 2423, relating to transportation of minors to engage in prostitution or other illegal sexual activity. The crimes of section 2423(b) and 2252A were only added to the Federal Criminal Code

in the last 6 years and, at the time of their enactment, no corresponding amendments to section 2516 were made in order to add these crimes as wiretap predicates. However, as both of these crimes were enacted as part of much larger, omnibus bills,¹ this omission may have been simply an oversight. This is especially the case in the instance of section 2252A, given that section 2252, a crime very similar to the section 2252A offense, was a wiretap predicate at the time section 2252A was enacted and remains one today.² And while the crimes in section 2422 and 2423(a) have been part of the Federal criminal code for some time, the increasing use of the Internet has brought renewed use of these statutes to punish criminals.

The committee believes that law enforcement officials should be given every appropriate tool with which to protect children from those who seek to harm them. Accordingly, the committee favorable reports this bill.

HEARINGS

The committee's Subcommittee on Crime held 1 day of hearings on H.R. 3484 on July 13, 2000. Testimony was received from 3 witnesses, representing 3 organizations, with no additional material submitted.

COMMITTEE CONSIDERATION

On July 20, 2000, the Subcommittee on Crime met in open session and ordered favorably reported the bill H.R. 3484, by a voice vote, a quorum being present. On September 20, 2000, the committee met in open session and ordered favorably reported the bill H.R. 3484 without amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

No recorded votes were taken in the Full Committee.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

¹ Subsection (b) of section 2423 was added by the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, title XVI, § 160001(g); Section 2252A was added by the Omnibus Consolidated Appropriations Act of 1997, Public Law 104-208, Div. A, Title I, § 101(a) [Title I, Sec. 121].

² See 18 U.S.C. § 2516 (1)(c).

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the committee sets forth, with respect to the bill, H.R. 3484, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 27, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3484, the Child Sex Crimes Wiretapping Act of 1999.

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

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Democratic Member

H.R. 3484—Child Sex Crimes Wiretapping Act of 1999.

CBO estimates that implementing H.R. 3484 would not result in any significant cost to the federal government. Enacting H.R. 3484 could affect direct spending and receipts; therefore, pay-as-you-go procedures would apply to the bill, but CBO estimates that any such effects would not be significant. H.R. 3484 contains no inter-governmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect state, local, or tribal governments.

H.R. 3484 would add certain sexual crimes against children to the list of offenses for which wiretaps and other interceptions of communications can be authorized. Implementing the bill could result in more successful investigations and prosecutions in cases involving such crimes. CBO expects that any increase in costs for law enforcement, court proceedings, or prison operations would not be significant because of the small number of cases likely to be affected. Any such additional costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 3484 could be subject to criminal fines, the federal government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in subsequent

years. CBO expects that any additional receipts and direct spending would be negligible because of the small number of cases involved.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, section 8, clause 3 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Sec. 1. Short Title.

Section 1 of the bill states the short title of the act as the Child Sex Crimes Wiretapping Act of 1999.

Sec. 2. Authorization of Interception of Communications in the Investigation of Sex Crimes Against Children.

Section 2 of the bill adds three crimes as new wiretap predicates in section 2516 of title 18 of the United States Code. The title 18 crimes added by the bill are section 2252A, which deals with child pornography; section 2422, which deals with coercion and enticement to engage in prostitution or other illegal sexual activity; and section 2423, relating to transportation of minors to engage in prostitution or other illegal sexual activity.

Sec. 3. Technical Amendment Eliminating Duplicative Provision

Section 3 of the bill makes a technical correction to section 2516(1) of title 18. Each of the wiretap predicates listed in paragraph (p) of that section are also listed as wiretap predicates in other paragraphs of that section. In short, paragraph (p) is redundant and section 3 of the bill deletes it.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 2516 OF TITLE 18, UNITED STATES CODE

§ 2516. Authorization for interception of wire, oral, or electronic communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of

this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

(a) * * * * *

(c) any offense which is punishable under the following sections of this title: section 201 (bribery of public officials and witnesses), section 215 (relating to bribery of bank officials), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1032 (relating to concealment of assets), section 1084 (transmission of wagering information), section 751 (relating to escape), section 1014 (relating to loans and credit applications generally; renewals and discounts), sections 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1751 (Presidential and Presidential staff assassination, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1958 (relating to use of interstate commerce facilities in the commission of murder for hire), section 1959 (relating to violent crimes in aid of racketeering activity), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), section 1343 (fraud by wire, radio, or television), section 1344 (relating to bank fraud), sections 2251 and 2252 (sexual exploitation of children), *section 2252A (relating to material constituting or containing child pornography)*, sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), *section 2422 (relating to coercion and enticement)*, *section 2423 (relating to transportation of minors)* section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities), section 38 (relating to aircraft parts fraud), section 1963 (violations with respect to racketeer influenced and corrupt organizations), section 115 (relating to threatening or retaliating against a Federal official), and section 1341 (relating to mail fraud), section 351 (violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnapping, and assault), section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), section 175 (relating to biological weapons), section 1992 (relating to wrecking trains), a felony

violation of section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), section 1544 (relating to misuse of passports), or section 1546 (relating to fraud and misuse of visas, permits, and other documents);

* * * * *

(o) any violation of section 5861 of the Internal Revenue Code of 1986 (relating to firearms); *or*

[(p) a felony violation of section 1028 (relating to production of false identification documents), section 1542 (relating to false statements in passport applications), section 1546 (relating to fraud and misuse of visas, permits, and other documents) of this title or a violation of section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens); or]

* * * * *

DISSENTING VIEWS

Wiretap authority is invasive and should be extended only when absolutely necessary. It allows Federal employees to listen in on private personal conversations, most of which will, undoubtedly, have nothing to do with criminal activity.

The current Congressionally approved wiretap authority dates back to the 1968 crime bill. The primary intent of the provision was to permit a limited use of electronic surveillance of organized crime and gambling groups, although it was envisioned as a tool of last resort even under those circumstances. Since that time, the Act has been amended over a dozen times with now over 50 predicate crimes to which wiretap authority may be obtained. Regrettably, a number of those predicates involve relatively minor criminal activity such as lying on a passport application. So, now the argument goes "if we amended the wiretap authority to add 'x', we certainly should amend it to add 'y', a much more serious offense." As a result, wiretaps are becoming routine, rather than an extraordinary procedure to be used only as a last resort. And given the level of effectiveness of today's technology, wiretaps have the potential for being much more invasive. While we are prepared to support some extension of Federal wiretap authority, we believe the present bill goes too far in putting in the hands of law enforcement a procedure recognized to be so evasive of the rights of citizens in a free society that it can only be made available for use under circumstances specifically approved by Congress.

The original bill added as wiretap predicates three sections under Title 18 of the Federal criminal code relating to sex crimes against children—sections 2252(A), 2422, and 2423. Section 2252(A), among other things, includes computer generated depictions of child pornography. It's a provision which is too broad to merit expanding the already too intrusive wiretapping authority. Section 2422 prohibits coercion and enticement to travel in interstate or foreign commerce to engage in any illegal sexual activity, and 2423 prohibits a broad range of misconduct (i.e., transportation of a minor to engage in sexual activity which constitutes any criminal offense).

Mr. Scott offered an amendment at Full Committee Markup which would have eliminated section 2252(A) as wiretap predicate. That amendment was defeated. While the Majority agreed, at Mr. Scott's suggestion, to limit the extension of wiretap authority under 2422, and 2423 to situations which involve offenses which constitute a Federal felony if committed on Federal lands, we continue to believe that 2423(b), which makes it an offense to travel with the intent, or thought, of committing any sex crime, is too remote to warrant making it a predicate offense for wiretap authority.

We recognize that supporters of this bill would argue that given the types of crimes for which wiretap authority can now be sought,

adding any sex crime against children as wiretap predicate would seem to be more than justified. However, in our view, further extension of this extraordinary power should not be justified by unjustified, or less justified, extensions in the past. Just because we did it wrong before, doesn't mean we have to do it wrong again.

We also dissent from the bill because sexual exploitation of children is already a crime that is a wiretap predicate. Much of the activity which would be covered by the current bill would involve State misdemeanor activity or activity which may not be illegal in the country in which it is pursued. Given the four year age differential in statutory rape cases, this legislation would authorize Federal wiretap authority in a case where an 19 year old makes arrangements through email to travel from DC to Virginia to engage in sex with a 15 year old and show her dirty pictures. Ironically, being caught in bed with the 15 year old would not be a Federal offense, but showing her the dirty pictures would be.

Similarly, if the girl lived in Scandinavia, where, like the drug laws, the sex laws may be much different than in the U.S., and the 19 year old boyfriend traveled there to have sex with her, this would constitute a wiretap predicate under the bill. While it is one thing to make illegal such otherwise not illegal activity for anyone leaving the U.S., it is another thing to let "big brother" eavesdrop on it through wiretap.

Moreover, it is clear from the list of already existing sex crime offenses that much of the more serious activity for which proponents of the legislation are seeking to justify wiretap extension (e.g., "sexual exploitation of children") are already covered by wiretap authority. And all of it is already covered by email confiscation authority and other investigatory techniques. So, it is not clear to me what is missing in current investigations of the crimes listed in the bill, including some very minor crimes, which would require the extraordinary procedure of wiretap. Wiretap is an intrusive procedure which was designed to be authorized only as a last resort to prevent very serious crimes. Since there are other effective ways to prosecute the crimes in this bill, we believe this extension of wiretap authority is not warranted.

ROBERT C. SCOTT.
MAXINE WATERS.

