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4 MARKUP OF H.R. 3796, THE ADAM WALSH REAUTHORIZATION ACT OF  
5 2012;

6 H.R. 4362, THE STOPPING TAX OFFENDERS AND PROSECUTING  
7 IDENTITY THEFT ACT OF 2012;

8 H.R. 6063, THE CHILD PROTECTION ACT OF 2012;

9 H.R. 6029, THE FOREIGN AND ECONOMIC ESPIONAGE PENALTY  
10 ENHANCEMENT ACT OF 2012;

11 H.R. \_\_\_\_\_, THE INTELLECTUAL PROPERTY ATTACHE ACT;

12 H.R. 6062, THE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT  
13 PROGRAM REAUTHORIZATION ACT OF 2012;

14 H.R. 1950, TO ENACT TITLE 54, UNITED STATES CODE, NATIONAL  
15 PARK SYSTEM, AS POSITIVE LAW;

16 H.R. 6080, TO MAKE IMPROVEMENTS IN THE ENACTMENT OF TITLE 41,  
17 UNITED STATES CODE, INTO A POSITIVE LAW TITLE AND TO IMPROVE  
18 THE CODE; AND

19 H.R. 3803, THE DISTRICT OF COLUMBIA PAIN-CAPABLE UNBORN CHILD  
20 PROTECTION ACT

21 Tuesday, July 10, 2012  
22 House of Representatives  
23 Committee on the Judiciary  
24 Washington, D.C.

25 The committee met, pursuant to call, at 10:01 a.m., in  
26 Room 2141, Rayburn House Office Building, Hon. Lamar Smith  
27 [chairman of the committee] presiding.

28 Present: Representatives Smith, Sensenbrenner, Coble,  
29 Gallegly, Goodlatte, Lungren, Chabot, Issa, Forbes, King,  
30 Franks, Gohmert, Jordan, Poe, Chaffetz, Griffin, Marino,  
31 Gowdy, Ross, Adams, Amodei, Conyers, Berman, Nadler, Scott,  
32 Watt, Lofgren, Jackson Lee, Waters, Johnson, Quigley, Chu,  
33 Sanchez, and Polis.

34 Staff Present: Richard Hertling, Majority Staff  
35 Director and Chief Counsel; Travis Norton, Majority  
36 Parliamentarian; Sarah Kish, Clerk; Caroline Lynch, Majority  
37 Counsel; Sam Ramer, Majority Counsel; Sarah Allen, Majority  
38 Counsel; Perry Apfelbaum, Minority Staff Director; Danielle

39 Brown, Minority Parliamentarian; Ron LeGrand, Minority  
40 Counsel; Ashley McDonald, Minority Counsel; and Joe  
41 Graupensperger, Minority Counsel.  
42

43 Chairman Smith. The Judiciary Committee will come to  
44 order, and the clerk will call the roll.

45 Ms. Kish. Mr. Smith?

46 Chairman Smith. Present.

47 Ms. Kish. Mr. Sensenbrenner?

48 Mr. Coble?

49 Mr. Gallegly?

50 Mr. Goodlatte?

51 Mr. Lungren?

52 Mr. Chabot?

53 Mr. Issa?

54 Mr. Pence?

55 Mr. Forbes?

56 Mr. King?

57 Mr. Franks?

58 Mr. Gohmert?

59 Mr. Jordan?

60 Mr. Poe?

61 Mr. Chaffetz?

62 Mr. Griffin?

63 Mr. Marino?

64 Mr. Gowdy?  
65 Mr. Ross?  
66 Mrs. Adams?  
67 Mrs. Adams. Present.  
68 Ms. Kish. Mr. Quayle?  
69 Mr. Amodei?  
70 Mr. Conyers?  
71 Mr. Berman?  
72 Mr. Nadler?  
73 Mr. Scott?  
74 Mr. Watt?  
75 Ms. Lofgren?  
76 Ms. Jackson Lee?  
77 Ms. Waters?  
78 Mr. Cohen?  
79 Mr. Johnson?  
80 Mr. Pierluisi?  
81 Mr. Quigley?  
82 Ms. Chu?  
83 Mr. Deutch?  
84 Ms. Sanchez?

85 Mr. Polis?

86 [Pause.]

87 Chairman Smith. The gentlewoman from California, before  
88 she leaves the room maybe? Oh, gone. We will get her back  
89 in a minute.

90 [Pause.]

91 Chairman Smith. The gentleman from Michigan?

92 Ms. Kish. Mr. Conyers?

93 Mr. Conyers. Present.

94 [Pause.]

95 Chairman Smith. The gentlewoman from California?

96 Ms. Kish. Ms. Lofgren?

97 Ms. Lofgren. Present.

98 Chairman Smith. Okay. And the gentleman from Virginia,  
99 Mr. Scott?

100 Mr. Scott. Present.

101 [Pause.]

102 Chairman Smith. The gentleman from Utah?

103 Mr. Chaffetz. Present.

104 [Pause.]

105 Chairman Smith. The gentleman from Iowa?

106 Mr. King. Present.

107 [Pause.]

108 Chairman Smith. The Judiciary Committee is going to  
109 proceed. Without objection, the chair is authorized to  
110 declare recesses of the committee at any time.

111 And with the concurrence of the ranking member, we are  
112 going to take up the first two bills, after which we will  
113 pause and make sure that we have the requisite number of  
114 Members who are present.

115 And pursuant to notice, I now call up H.R. 1950 and H.R.  
116 6080 for purposes of markup, and I ask unanimous consent  
117 that the bills be considered en bloc.

118 Without objection, so ordered, and the clerk will report  
119 the bills.

120 Ms. Kish. H.R. 1950, to enact Title 54, United States  
121 Code, National Park System, as positive law --

122 Chairman Smith. Without objection, the bills are  
123 considered as read and open for amendment at any point.

124 [The information follows:]

125

126 Chairman Smith. I recognize myself for a manager's  
127 amendment to H.R. 1950, and the clerk will report the  
128 amendment.

129 Ms. Kish. H.R. 1950, to enact Title 54, United States  
130 Code, National Park System, as positive law.

131 Chairman Smith. Without objection, the amendment is  
132 considered as read and will be considered as base text for  
133 purposes of amendment.

134 [The amendment of Chairman Smith follows:]

135

136 Chairman Smith. And I will recognize myself and then  
137 the ranking member for opening statements.

138 The Rules of the House entrust to the Judiciary  
139 Committee the responsibilities of revision and codification  
140 of the statutes of the United States. This power does not  
141 give our committee substantive legislative jurisdiction over  
142 all areas of law. It merely confers the authority to  
143 organize duly enacted laws into an efficient codification  
144 system.

145 The nonpartisan Office of Law Revision Counsel is  
146 responsible for properly codifying public laws and the  
147 titles and sections of the United States Code. From time to  
148 time, that office provides the Judiciary Committee advice as  
149 to how to enact a more user-friendly and cohesive statutory  
150 system.

151 Over the past several months, Republican and Democratic  
152 committee staff have worked cooperatively with the Office of  
153 Law Revision Counsel to develop the two bills under  
154 consideration. H.R. 6080 makes technical changes to Title  
155 41, the title that contains public contracts law, and H.R.  
156 1950 creates a new title of positive law, Title 54, to

157 compile all of the laws that relate to national parks.

158 Codification bills do not make any substantive changes

159 to existing law and, therefore, attract bipartisan support.

160 My manager's amendment makes minor changes to H.R. 1950 that

161 further ensure that no substantive law will be altered by

162 its enactment.

163 I encourage my colleagues to support the manager's

164 amendment and the two bills.

165 I now recognize the ranking member, the gentleman from

166 Michigan, Mr. Conyers, for his opening statement.

167 Mr. Conyers. Thank you, Chairman Smith.

168 And my Judiciary colleagues, I am pleased to welcome

169 everyone back.

170 And I think it is very easy for us to consider both of

171 these bills together. They work on the same premise as

172 improving the compilation, restatement, and revision of the

173 laws, and we have a method now of doing this to see that

174 corrections will avoid interruption or confusion in the

175 statutory text.

176 I am very pleased to have joined with Chairman Smith in

177 this endeavor. We think that it will make for a much easier

178 understanding of the many laws that we are enacting. And I  
179 will submit my statement for the record for both these  
180 measures, Mr. Chairman, and return the balance of my time.

181 [The information follows:]

182

183 Chairman Smith. Thank you, Mr. Conyers.

184 The question is on the manager's amendment to H.R. 1950.

185 Those in favor, say aye.

186 Opposed, no.

187 In the opinion of the chair, the ayes have it, and the  
188 amendment is agreed to.

189 A reporting quorum being present, the question is on  
190 reporting the bills favorably, as amended, to the House.

191 Those in favor, say aye.

192 Opposed, nay.

193 The ayes have it, and the bills, as amended, are ordered  
194 reported favorably.

195 Without objection, staff is authorized to make technical  
196 and conforming changes. Members will have 2 days to submit  
197 their views.

198 Pursuant to notice, I now call up H.R. 6029, to amend  
199 Title 18, United States Code, to provide for increased  
200 penalties for foreign and economic espionage, and for other  
201 purposes, for purposes of markup.

202 And the clerk will report the bill.

203 Ms. Kish. H.R. 6029, to amend Title 18, United States

204 Code, to provide for increased penalties for foreign and  
205 economic --

206 Chairman Smith. Without objection, the bill will be  
207 considered as read.

208 [The information follows:]

209

210 Chairman Smith. And I will recognize myself and then  
211 the ranking member for opening statements.

212 In 1975, tangible assets, such as real estate and  
213 equipment, made up 83 percent of the market value of  
214 Standard & Poor's 500 companies. Intangible assets, which  
215 include trade secrets, proprietary data, source code,  
216 business processes, and marketing plans, attributed only 17  
217 percent of these companies' market value.

218 By 2009, these percentages were nearly reversed.  
219 Tangible assets accounted for 19 percent of these companies'  
220 market value while intangible assets accounted for 81  
221 percent. In a dynamic and globally connected information  
222 economy, intangible assets are important to the success of  
223 individual enterprises and to the future of entire  
224 industries, economies, and nations.

225 A global study released last year by McAfee, the world's  
226 largest security technology company, and Science  
227 Applications International Corporation concluded that  
228 corporate trade secrets and other sensitive intellectual  
229 capital are the newest currency of cyber criminals.

230 The study found that the motivations of criminals in the

231 cyber underground are almost always financial. There has  
232 been a shift from a focus on the theft of personal  
233 information, such as credit cards and Social Security  
234 numbers, to the theft of corporate intellectual capital.

235 Corporate intellectual capital is frequently vulnerable,  
236 of great value to competitors and foreign governments, and  
237 its theft is not always immediately or easily detected by  
238 victims. The intelligence community warns us that foreign  
239 interests place a high priority on acquiring sensitive U.S.  
240 economic information and technologies.

241 Targets include information and communications  
242 technologies, business information, military technologies,  
243 and rapidly growing civilian and dual-use technologies, such  
244 as those that relate to clean energy, healthcare, and  
245 pharmaceuticals.

246 The most recent report from the Office of the National  
247 Counterintelligence Executive identifies Chinese actors as  
248 the world's most active and persistent perpetrators of  
249 economic espionage. Also, it describes Russia's  
250 intelligence services as responsible for conducting a range  
251 of activities to collect economic information and technology

252 from U.S. targets.

253       Of seven economic espionage act cases resolved in fiscal  
254 year 2010, six involved links to China. More recently, five  
255 companies were accused of the theft of trade secrets from  
256 DuPont. Four of these companies are Chinese state-owned  
257 enterprises or subsidiaries.

258       In the U.S., the EEA serves as the primary tool the  
259 Federal Government uses to protect secret valuable  
260 commercial information from theft. The EEA addresses two  
261 types of trade secret theft.

262       Section 1831 punishes the theft of a trade secret to  
263 benefit a foreign entity, and Section 1832 punishes the  
264 commercial theft of trade secrets carried out for economic  
265 advantage, whether or not the theft benefits a foreign  
266 entity.

267       Since enacting the EEA in 1996, Congress hasn't adjusted  
268 the penalties to reflect the increasing importance of  
269 intellectual property to the economic and national security  
270 of the U.S. and to our businesses. H.R. 6029, the Foreign  
271 and Economic Espionage Penalty Enhancement Act of 2012,  
272 focuses on this aspect of the EEA.

273           It increases the maximum penalties for an individual  
274 convicted of committing espionage on behalf of a foreign  
275 entity. Currently, the maximum penalty for someone  
276 convicted under Section 1831 of the EEA is up to 15 years  
277 imprisonment and a fine of only up to \$500,000.

278           This bill increases the maximum penalty to up to 20  
279 years imprisonment and a fine up to \$5 million. It also  
280 provides a new means of calculating the maximum fine for a  
281 convicted organization.

282           Earlier this year, the FBI estimated that companies had  
283 lost \$13 billion to trade secret theft in just over 6  
284 months. In several cases over the past 6 years, losses to  
285 individual U.S. companies were reported up to \$1 billion.

286           Our intelligence community has recognized the  
287 significant and growing threat of our Nation's prosperity  
288 and security posed by criminals, both inside and outside the  
289 U.S., who commit espionage. We should also recognize this  
290 increasing threat by enhancing deterrence and more  
291 aggressively punishing those criminals who target U.S.  
292 companies for espionage.

293           So I urge my colleagues to support H.R. 6029.

294 The gentleman from Michigan, the ranking member, is  
295 recognized.

296 Mr. Conyers. Thank you again, Chairman Smith.

297 This is a measure that you and I and the gentleman from  
298 North Carolina, Mel Watt, have produced, the Foreign and  
299 Economic Espionage Penalty Enhancement Act. It is  
300 consistent with our longstanding efforts to protect  
301 intellectual property and competitive strengths of American  
302 business.

303 And there has been new evidence that sometimes even  
304 governments are working to lessen the protection that we  
305 afford our intellectual property endeavors. So it is an  
306 appropriate subject matter for the House Judiciary  
307 Committee.

308 Now, as reported by the Intellectual Property  
309 Enforcement Coordinator, economic espionage is a serious  
310 threat to American businesses by foreign governments. And  
311 so, this makes this a measure that I think an overwhelming  
312 majority, if not the entire committee, can support.

313 The pace of foreign economic collection of information  
314 and industrial espionage activities against American

315 corporations seems to be accelerating. Foreign competitors  
316 with ties to companies owned by foreign governments have  
317 increased their efforts to steal trade secret information  
318 and intellectual property. The loss of this information and  
319 property can have serious repercussions for the companies,  
320 American companies and our economy.

321 Finally, the increase in the capabilities of foreign  
322 governments to infiltrate our computer networks has  
323 increased the risks and instances of economic espionage.  
324 The Department of Justice and the Federal Bureau of  
325 Investigation have seen a 29 percent increase in economic  
326 espionage and trade secret theft investigation compared to  
327 the fiscal year 2010.

328 And so, I am not trying to be an alarmist or to  
329 overstimulate our reactions to foreign economic collection  
330 of information, but I think it is serious. It is on the  
331 increase, and I am proud to join with the sponsors of this  
332 measure, and I ask unanimous consent to put my entire  
333 statement into the record and return the balance of my time.

334 Chairman Smith. Without objection.

335 [The information follows:]

336

337 Chairman Smith. And thank you, Mr. Conyers, for that.

338 Are there any amendments to this bill?

339 [No response.]

340 Chairman Smith. If not, a reporting quorum being  
341 present, the question is on reporting the bill favorably to  
342 the House.

343 Those in favor, say aye.

344 Opposed, no.

345 The ayes have it, and the bill is ordered reported  
346 favorably. Members will have 2 days to submit views.

347 Pursuant to notice, I now call up H.R. 6063, to amend  
348 Title 18, United States Code, with respect to child  
349 pornography and child exploitation offenses, for purposes of  
350 markup.

351 And the clerk will report the bill.

352 Ms. Kish. H.R. 6063, to amend Title 18, United States  
353 Code, with respect to child pornography and child  
354 exploitation --

355 Chairman Smith. Without objection, the bill will be  
356 considered as read.

357 [The information follows:]

358

359 Chairman Smith. And I will recognize myself and the  
360 ranking member for opening statements.

361 Trafficking of child pornography images was almost  
362 completely eradicated in America by the mid 1980s.  
363 Purchasing or trading these images was risky and almost  
364 impossible to do anonymously, but the advent of the Internet  
365 reversed this accomplishment.

366 Today, Internet child pornography may be the fastest-  
367 growing crime in America, increasing an average of 150  
368 percent per year. The National Center for Missing and  
369 Exploited Children's Child Victim Identification Program has  
370 reviewed more than 51 million child pornography images and  
371 videos in the hopes of identifying the victims in them.

372 These images of children being sexually assaulted are  
373 crime scene photos, and each face represents a child in  
374 desperate need of help. Every day, these online criminals  
375 prey on our children with virtual anonymity. And according  
376 to recent estimates, there are as many as 100,000 sex  
377 offenders in the U.S. whose whereabouts are still unknown.

378 I and Representative Debbie Wasserman Schultz introduced  
379 H.R. 6063, the Child Protection Act of 2012, to provide law

380 enforcement officials with important tools and additional  
381 resources to combat the growing threat of child pornography  
382 and exploitation.

383 H.R. 6063 increases the maximum penalties from 10 to 20  
384 years for child pornography offenses that involve children  
385 or children under the age of 12, and it strengthens  
386 protections for child witnesses and victims who are often  
387 subjected to harassment and intimidation throughout the  
388 trial process.

389 The bill allows a Federal court to issue a protective  
390 order if it determines that a child victim or witness is  
391 being harassed or intimidated and imposes criminal penalties  
392 for violation of a protective order. This bill ensures that  
393 paperwork does not stand in the way of protecting our kids.

394 It gives the U.S. marshals, the Federal agency tasked by  
395 Congress under the Adam Walsh Act with apprehending fugitive  
396 sex offenders, administrative subpoena authority. We must  
397 ensure that investigators have every available resource to  
398 track down these predators and protect the weakest among us.

399 The Internet Crimes Against Children Task Force Program  
400 is a national network of 61 coordinated task forces that

401 represent over 3,000 Federal, State, and local law  
402 enforcement and prosecutorial agencies dedicated to child  
403 exploitation investigations. The ICAC task forces were  
404 launched in 1998 and officially authorized by Congress in  
405 the Protect Our Children Act of 2008.

406 Since 1998, the ICAC task forces have reviewed more than  
407 280,000 complaints of alleged child sexual abuse and have  
408 arrested more than 30,000 individuals. In fiscal year 2011,  
409 the ICAC program trained over 31,000 law enforcement  
410 personnel, over 2,800 prosecutors, and more than 11,000  
411 other professionals that work in the ICAC field.

412 The Child Protection Act extends the authorization of  
413 the task forces for 5 years and increases the cap on grant  
414 funds for training programs. The bill also makes several  
415 additional clarifications to provisions enacted as part of  
416 the Protect Our Children Act and requests a report from the  
417 Justice Department on implementation of the National  
418 Internet Crimes Against Children Data System.

419 The bill has broad bipartisan support in Congress and is  
420 supported by a number of outside organizations, which  
421 include the National Center for Missing and Exploited

422 Children, the Major City Chiefs of Police, Futures Without  
423 Violence, the Fraternal Order of Police, the International  
424 Association of Chiefs of Police, the National Alliance to  
425 End Sexual Violence, the National District Attorneys  
426 Association, the National White Collar Crime Center, the  
427 National Sheriffs Association, the Surviving Parents  
428 Coalition, the Rape, Abuse, Incest National Network, and  
429 Protect.

430 Without objection, letters of support from these  
431 organizations will be made a part of the record.

432 [The information follows:]

433

434 Chairman Smith. I urge my colleagues to join me in  
435 support of this bill. And again, I want to thank my  
436 colleagues on the committee, so many of them on both sides,  
437 for cosponsoring this legislation.

438 With that, I will recognize the gentleman from Michigan,  
439 the ranking member of the Judiciary Committee, to make his  
440 statement.

441 Mr. Conyers. Thank you, Chairman Smith.

442 This measure has been worked on and reworked  
443 considerably, and I want to commend you for the rather  
444 important and large revisions that have been made in the  
445 course of bringing the measure before us today.

446 There are two points here that I would like to make, and  
447 I am certainly glad that Bobby Scott, the ranking member of  
448 the Subcommittee on Crime, has a number of amendments that  
449 he is going to bring forward that will, I think, help make  
450 the measure even more acceptable.

451 But the two points I make is, one, that we are creating  
452 a criminal penalty for the violation of a civil restraining  
453 order for which there is already existing law against. It  
454 is already a violation. So we are piling something that

455 could go to 5-year maximum onto this measure through this  
456 bill.

457 I would hope that the Members would think very carefully  
458 with me about this because I don't think it is an  
459 appropriate way for the Committee on the Judiciary to  
460 legislate.

461 And the second thing, it validates administrative  
462 subpoenas. What is an administrative subpoena? Well, that  
463 is a subpoena that the Government does not have to go to  
464 court to effectuate. It is sent out from the office as a  
465 subpoena.

466 I think my opposition to administrative subpoenas is  
467 probably pretty complete, in and of itself. But certainly,  
468 in this circumstance, I don't find it acceptable or  
469 necessary at all.

470 And so, Mr. Chairman, with those reservations, I would  
471 like to submit my full statement and yield back the  
472 remainder of my time.

473 [The information follows:]

474

475 Chairman Smith. Okay. Thank you, Mr. Conyers.

476 The gentleman from Virginia, Mr. Scott, the ranking  
477 member of the Crime Subcommittee, is recognized for an  
478 opening statement.

479 Mr. Scott. Thank you, Mr. Chairman.

480 I appreciate the apparent intent of H.R. 6063 to better  
481 protect children who are victims of sexual abuse, but I am  
482 not sure of the extent to which it accomplishes that goal.  
483 And so, I am not able to support all of its provisions.

484 There is already a comprehensive statutory scheme to  
485 assist judges and law enforcement officials in protecting  
486 witnesses in Federal criminal proceedings. In addition,  
487 there are Federal criminal provisions with heavy penalties  
488 and all the authority for judges to enter protective orders  
489 for the protection of all witnesses, including children.

490 Judges have immense contempt powers and other powers to  
491 accomplish this goal. Certainly not been any showing to  
492 suggest that Federal judges are shy or hampered in their  
493 ability to protect child witnesses. So it is not clear that  
494 anyone -- it is not clear that any one assistance is  
495 necessary or helpful in this area.

496           Accordingly, I am opposed to the additional Federal  
497 criminal provision with fines and up to 5 years of  
498 imprisonment for any violation of a court order protecting a  
499 child witness. Indeed, such a provision moves the  
500 protection responsibility from a judge in a case to the  
501 prosecutor, who decides when there is a violation or whether  
502 to bring such charges.

503           And given the fact that many proceedings involving child  
504 witnesses also involve family members of the child witness  
505 in emotionally charged situations, in those cases adding  
506 more criminal provisions to the mix is clearly not a helpful  
507 step.

508           There is also no need to give prosecutors and judges  
509 extra weight in such situations against defendants who may  
510 be innocent of the underlying charges by providing  
511 presumptions of guilty motives, as this bill does, with  
512 respect to violation proceedings. Minor activities not  
513 intended to cause any harm or distress, such as a phone call  
514 or an email, can result in a Federal criminal charge not as  
515 a violation of existing laws protecting witnesses from  
516 harassment or intimidation, but as a technical violation of

517 a civil order.

518 Judges already have the ability to enforce the orders  
519 even with jail time. So criminal proceedings at the  
520 discretion of prosecutors with presumptions of guilt are not  
521 necessary, productive, or fair in this context, and such a  
522 provision is certainly not just geared at protecting  
523 children because the way it is written, it applies to all  
524 protective orders whether it involves children or not.

525 I am also not convinced that extending the extraordinary  
526 order of the ex parte judicial authority through  
527 administrative subpoena power to an agency that is  
528 appropriate -- I am not sure that is appropriate in the case  
529 of registered sex offenders.

530 The existing statutory scheme for administrative  
531 subpoenas for law enforcement focuses on special  
532 circumstances such as a presidential threat protection  
533 administrative subpoena that we approved a few years ago  
534 when the Director of the Secret Service has determined that  
535 there is an imminent threat against the President of the  
536 United States. He certifies the same to the Secretary of  
537 the Treasury or the Attorney General. I am not sure we need

538 to extend that in cases of child exploitation.

539 The subpoena authorized in this bill has none of the  
540 oversight protections against abuse or misuse. So it is  
541 actually more powerful than the administrative subpoena  
542 available to the Secret Service in the case of an imminent  
543 threat to the President of the United States.

544 The research has clearly shown, and we have had hearings  
545 to show this, that registered sex offenders who may be  
546 noncompliant are no more apt to commit a criminal offense  
547 than those who are compliant with all of the regulations.  
548 And I say may be noncompliant because a high number of those  
549 charged with a criminal offense of violating registration  
550 requirements are found not guilty as charged.

551 So there is no imminent threat context with rounding up  
552 allegedly noncompliant registered sex offenders who, by  
553 evidence we heard at the hearings, are no more likely to  
554 commit an offense than those who are compliant, and there is  
555 no additional protection provided against abuse to children.

556 Again, I want to point out that this administrative  
557 subpoena is not just focused on children because it is for  
558 any case. Some States require registration for very

559 questionable situations, such as urinating in public, and  
560 for offenses between consenting adults. So using the  
561 extraordinary powers chasing down those who may be in  
562 technical violation of reporting requirements when they are  
563 no more likely to commit offense than those who are in  
564 compliance is not a productive use of our criminal justice  
565 system.

566 Mr. Chairman, I will be offering amendments to address  
567 some of these problems, and I hope that they are adopted.

568 And I yield back.

569 Chairman Smith. Yes. Thank you, Mr. Scott.

570 The gentleman will now be recognized for the purposes of  
571 offering an amendment.

572 Mr. Scott. Amendment Number 2.

573 Chairman Smith. The clerk will report the amendment.

574 Ms. Kish. Amendment to H.R. 6063, offered by Mr. Scott.

575 Page 4, strike lines 14 through 19 and redesignate  
576 provisions accordingly.

577 [The amendment of Mr. Scott follows:]

578

579 Chairman Smith. The gentleman is recognized to explain  
580 his amendment.

581 Mr. Scott. Thank you, Mr. Chairman.

582 Mr. Chairman, this will strike the provision in H.R.  
583 1981 -- wait a minute. Yes, okay. 6063, creating a new  
584 criminal offense for violations or attempts to violate a  
585 civil restraining order.

586 There are already felony criminal provisions protecting  
587 Federal witnesses from harassment and intimidation, already  
588 provisions for a protective order including children. And  
589 courts already have tremendous authority and power to  
590 enforce those orders through contempt, which can carry jail  
591 time, or other means.

592 Yet this bill takes the enforcement authority away from  
593 the judge and gives it to prosecutors by authorizing a  
594 charge of a felony offense up to 5 years imprisonment for  
595 violations of a civil order by a person who may be a family  
596 member or even a child who may be innocent of the underlying  
597 charge.

598 Mr. Chairman, we remember the case a few years ago,  
599 Morgan v. Foretich, a child custody case where the mother

600 accused the father of child sexual abuse in a heated custody  
601 dispute. The case against the father was never established,  
602 but this is the kind of case where the protective order  
603 could be applied.

604 Moreover, the violation could be something very minor,  
605 such as a phone call in violation of a court order that does  
606 not involve witness intimidation or harassment or any effect  
607 upon the protected person. The provision, while well-  
608 meaning, is totally unnecessary and has too many pitfalls to  
609 allow the imposition of a Federal felony and up to 5 years  
610 in prison for violation.

611 Although the section -- although placed in a section of  
612 the bill that purports to deal with protection of child  
613 witnesses, the law as written is not limited to child victim  
614 cases. It applies to any protective order under the section  
615 addressing witness protection orders. It seems overly  
616 broad, overly harsh, and unnecessary, and I hope that we  
617 will adopt this amendment.

618 I yield back.

619 Chairman Smith. Thank you, Mr. Scott.

620 I will recognize myself in opposition to the amendment.

621           This amendment eliminates the criminal penalty for  
622 violating a protective order that prohibits the harassment  
623 or intimidation of a victim or witness. The protective  
624 order is issued to prevent harassment or intimidation of a  
625 Federal witness or when the conduct in question is likely to  
626 affect the willingness of a minor from testifying at a trial  
627 or participating in a Federal investigation.

628           Current fines and contempt citations are inadequate to  
629 protect minor witnesses and victims, especially in child sex  
630 abuse cases. This bill provides Federal courts with the  
631 means to control intimidation through effective protective  
632 orders and strengthens the deterrent effect of a restraining  
633 order with criminal penalties for knowing and intentional  
634 violation.

635           The penalty in this case is not a mandatory minimum  
636 sentence. It is left to the discretion of the court to fine  
637 the violator, impose a prison sentence of not more than 5  
638 years, or both.

639           Removal of this penalty from the bill significantly  
640 weakens our ability to protect child witnesses and works to  
641 the advantage of those who would sexually exploit minors.

642 This provision was passed by the House under the suspension  
643 last Congress as part of the Domestic Minor Sex Trafficking  
644 Deterrence and Victims Support Act of 2010.

645 And the gentleman from Virginia knows what I am going to  
646 say next, and that is that this bill passed with the support  
647 of my colleagues on the other side of the aisle, including  
648 Mr. Scott, who happened to have managed the bill.

649 Mr. Scott. Will the gentleman yield?

650 Chairman Smith. So I urge my colleagues to oppose the  
651 amendment, and I will yield to the gentleman from Virginia.

652 Mr. Scott. Mr. Chairman, we reviewed that bill, and  
653 that bill was so bad that we improved it a lot. And  
654 apparently, we didn't get everything out of it, but we are  
655 still trying.

656 Chairman Smith. But the gentleman is not quibbling with  
657 my description of his managing the bill and it passing under  
658 suspension when his party was in control, is he?

659 Mr. Scott. No. The bill was real bad when it started.

660 Chairman Smith. Okay. Okay.

661 [Laughter.]

662 Mr. Scott. We got the mandatory minimums out and a lot

663 of other things out.

664 Chairman Smith. Okay. Thank you, Mr. Scott.

665 Are there other Members who wish to be heard on this  
666 amendment?

667 [No response.]

668 Chairman Smith. If not, all in favor of the amendment,  
669 say aye.

670 All opposed, no.

671 In the opinion of the chair, the nays have it, and the  
672 amendment is not agreed to.

673 Are there other amendments? The gentleman from  
674 Virginia, Mr. Scott, is recognized.

675 Mr. Scott. Number 3.

676 Chairman Smith. The clerk will report the amendment  
677 Number 3

678 Ms. Kish. Amendment to H.R. 6063, offered by Mr. Scott.  
679 Page 6, strike lines 3 through 14 and redesignate provisions  
680 accordingly.

681 [The amendment of Mr. Scott follows:]

682

683 Chairman Smith. The gentleman from Virginia is  
684 recognized to explain his amendment.

685 Mr. Scott. Thank you, Mr. Chairman.

686 Mr. Chairman, this amendment would strike the provision  
687 that creates the rebuttable presumption that was just  
688 referred to in that if an individual posts a photograph or  
689 personal identifying information about a person subject to a  
690 protective order, that the rebuttable presumption is that it  
691 serves no legitimate purpose.

692 Now I am certain that I speak for all Members when I say  
693 that we want to protect children, especially those who are  
694 victims of crime. But with this new criminal penalty  
695 created in this section, this penalty is not limited to just  
696 child witnesses or victims.

697 Moreover, this rebuttable presumption would shift the  
698 burden of proof in harassment or intimidation cases from the  
699 accuser to the accused by requiring that the accused prove  
700 the posting of the photograph about the accuser was for a  
701 legitimate purpose. Under the current law, the burden is on  
702 the accuser to establish this element of defense, not the  
703 defendant, and in fact, that is normal case with the

704 presumption of innocence.

705       Given that this charge is coupled with the creation of a  
706 felony criminal liability of up to 5 years, it would  
707 essentially make it easier to prove a case of harassment  
708 against an individual that could subject them to a felony  
709 conviction.

710       Now think about all the various ways of posting a  
711 photograph or information about a person over the Internet  
712 would serve a legitimate purpose. To presume and make an  
713 accused person prove that it was unnecessary or unfair, what  
714 is wrong with the accuser having to show the harassment or  
715 intimidation -- to prove the intimidation or harassment,  
716 given the fact that if it is proven, there is 5 years at the  
717 end of it.

718       I would hope that posting -- I mean, a lot of people  
719 have photo albums where the album may be, in fact, posted on  
720 the Internet, along with all your other family photos. If  
721 the victim is in that mix, all of a sudden, you are looking  
722 at a presumption that you are guilty of a 5-year felony.

723       I would hope that we would adopt the amendment and at  
724 least keep criminal law the way it traditionally is, that

725 you don't have a rebuttable presumption of guilt.

726 Yield back.

727 Chairman Smith. The gentleman yields back.

728 I will recognize myself in opposition to the amendment.

729 This amendment strikes language intended to prevent the  
730 distribution of a witness's personal information on the  
731 Internet. Current law authorizes Federal courts to issue  
732 protective orders to prevent the intimidation or harassment  
733 of Federal witnesses.

734 Section 3 of H.R. 6063 expands this law to allow a  
735 Federal court to issue a protective order for harassment or  
736 intimidation of a child witness if the intimidation might  
737 affect the willingness of the witness to testify in an  
738 ongoing investigation or Federal criminal matter.

739 This section also permits a court to issue a protective  
740 order to restrict the distribution of a witness's restricted  
741 personal information on the Internet. It creates a  
742 presumption that the distribution on the Internet of a  
743 witness's photograph or personal information serves no  
744 legitimate purpose. So this is a privacy issue.

745 Information can be distributed via the Internet, one,

746 with the person's permission; two, for news reporting  
747 purposes; three, to locate a missing person; and four, to  
748 apprehend a fugitive. And the presumption that the  
749 distribution of this personal information serves no other  
750 legitimate purpose can be rebutted with evidence presented  
751 by those who distributed it.

752       There is generally no legitimate purpose for  
753 distributing the picture or identifying information of a  
754 victim or witness. And such actions are generally done to  
755 intimidate.

756       Under this bill, such postings would be considered to be  
757 witness intimidation under Section 1514 of the Criminal Code  
758 unless the person in question can overcome the presumption.  
759 The presumption does not apply to news gatherers and law  
760 enforcement agencies, institutions that may have a  
761 legitimate purpose in publishing information to the public  
762 about the victim or a witness of the crime.

763       This provision -- this will sound familiar to the  
764 gentleman from Virginia. This provision was passed by the  
765 House under suspension last Congress as part of the Domestic  
766 Minor Sex Trafficking Deterrence and Victims Support Act of

767 2010. It passed with the support of my colleagues on the  
768 other side of the aisle, including Mr. Scott, who managed  
769 the bill.

770 So I urge my colleagues to join me in opposition to this  
771 amendment.

772 Are there other Members who wish to be heard on the  
773 amendment?

774 Mr. Conyers. Mr. Chairman?

775 Chairman Smith. The gentleman from Michigan, Mr.  
776 Chairman, is recognized.

777 Mr. Conyers. Well, thank you, Mr. Chairman.

778 The purpose of the hearing this morning, though, is not  
779 that we passed this already and that it is over and done  
780 with. We are doing some fine-tuning in here.

781 So I don't think that the fact that it passed before and  
782 that Ranking Member Scott may have been involved in it  
783 doesn't mean that we can't come back and clean it up.

784 Now I observe that this is not a privacy issue. There  
785 are laws in the Criminal Code that already punish this kind  
786 of activity. And finally, and most importantly, here we  
787 have the law-making committee of the Congress reversing the

788 burden of proof without even commenting on it. This is  
789 incredible.

790 We cannot -- the burden of proof shouldn't be on the  
791 person that did -- the burden of proof here is being  
792 reversed in I think a very thoughtless way and a kind of  
793 careless way that I would urge all the Members that now that  
794 we are examining this in detail that is allowed in a  
795 committee, to examine this and ask ourselves if we really  
796 want to do that?

797 I don't think most of us want to reverse the burden of  
798 proof in this or any other case without some very, very  
799 careful examination. And so, we want to protect victims of  
800 crime. But we have to do it in, I think, a thoughtful and  
801 deliberative way.

802 And for the reasons that I have advanced, I urge that  
803 you support the Scott amendment, and I yield back my time.

804 Chairman Smith. Okay. Thank you, Mr. Conyers.

805 The gentleman from North Carolina, Mr. Watt, is  
806 recognized.

807 Mr. Watt. Thank you, Mr. Chairman.

808 Every once in a while, the Senate will save us from

809 ourselves when we make a mistake. And it seems to me that  
810 they did in this case by failing to pass the bill. So the  
811 fact that we voted for it. It didn't pass the entire  
812 process should tell us something that when it comes back, we  
813 ought to be more careful about it.

814 I am wondering whether there are any other precedents  
815 that the chair or the ranking member or the ranking member  
816 of the subcommittee are aware of where the burden of proof  
817 is shifted in a criminal case from the prosecution to the  
818 defense side. Are there other similar circumstances that we  
819 might be able to consider?

820 Mr. Conyers. If the gentleman would yield?

821 Mr. Watt. I would be happy to.

822 Mr. Conyers. We have looked for some, but we have not  
823 found any.

824 Mr. Watt. Perhaps the chair of the full committee could  
825 enlighten us about whether there are any other precedents  
826 for what he is asking us to do here? After his staff gets  
827 through telling him.

828 Chairman Smith. If the gentleman was addressing a  
829 question to me, we are checking. We will get back to you.

830 I don't know off the top of my head whether there are other  
831 examples.

832 But if I may continue, though? As far as the point of  
833 needing to fine-tune, we are, frankly, following the example  
834 of the majority when -- of the minority today when they were  
835 the majority in the last Congress --

836 Mr. Watt. Well, let me reclaim my time. It is my time,  
837 Mr. Chairman.

838 Chairman Smith. It is.

839 Mr. Watt. I appreciate your speech. You already gave  
840 that speech.

841 Chairman Smith. Well, I was going to make one more  
842 point about --

843 Mr. Watt. Okay. Well, go ahead.

844 Chairman Smith. -- fine-tuning. The individuals who  
845 seem to be resisting at least this part of the bill and  
846 proposing this amendment had ample opportunity in the last  
847 Congress to fine-tune the bill if they wanted to do so, and  
848 they chose not to do so.

849 Mr. Watt. But I guess the relevant question there would  
850 be whether the Senate passed what we sent over there to

851 them.

852 Chairman Smith. I think the bill originated by Senator  
853 Wyden in the Senate. We had an opportunity on this side to  
854 change it if we wanted to, and so -- and chose not to change  
855 the bill.

856 Mr. Watt. So are we changing current law, or are we  
857 passing a new law now?

858 Chairman Smith. We are amending current law.

859 Mr. Watt. This is a new law, right?

860 Chairman Smith. Yes, but it follows the precedent set  
861 in the last Congress by the then-majority. That is correct.

862 Mr. Watt. Well, I don't understand what the chairman is  
863 saying. Why are we doing this if it is already law? It  
864 obviously didn't go through the entire process, and you are  
865 saying just because we were irresponsible in the last  
866 Congress, we should continue to be irresponsible in this  
867 Congress.

868 Chairman Smith. Well, I understand that --

869 Mr. Watt. I don't follow that logic very well.

870 Chairman Smith. Would the gentleman yield?

871 Mr. Watt. Yes, sir.

872 Chairman Smith. I understand that the bill that we  
873 passed in the House that was not fine-tuned was actually not  
874 signed by the President.

875 Mr. Watt. Okay. Well, then somebody saved us from  
876 ourselves, and either the Senate saved us from ourselves or  
877 the President saved us from ourselves.

878 Chairman Smith. Who knows?

879 Mr. Watt. Somebody was enlightened enough to know that  
880 the burden of proof in criminal cases --

881 Chairman Smith. Well, if the gentleman will yield?

882 Mr. Watt. -- is not on the defendant. The burden of  
883 proof is on the person who is bringing the charges.

884 Chairman Smith. If the gentleman is yielding? The  
885 gentleman is making a presumption that that was the reason  
886 the bill was not signed. We don't know that. We could have  
887 run out of time.

888 Mr. Watt. I can make whatever presumption that you can  
889 make, Mr. Chairman. If we are making presumptions --

890 Chairman Smith. But I have a basis for mine.

891 Mr. Watt. On my time, I can presume whatever I choose  
892 to presume. On your time, you can choose whatever you

893 presume -- you choose to presume.

894 But if this was not made law, it is not justification  
895 for the fact that it was not made law that we should be  
896 doing the same thing again. I mean, that is like being in a  
897 ditch and continuing to dig.

898 Somebody saved us from ourselves the last time. That is  
899 not a justification for doing something that is irrational  
900 and indefensible this time. Unless there is some other  
901 precedent where the burden of proof in a criminal case  
902 shifts from the prosecution to the defense, I don't know why  
903 we would be doing this.

904 Whether I voted for it 2 years ago or last year or  
905 yesterday, if it was stupid when I did it, I want to correct  
906 that mistake.

907 Chairman Smith. Okay. If the gentleman will yield? I  
908 want to --

909 Mr. Watt. I am happy to yield to the chairman.

910 Chairman Smith. -- set the record straight on something  
911 the gentleman said a while ago. I am now informed that the  
912 reason that it was not signed by the President is because  
913 the Senate objected to administrative subpoenas being taken

914 out of the bill.

915 Mr. Watt. Well, but --

916 Chairman Smith. And --

917 Mr. Watt. But we now have the right, the opportunity to  
918 revisit this issue. It seems to me the relevant question  
919 here is, is there any other precedent in criminal law for  
920 shifting the burden of proof from the prosecution to the  
921 defendant?

922 Chairman Smith. The gentleman's time has expired, but I  
923 will yield 10 seconds to myself to --

924 Mr. Watt. Well, I will yield to you. I will ask for 10  
925 seconds and yield to you.

926 Chairman Smith. Okay. The answer is yes.

927 Mr. Watt. Okay. Well --

928 Chairman Smith. I am told by counsel that there are --

929 Mr. Watt. I ask for unanimous consent for 1 additional  
930 minute so that you can enlighten us so that our --

931 Chairman Smith. Without objection. Without objection,  
932 there are a number of instances, particularly in affirmative  
933 defenses and self defenses, and we will get you those  
934 examples.

935 Mr. Nadler. Mr. Chairman, would you yield?

936 Mr. Watt. If the chairman would tell me what those are,  
937 I think I could compare them and make some rational judgment  
938 about this.

939 Chairman Smith. Yes. Well, we will get them to --

940 Mr. Watt. But in the absence of that --

941 Chairman Smith. We will get them to you --

942 We will get them to you expeditiously.

943 Mr. Watt. I should trust the chair as we continue this  
944 debate and pass it out of this committee. That is what you  
945 are saying?

946 Chairman Smith. That is correct.

947 Mr. Watt. Okay. Well, I can't trust the chair, Mr.  
948 Chairman. I think this is irrational to shift the burden of  
949 proof in a criminal case. And if I voted for it the last  
950 time, I think it was irrational then. I probably just  
951 didn't catch it, but that is not a justification for me  
952 doing something irrational a second time.

953 Chairman Smith. Okay. All right.

954 Mr. Watt. Just because I did something irrational the  
955 first time.

956 Chairman Smith. Fair enough.

957 Mr. Watt. I yield back.

958 Chairman Smith. The gentleman yields back.

959 The gentleman from New York, Mr. Nadler?

960 Mr. Nadler. Thank you, Mr. Chairman.

961 I want to continue this line of questioning because I  
962 think it is important. It seems a startling thing to do to  
963 shift the burden of proof in a criminal case. It seems an  
964 unprecedented thing to do, and yet I heard the chairman say  
965 a moment ago that we have done it before.

966 I would like to hear now an example and a justification  
967 for the way we have shifted the burden of proof and,  
968 frankly, why we should shift the burden of proof now. Why  
969 we should ever shift the burden of proof. The whole idea of  
970 our system of justice is that you are innocent until proven  
971 guilty.

972 Chairman Smith. Right.

973 Mr. Nadler. And shifting the burden of proof reverses  
974 that.

975 Chairman Smith. If the gentleman will yield? I am told  
976 that the three general areas where we have done so

977 repeatedly before are in the areas of self defense,  
978 insanity, and duress.

979 Now we can get you the details, but --

980 Mr. Nadler. No, no. Wait a minute. So let us take one  
981 of them --

982 Chairman Smith. No, no. I will repeat what I just  
983 said. Those are the general areas. We will get you the  
984 details, but those are the general areas where there has  
985 been precedent set.

986 Mr. Watt. Will the gentleman yield?

987 Mr. Nadler. I will yield.

988 Mr. Watt. All of those cases you have cited would be  
989 affirmative defenses. There wouldn't be a shifting of the  
990 burden of proof --

991 Mr. Nadler. Ah, correct.

992 Mr. Watt. -- on the basic underlying merits of the  
993 case.

994 Mr. Nadler. I will -- reclaiming my --

995 Mr. Watt. I don't understand how those things are  
996 analogous at all.

997 Mr. Nadler. Reclaiming my time. The gentleman is

998 correct. You can't compare shifting a burden on an  
999 affirmative defense where the defendant has the burden to  
1000 start with. That is the point of an affirmative defense.  
1001 The defendant has the burden.

1002 Chairman Smith. That is correct.

1003 Mr. Nadler. The defendant has the burden of  
1004 establishing affirmative defense. So you are not really  
1005 shifting the burden. It is shifted to start with.

1006 Here, you are talking about shifting the burden of proof  
1007 on the case in chief. You are accused of something.  
1008 Normally, the State must prove that you did it to the  
1009 satisfaction of the jury beyond a reasonable doubt. And now  
1010 we are saying, no, it mustn't. You have to prove the  
1011 contrary.

1012 I think that is unprecedented. I think it violates the  
1013 Fifth Amendment, and it would be a highly obnoxious thing  
1014 for this committee to sanction. And if we have done it  
1015 before, it was through inadvertence that some of us, somehow  
1016 it escaped us.

1017 And using as a precedent an affirmative defense is not a  
1018 precedent at all because an affirmative defense is just

1019 that, affirmative. The burden of proof to start with is on  
1020 -- to prove the defense is on the defendant. I don't  
1021 believe there is any precedent for shifting the burden of  
1022 proof for the underlying crime.

1023 To say that the State doesn't have to prove you  
1024 committed the crime, you have to prove you didn't. And that  
1025 seems to me unconstitutional as well as obnoxious.

1026 Mr. Conyers. Would the gentleman yield?

1027 Mr. Nadler. I will yield to the gentleman from  
1028 Michigan.

1029 Mr. Conyers. Thank you, Mr. Nadler.

1030 Might I add to this conversation the fact that since we  
1031 were not able to find any reversals of the burden of proof,  
1032 it doesn't mean that if some exists, they may be justifiable  
1033 in their own right. We don't know that or not.

1034 And so, it isn't a question of whether we found any  
1035 instances where there have been a reversal of the burden of  
1036 proof. The real point is, in this case, do we want to agree  
1037 to a reversal of the burden of proof? And regardless of who  
1038 was the majority or the minority when it passed, this is  
1039 what we are here for today, to be --

1040 Mr. Nadler. Reclaiming my time, I would like to ask the  
1041 chairman. I would like to ask the distinguished chairman  
1042 what possible justification is there? I mean, stepping  
1043 back, this is a serious subject, obviously.

1044 But what possible justification is there for making --  
1045 for shifting the burden of proof on a criminal offense and  
1046 saying you are guilty until proven innocent rather than the  
1047 reverse even in this case?

1048 I will yield.

1049 Chairman Smith. Well, if the gentleman will yield? I  
1050 can re-read my opening statement for you. But the idea here  
1051 is to protect the children and protect the victims, and --

1052 Mr. Nadler. Reclaiming my time. Saying that the idea  
1053 is to protect somebody. The whole point of criminal law is  
1054 always to protect somebody. We are protecting somebody from  
1055 theft. We are protecting somebody from murder. We are  
1056 protecting somebody from whatever.

1057 Saying that something is a serious danger -- murder,  
1058 theft, robbery, whatever -- by itself does not justify  
1059 shifting the burden of proof. The question in the criminal  
1060 law is not how -- well, one question is how serious a crime

1061 is. Obviously, the more serious, the more you worry about  
1062 it and the heavier the penalty.

1063 But secondly, how do you prove it? If murder is  
1064 serious, it doesn't mean that Smith should be sent away  
1065 unless Smith is proven to have committed the crime.

1066 So what justification? And seriousness is not a  
1067 justification for shifting the burden of proof. You would  
1068 have to show some reason to believe that the normal  
1069 procedure, which is that you must prove the person guilty,  
1070 not that the person must prove his innocence. There is  
1071 something wrong with that here. Why doesn't that operate  
1072 here?

1073 I will yield.

1074 Chairman Smith. The gentleman's time has expired.

1075 But very briefly, I am going to restate what I had  
1076 before. If you go back to what I said in my opening  
1077 statement, I would rather come down on the side of the  
1078 victims and the children and have that rebuttable  
1079 presumption, which I think protects them. I clearly put a  
1080 greater emphasis on that than maybe the gentleman does.

1081 I am not saying he doesn't want to protect the children

1082 or the victims. But I am willing to put them first and  
1083 ahead of the presumption.

1084 The gentleman's time has expired. Does the gentleman  
1085 from Pennsylvania seek recognition?

1086 Mr. Marino. Yes.

1087 Chairman Smith. The gentleman from Pennsylvania, Mr.  
1088 Marino, is recognized.

1089 Mr. Marino. Thank you.

1090 My colleagues on the other side are confusing the terms,  
1091 confusing the terms. Clearly, it is the prosecution's  
1092 responsibility. It is the State, it is the government's  
1093 responsibility to prove guilt beyond a reasonable doubt.

1094 However, and it has happened to me several times in  
1095 cases at the State and Federal level, if there is a shift in  
1096 a defense, the defense has to come up with a standard or a  
1097 basis to establish that. They just can't say he is insane,  
1098 and you would have to prove that he is not insane. There  
1099 has to be a basis for that.

1100 So you are using apples and oranges. You are using a  
1101 term to establish something that doesn't exist in the  
1102 criminal essence. Now I think this legislation we are

1103 talking about has a civil penalty involved with it. That  
1104 prevents the victim from being harassed by the perpetrator,  
1105 and that individual can be held in civil contempt and also  
1106 criminal contempt, pursuant to the civil contempt, if he  
1107 doesn't follow the court.

1108 So you can't say that we are reversing and the defendant  
1109 has to prove that he is innocent. That is not the case.  
1110 Clearly, government has to prove beyond a reasonable doubt.  
1111 But the defendant switches standards or switches a defense  
1112 has to come forward and lay a basis for that defense.

1113 I yield.

1114 Chairman Smith. Thank you, Mr. Marino.

1115 Mr. Scott. Would the gentleman yield? I am sorry.

1116 What we are talking about is posting a photograph that  
1117 serves no legitimate purpose. When you get a presumption on  
1118 the no legitimate purpose, that covers a lot of things that  
1119 could be innocent.

1120 If you take a lot of pictures and put them on your Web,  
1121 and a lot of photo albums are on the Web, you probably have  
1122 pictures of people, including the person protected by a  
1123 protective order.

1124           How do you get past the idea that it is a criminal  
1125 offense to have that picture up there without showing some  
1126 intent to harass, intimidate? The picture is just up there.  
1127 And all of a sudden, you get a presumption that it serves no  
1128 legitimate purpose.

1129           And so, the elements in a case are already proven by  
1130 this presumption. The defendant now has to come forward to  
1131 prove his innocence. Why is that -- I mean, when did you  
1132 ever have to prove your innocence?

1133           Mr. Marino. I think you are conflicting terms there.  
1134 Because if there is -- if the legislation is designed to  
1135 prevent the harassment, and there is --

1136           Mr. Scott. Just would the gentleman yield again?

1137           Mr. Marino. Yes, sir.

1138           Mr. Scott. There are already criminal statutes against  
1139 harassing Federal witnesses. This is a new thing we are  
1140 doing here, a new 5-year penalty under a court order. And  
1141 if you have got a photo album with somebody's picture in it,  
1142 in addition to the normal criminal penalties and other  
1143 things the judge can do to you, this is a separate. And by  
1144 virtue of having that picture and the little presumption,

1145 you are set up with a criminal 5-year penalty.

1146 Mr. Marino. Reclaiming my time. But it does apply to  
1147 physical, physical violence, harassment, and it is just an  
1148 addition to what protections are already there in the  
1149 Federal system.

1150 Mr. Scott. No, no. We are talking about violating the  
1151 order. This is already on the books. You already have the  
1152 criminal laws on the book, harassing a witness. We know  
1153 this is extra.

1154 You get a protective order, and you find that you have  
1155 got a picture on the Internet of the person who is protected  
1156 by the order. You are guilty, 5 years, by presumption of  
1157 intimidating. Just by virtue of the fact that you have the  
1158 photo album with the picture in it, you are guilty. No  
1159 intent, no nothing.

1160 Claiming all those elements --

1161 Mr. Marino. Reclaiming my time. Still, at the end of  
1162 the proceedings, by the end of the proceedings, the  
1163 commonwealth or the government has to prove that there was  
1164 harassment or --

1165 Mr. Scott. No. No. That is what we are trying to get

1166 out. That is what we want you to prove. That is what we  
1167 want you to prove. If my amendment passes, that is what you  
1168 are going to have to prove. If the amendment doesn't pass,  
1169 you don't have to bother to prove it. You just show -- you  
1170 put a picture on the Internet. He is guilty of harassment,  
1171 dissemination. You are violating the order.

1172 Mr. Marino. That is where we disagree on the  
1173 legislation.

1174 Mr. Scott. Well, you don't have to prove anything.  
1175 That is what -- you violate an order. You had a picture.

1176 Chairman Smith. Okay. Does the gentleman yield back  
1177 his time?

1178 Mr. Scott. Yes.

1179 Chairman Smith. The gentleman yields back his time.  
1180 The gentleman from Georgia, Mr. Johnson, is recognized.

1181 Mr. Johnson. Yes, I would like to cite the case of  
1182 Sandstrom v. Montana at 442 U.S. 510. And Sandstrom is a  
1183 U.S. Supreme Court case, Sandstrom v. Montana.

1184 The facts were that a jury instruction that the law  
1185 presumed that a person intends the ordinary consequences of  
1186 his voluntary acts, is that jury instruction proper in a

1187 criminal case? In other words, is a law that presumes that  
1188 a person intends the ordinary consequences of his voluntary  
1189 acts, is that proper in a criminal case?

1190 The Supreme Court of the United States ruled no. A jury  
1191 instruction that presumes that a person intends the ordinary  
1192 consequences of his voluntary acts is not proper in a  
1193 criminal case. And here, we have this section which states  
1194 that a court shall presume, subject to the rebuttal by the  
1195 person, that the distribution or publication using the  
1196 Internet of a photograph of or restricted personal  
1197 information regarding a specific person serves no legitimate  
1198 interest or no legitimate purpose unless that use is  
1199 authorized by that specific person.

1200 So, in other words, when you impose a presumption, then  
1201 you are automatically shifting the burden to the defendant  
1202 to prove something that should not be placed on him. In  
1203 other words, that is a presumption that the defendant must  
1204 overcome.

1205 And I think if Sandstrom is still current law, because  
1206 that is a case, '79, 1979 case --

1207 Mr. Marino. Would my colleague yield for a moment?

1208 Mr. Johnson. Yes, I will.

1209 Mr. Marino. Thank you, sir.

1210 There are many presumptions in the criminal law  
1211 proceedings. Drugs in a car, one person in there. That  
1212 individual owns the car. There can be a presumption that  
1213 that person owns the drugs.

1214 There is a presumption in a murder. For example, for  
1215 intention. Six shots, nine shots into the body, as opposed  
1216 to one and it was accidental. There is a presumption there.

1217 There are many presumptions in the criminal law  
1218 procedures.

1219 I yield back.

1220 Mr. Johnson. Well, this is a presumption subject to  
1221 rebuttal by the person. And so, I am just -- I recall the  
1222 case of Sandstrom v. Montana. It is a burden shift in this  
1223 case, and I don't know --

1224 Mr. Marino. If my friend would yield once more?

1225 Mr. Johnson. I don't know if it is a permissible  
1226 presumption.

1227 Mr. Marino. I understand what you are saying. But  
1228 there always is the ability to rebut the presumption.

1229 Mr. Johnson. Well, on a central issue, though. On the  
1230 central issue involving the case, I think a presumption has  
1231 to be looked at with great care.

1232 You are correct that there are some presumptions in law.  
1233 And yes, so on the central issue of the case, a presumption  
1234 would, I think, be subject to Sandstrom v. Montana. And if  
1235 staff would look to see if that is -- if we would look at  
1236 Sandstrom, I think we could be guided. If Sandstrom is  
1237 still the law of the land, which I do believe it is, I think  
1238 this proposal, this amendment would be proper.

1239 Now I will yield back.

1240 Chairman Smith. The gentleman yields back his time.

1241 The question is on the Scott amendment.

1242 All in favor, say aye.

1243 All opposed, no.

1244 In the opinion of the chair, the nays have it, and the  
1245 amendment is not agreed to.

1246 Does the gentleman have -- the gentleman has requested a  
1247 recorded vote, and the clerk will call the roll.

1248 Ms. Kish. Mr. Smith?

1249 Chairman Smith. No.

1250 Ms. Kish. Mr. Smith votes no.  
1251 Mr. Sensenbrenner?  
1252 [No response.]  
1253 Ms. Kish. Mr. Coble?  
1254 Mr. Coble. No.  
1255 Ms. Kish. Mr. Coble votes no.  
1256 Mr. Gallegly?  
1257 [No response.]  
1258 Ms. Kish. Mr. Goodlatte?  
1259 [No response.]  
1260 Ms. Kish. Mr. Lungren?  
1261 Mr. Lungren. No.  
1262 Ms. Kish. Mr. Lungren votes no.  
1263 Mr. Chabot?  
1264 [No response.]  
1265 Ms. Kish. Mr. Issa?  
1266 [No response.]  
1267 Ms. Kish. Mr. Pence?  
1268 [No response.]  
1269 Ms. Kish. Mr. Forbes?  
1270 Mr. Forbes. No.

1271 Ms. Kish. Mr. Forbes votes no.  
1272 Mr. King?  
1273 Mr. King. No.  
1274 Ms. Kish. Mr. King votes no.  
1275 Mr. Franks?  
1276 Mr. Franks. No.  
1277 Ms. Kish. Mr. Franks votes no.  
1278 Mr. Gohmert?  
1279 [No response.]  
1280 Ms. Kish. Mr. Jordan?  
1281 Mr. Jordan. No.  
1282 Ms. Kish. Mr. Jordan votes no.  
1283 Mr. Poe?  
1284 Mr. Poe. Yes.  
1285 Ms. Kish. Mr. Poe votes yes.  
1286 Mr. Chaffetz?  
1287 [No response.]  
1288 Ms. Kish. Mr. Griffin?  
1289 [No response.]  
1290 Ms. Kish. Mr. Marino?  
1291 Mr. Marino. No.

1292 Ms. Kish. Mr. Marino votes no.  
1293 Mr. Gowdy?  
1294 [No response.]  
1295 Ms. Kish. Mr. Ross?  
1296 Mr. Ross. No.  
1297 Ms. Kish. Mr. Ross votes no.  
1298 Mrs. Adams?  
1299 Mrs. Adams. No.  
1300 Ms. Kish. Mrs. Adams votes no.  
1301 Mr. Quayle?  
1302 [No response.]  
1303 Ms. Kish. Mr. Amodei?  
1304 Mr. Amodei. No.  
1305 Ms. Kish. Mr. Amodei votes no.  
1306 Mr. Conyers?  
1307 Mr. Conyers. Aye.  
1308 Ms. Kish. Mr. Conyers votes aye.  
1309 Mr. Berman?  
1310 [No response.]  
1311 Ms. Kish. Mr. Nadler?  
1312 Mr. Nadler. Aye.

1313 Ms. Kish. Mr. Nadler votes aye.

1314 Mr. Scott?

1315 Mr. Scott. Aye.

1316 Ms. Kish. Mr. Scott votes aye.

1317 Mr. Watt?

1318 Mr. Watt. Aye.

1319 Ms. Kish. Mr. Watt votes aye.

1320 Ms. Lofgren?

1321 Ms. Lofgren. Aye.

1322 Ms. Kish. Ms. Lofgren votes aye.

1323 Ms. Jackson Lee?

1324 [No response.]

1325 Ms. Kish. Ms. Waters?

1326 [No response.]

1327 Ms. Kish. Mr. Cohen?

1328 [No response.]

1329 Ms. Kish. Mr. Johnson?

1330 Mr. Johnson. Aye.

1331 Ms. Kish. Mr. Johnson votes aye.

1332 Mr. Pierluisi?

1333 [No response.]

1334 Ms. Kish. Mr. Quigley?

1335 [No response.]

1336 Ms. Kish. Ms. Chu?

1337 Ms. Chu. Aye.

1338 Ms. Kish. Ms. Chu votes aye.

1339 Mr. Deutch?

1340 [No response.]

1341 Ms. Kish. Ms. Sanchez?

1342 Ms. Sanchez. Aye.

1343 Ms. Kish. Ms. Sanchez votes aye.

1344 Mr. Polis?

1345 Mr. Polis. Aye.

1346 Ms. Kish. Mr. Polis votes aye.

1347 Chairman Smith. The gentleman from Virginia?

1348 Mr. Goodlatte. No.

1349 Ms. Kish. Mr. Goodlatte votes no.

1350 Chairman Smith. The gentleman from Ohio?

1351 Mr. Chabot. No.

1352 Ms. Kish. Mr. Chabot votes no.

1353 Chairman Smith. And the gentleman from California?

1354 Mr. Berman. Aye.

1355 Ms. Kish. Mr. Berman votes aye.

1356 Ms. Lofgren. Mr. Chairman?

1357 Chairman Smith. The gentlewoman from California is  
1358 recognized.

1359 Ms. Lofgren. How am I recorded? Am I recorded?

1360 Ms. Kish. Ms. Lofgren is voted aye.

1361 Ms. Lofgren. Thank you.

1362 Chairman Smith. The gentlewoman from Texas, Ms. Jackson  
1363 Lee?

1364 Ms. Jackson Lee. Aye.

1365 Ms. Kish. Ms. Jackson Lee votes aye.

1366 Chairman Smith. The clerk will report.

1367 Ms. Kish. Mr. Chairman, 12 Members voted aye; 13  
1368 Members voted nay.

1369 Chairman Smith. A majority having voted against the  
1370 amendment, the amendment is not agreed to.

1371 Does the gentleman from Virginia have any other  
1372 amendments? Okay.

1373 Mr. Scott. Number 1, Mr. Chairman.

1374 Chairman Smith. The clerk will report Amendment Number  
1375 1.

1376 Ms. Kish. Amendment to H.R. 6063, offered by Mr. Scott.  
1377 Beginning on page 7, line 12, strike Subsection (a) and  
1378 redesignate provisions accordingly.

1379 [The amendment of Mr. Scott follows:]

1380

1381 Chairman Smith. The gentleman is recognized to explain  
1382 his amendment.

1383 Mr. Scott. Mr. Chairman -- thank you, Mr. Chairman.

1384 This amendment strikes the section of the bill that  
1385 gives the U.S. marshals authority to issue administrative  
1386 subpoenas to investigate unregistered sex offenders.

1387 Mr. Chairman, the U.S. Marshals Service already arrests  
1388 tens of thousands of people each year. So it is clear that  
1389 they can make arrests without taking away from the court's  
1390 extraordinary authority of issuing its own subpoenas by  
1391 doing it on an ex parte basis with no notice or other  
1392 information to the person to whom the information sought  
1393 applies.

1394 To the extent that there is such authority, it should be  
1395 conferred on all executive branch -- to the extent that such  
1396 authority should be conferred on all executive branch  
1397 officials, it should be narrowly defined and only available  
1398 to the highest level of officials.

1399 Existing administrative subpoena authority for law  
1400 enforcement officials is bestowed upon the U.S. Attorney  
1401 General in the case of a Federal health offense or a child

1402 exploitation or abuse and in the Secretary of Treasury in  
1403 the case of an event of a threat to the President of the  
1404 United States or other protectees of the U.S. Secret  
1405 Service, both such officials being Cabinet-level officials.

1406 Now I think we have to consider the testimony before  
1407 this committee, as well as research and evidence, regarding  
1408 sex offender registration and requirements tell us that  
1409 there is no difference in the recidivism rate between sex  
1410 offenders who are compliant with their registration  
1411 requirements as far as those who are not.

1412 We are already arresting tens of thousands of people for  
1413 noncompliance without any indication that they may propose  
1414 any enhanced danger to society over those who are in  
1415 compliance. Now given that there is no compelling reason  
1416 shown for conferring such extraordinary power to the U.S.  
1417 Marshals Service for sex offender registration, I urge my  
1418 colleagues to take this from the bill.

1419 Mr. Chairman, every year, tens of thousands of people  
1420 are rounded up on these things already, locked up at great  
1421 expense without any indication that it makes any difference  
1422 at all. And to extend this extraordinary power, which, in

1423 this case, the way it is written is a more powerful subpoena  
1424 than the one available in the case of a threat to the  
1425 President of the United States, an imminent threat to the  
1426 President of the United States, makes no sense at all.

1427 I yield back.

1428 Chairman Smith. Thank you, Mr. Scott.

1429 I recognize myself in opposition.

1430 This amendment strikes Section 4 of H.R. 6063, which  
1431 provides the U.S. Marshals Service with administrative  
1432 subpoena authority to apprehend unregistered sex offenders.  
1433 The Adam Walsh Act mandated that the U.S. marshals apprehend  
1434 both State and Federal fugitive sex offenders.

1435 U.S. marshals have aggressively undertaken this  
1436 important function that are at the heart of the Adam Walsh  
1437 Act. Despite this hard work, there remains a lot for the  
1438 marshals to do. It is estimated that at least 100,000  
1439 fugitive sex offenders now roam the country in violation of  
1440 their registration and notification requirements.

1441 There are over 300 instances where Congress has granted  
1442 other Federal agencies administrative subpoena power in one  
1443 form or another. And this committee has voted several times

1444 to approve administrative subpoena authority for other  
1445 agencies.

1446 In 1996, this committee approved 18 U.S.C. Section 3486  
1447 to authorize the use of administrative subpoenas to  
1448 investigate Federal sexual exploitation or child abuse  
1449 offenses and threats to the President and other protectees.  
1450 This statute has been expanded by this committee several  
1451 times since then, including as part of the PROTECT Act of  
1452 2003.

1453 Most recently, my colleagues on the other side of the  
1454 aisle approved administrative subpoena authority as part of  
1455 Obamacare for the Inspector General of the Department of  
1456 Health and Human Services to investigate Medicare and  
1457 Medicaid fraud. Unlike these and other Federal  
1458 administrative subpoena powers which are used at the  
1459 beginning of a criminal investigation, the marshals' use of  
1460 administrative subpoenas would occur only afterwards.

1461 And the administrative subpoena would occur after the  
1462 fugitive is arrested, pursuant to a judge-issued warrant,  
1463 indicted for committing a sex offense, convicted by proof  
1464 beyond a reasonable doubt, and sentenced in a court of law.

1465 The fugitive is required to register as a sex offender. The  
1466 fugitive flees or otherwise violates their registration  
1467 requirements, and a State or Federal arrest warrant is  
1468 issued for violation of their registration requirements.

1469 H.R. 6063 gives the U.S. marshals limited administrative  
1470 subpoena authority to locate and apprehend only fugitive sex  
1471 offenders. Without administrative subpoena authority, the  
1472 marshals must request the U.S. attorney's office seek an all  
1473 writs act order from a judge before they can receive records  
1474 relevant to a fugitive apprehension.

1475 The all writs act process is burdensome and time  
1476 consuming and can delay the marshals' ability to locate and  
1477 apprehend fugitive sex offenders, particularly those that  
1478 have fled to another State. Administrative subpoenas are  
1479 critical for this reason.

1480 The Adam Walsh Act sex offender registry provisions were  
1481 intended to keep our children safe from heinous crimes and  
1482 limit sex offenders' ability to move around the country  
1483 unnoticed. The administrative subpoena provision of H.R.  
1484 6063 provides a crucial tool in this fight.

1485 The committee approved this authority last year, and the

1486 Senate Judiciary Committee has cleared similar language that  
1487 is awaiting consideration on the Senate floor today.

1488 I urge my colleagues to oppose this amendment and yield  
1489 back the balance of my time.

1490 Mr. Conyers. Mr. Chairman?

1491 Chairman Smith. The gentleman from Michigan, Mr.  
1492 Conyers, is recognized.

1493 Mr. Conyers. Could you restate for us the numbers of  
1494 people that are violating these orders so that we can  
1495 research them?

1496 Chairman Smith. If the gentleman will yield?

1497 Mr. Conyers. I will.

1498 Chairman Smith. It is estimated that at least 100,000  
1499 fugitive sex offenders now roam the country in violation of  
1500 their registration and notification requirements.

1501 Mr. Conyers. Right. I would like to just be able to  
1502 afterward check that statistic, and I note that just  
1503 commonly making these administrative subpoenas more  
1504 available is something that we ought to really start  
1505 thinking about.

1506 I don't like them, especially when there is no cause

1507 being demonstrated why the U.S. marshal can't go to court  
1508 and get it from the judge the same way everybody else does.

1509 And so, for that reason, I am in strong support of the  
1510 Scott amendment.

1511 Mr. Scott. Will the gentleman yield?

1512 Mr. Conyers. I yield.

1513 Mr. Scott. And I would ask the chairman to respond.

1514 Did I understand him to say that 100,000 people are being  
1515 picked up on these already without this extraordinary power  
1516 when the testimony before our committee was it didn't make  
1517 any difference in terms of recidivism whether they were in  
1518 compliance or not. We are spending all this money and  
1519 effort chasing down people and locking them up when they are  
1520 posing no more danger to society than those who are in  
1521 compliance.

1522 Is that my understanding?

1523 Chairman Smith. If the gentleman will yield? I think  
1524 he mentioned 100,000. One hundred thousand are those  
1525 individuals who have not yet been apprehended. I think the  
1526 figure that the gentleman probably meant --

1527 Mr. Scott. And posed no more, according to the

1528 testimony --

1529 Chairman Smith. I think about 30,000 may have been  
1530 picked up.

1531 Mr. Scott. Okay.

1532 Chairman Smith. And that is the figure you are talking  
1533 about.

1534 Mr. Scott. But they pose no more danger to society  
1535 measured by recidivism rate than those who are in  
1536 compliance.

1537 Chairman Smith. All I know is that sex offenders have a  
1538 25 to 30 percent recidivism rate. Now how that compares, I  
1539 don't know. But that is still too high, and it is still  
1540 something --

1541 Mr. Scott. The testimony before the committee, when  
1542 asked if there is any difference, they could not testify  
1543 that there was any difference at all in recidivism rate from  
1544 those who are in compliance and those who are not in  
1545 compliance.

1546 Chairman Smith. Right. Okay. If we can reduce  
1547 recidivism -- if the gentleman will yield? If we can reduce  
1548 the recidivism rates, why wouldn't we want to try to do

1549 that?

1550 Mr. Scott. Well, no, no, no. You have targeted a  
1551 group, those not in compliance, whose recidivism rate is the  
1552 same as those who are in compliance.

1553 Chairman Smith. Oh, I see.

1554 Mr. Scott. And we are spending all that money, all that  
1555 effort. When you catch them, you have got to lock them up,  
1556 spend all that money. And now you want extraordinary powers  
1557 to do more of it without any indication that the group that  
1558 you are targeting is any more dangerous than the group that  
1559 you haven't targeted.

1560 And I guess the question is does that make any sense at  
1561 all?

1562 Mr. Conyers. Well, I think that the Scott analysis is  
1563 right on, and I am just for reducing whenever we can, if it  
1564 doesn't endanger safety, the number of administrative  
1565 subpoenas because it is too easy to throw these into bills  
1566 just to facilitate some reason or no good reason at all.

1567 And so, I again urge support of this Scott amendment and  
1568 yield back.

1569 Oh, yes?

1570 Mr. Scott. How does the recidivism rate for sex  
1571 offenders compare to recidivism rates for robbers, burglars,  
1572 drug offenders? Isn't the recidivism rate for sex offenders  
1573 much lower anyway? So if we are going to go chasing down  
1574 people, wouldn't it make it -- wouldn't it be more  
1575 productive to go after drug offenders, burglars, and robbers  
1576 because they are more likely to offend anyway?

1577 Mr. Conyers. If that is directed to me, I would say  
1578 yes.

1579 Mrs. Adams. Will the gentleman yield?

1580 Mr. Scott. I yield.

1581 Mr. Conyers. I have the time, and I would yield to the  
1582 gentlelady.

1583 Mrs. Adams. So is it your argument today that people  
1584 who take advantage of our children should not be treated a  
1585 little bit differently? Because this is to protect our  
1586 children, and they have to live with this for the rest of  
1587 their lives if they survive this attack.

1588 Mr. Scott. Well, will the gentleman yield?

1589 Chairman Smith. The gentleman's time has expired.

1590 Mr. Conyers. I ask for unanimous consent for 1

1591 additional minute.

1592 Chairman Smith. Without objection, the gentleman is  
1593 recognized for an additional minute.

1594 Mr. Conyers. I yield.

1595 Mr. Scott. Well, I would admit that offenses against  
1596 children are included in the universe of people for whom  
1597 these administrative subpoenas could be used, as well as  
1598 those committing consensual acts, urinating in public, and  
1599 those kinds of things also. And we are going to be spending  
1600 administrative subpoena money going after them, too.

1601 Chairman Smith. If the gentleman will yield?

1602 Mr. Scott. There is no -- there is no -- these  
1603 administrative subpoenas --

1604 Mrs. Adams. Will the gentleman yield?

1605 Mr. Conyers. I yield.

1606 Chairman Smith. The gentleman from Michigan has the  
1607 time.

1608 Mr. Conyers. I yield.

1609 Mrs. Adams. This particular case is referencing -- or  
1610 bill, rather, references child pornography and child  
1611 exploitation offenses.

1612 Mr. Scott. That is the title of the bill. Read the  
1613 provision.

1614 Mrs. Adams. It is still protecting our children.

1615 Mr. Watt. You might try reading the bill.

1616 Mr. Scott. Who does it apply to?

1617 Mr. Conyers. Reclaiming my time. Chairman, I --

1618 Chairman Smith. The gentleman's time has expired.

1619 Mr. Conyers. Yes.

1620 Chairman Smith. And the gentlewoman from Texas, Ms.

1621 Jackson Lee, is recognized.

1622 Ms. Jackson Lee. I appreciate the dilemma that we are  
1623 facing on the utilization of the U.S. marshals. But I  
1624 adhere to the position that if a grown man can go into a  
1625 nursing home and attack a priest because of the impact that  
1626 child sexual abuse has had, if there are eons of stories  
1627 that still exist among victims of child abuse by certain  
1628 institutions, if the case of Mr. Sandusky in Pennsylvania is  
1629 any reflection or repeated acts, even though he remained in  
1630 his same jurisdiction, and if the U.S. marshals can be used  
1631 in a case that was upheld -- legislation that was upheld by  
1632 the Supreme Court, although premised on the utilization of

1633 U.S. marshals, I frankly believe that the finding of  
1634 unregistered sex offenders is an important task and one that  
1635 we need to utilize in the protection of our children.

1636 And I would argue that this is a valid part of the  
1637 legislation and would support this language remaining in the  
1638 legislation and the utilization of the U.S. marshals for  
1639 that reason. We have to step up the game for protecting our  
1640 children. And I do believe, though I am not citing  
1641 statistics, and I think we need to do that research.

1642 But from the general public everyday public opinion  
1643 analysis, what is in the public arena articles, sex  
1644 offenders are repeaters. There is recidivism. They are  
1645 isolated in prisons. It may be a sickness. They may need  
1646 treatment. I welcome all of that. But I think the use of  
1647 the U.S. marshals is an appropriate and valid use in this  
1648 legislation. And I would yield back, Mr. Chairman.

1649 Mr. Scott. Would the gentlelady yield?

1650 Ms. Jackson Lee. I will yield to the gentleman.

1651 Mr. Scott. Thank you. The gentlelady from Florida  
1652 pointed out that the title of the bill speaks to child  
1653 exploitation offenses. The administrative procedure section

1654 on page 7 talks about an unregistered sex offender, and it  
1655 defines those on page 8, meaning anybody required to  
1656 register under the Sex Offender Registration and  
1657 Notification Act, which includes in some States things like  
1658 urinating in public. I yield back.

1659 Ms. Jackson Lee. I thank the gentleman. Reclaiming my  
1660 time. Mr. Chairman, I would just indicate that I know that  
1661 as this bill makes it way to the floor, whether there are  
1662 any inconsistencies, we will have the opportunity to do so.  
1663 But I do think the role of the United States marshals is a  
1664 valid and important role in this legislation. I would yield  
1665 back.

1666 Chairman Smith. Thank you, Ms. Jackson.

1667 Mr. Watt. Will the gentlelady yield?

1668 Ms. Jackson Lee. If I had more time, I would be happy  
1669 to yield.

1670 Mr. Watt. Well, you have got more time. Will the  
1671 gentlelady --

1672 Ms. Jackson Lee. I would be happy to yield.

1673 Mr. Watt. Okay. So the role of this committee is to  
1674 correct these problems. While we are doing it between here

1675 and the floor, this is the place to correct the statute. If  
1676 we are going to correct it, there is nothing going to happen  
1677 to this bill between now and the floor. And we know that.  
1678 You know it as we are sitting here.

1679 So if there is going to be any limitation on this  
1680 provision, we need to do it in this committee and quit  
1681 appealing to the public as if this is all about sex  
1682 offenders who are predators and preying on children. This  
1683 is about a much, much broader category of people than that.

1684 And it is our responsibility in this committee, I think,  
1685 to correct the bill, not to just to pass it on and make a  
1686 political sound bite. I yield back to the gentlelady.

1687 Ms. Jackson Lee. I thank the gentleman. And let me  
1688 just say, now we are in the process of offering amendments.  
1689 I happen to believe the U.S. marshals component is  
1690 important.

1691 And let me just inquire of the chairman, Mr. Chairman,  
1692 in the drafting of this legislation, is your focus on sex  
1693 offenders or do you perceive it to be a broader reach?

1694 Chairman Smith. If the gentleman will yield, let me  
1695 summarize some of the last arguments by saying I do not mind

1696 spending extra money and effort to put child molesters in  
1697 jail.

1698 Ms. Jackson Lee. But you are narrowing this legislation  
1699 to child molesters, am I understanding?

1700 Chairman Smith. That is the purpose of this  
1701 legislation. And the administrative subpoena powers, if the  
1702 gentlewoman will continue to yield --

1703 Ms. Jackson Lee. I will continue to yield.

1704 Chairman Smith. Once again, are used only after the  
1705 following occurs: the fugitive is arrested pursuant to a  
1706 judge-issued warrant, indicated for committing a sex  
1707 offense, convicted by proof beyond a reasonable doubt,  
1708 sentenced in a court of law. The fugitive is required to  
1709 register as a sex offender. Again the emphasis is on the  
1710 fugitive. That is where the administrative subpoena is  
1711 directed. The fugitive flees or otherwise violates their  
1712 registration requirements, and a State or Federal arrest is  
1713 issued for a violation of the registration requirements.

1714 That all has to happen. This is not an administrative  
1715 subpoena used at the beginning of a criminal investigation  
1716 as is so often the case. It is after all those actions have

1717 occurred. So the process protects individuals and is going  
1718 to be directed towards the fugitives.

1719 Ms. Jackson Lee. I yield by just commenting, Mr.  
1720 Chairman, that the narrow focus of this legislation, as  
1721 articulated by the criteria, speaks to, I think, an  
1722 effective and appropriate use of the U.S. marshals. I yield  
1723 back.

1724 Chairman Smith. Thank you, Ms. Jackson Lee.

1725 The question is on the amendment --

1726 Mr. Watt. Mr. Chairman.

1727 Mr. Lungren. Mr. Chairman.

1728 Chairman Smith. The gentleman from California, Mr.  
1729 Lungren, is recognized.

1730 Mr. Lungren. Mr. Chairman, this debate does remind me  
1731 somewhat of similar debates we had going back 25 years ago  
1732 or so before this committee when I recall John Walsh  
1733 appearing before a subcommittee of this committee asking  
1734 that the Federal government be involved in the question of  
1735 missing and exploited children. At that time, there was an  
1736 argument that the Federal government ought not to be  
1737 involved in it. This was purely a local or State concern.

1738           And I recall the debate that raised at time with respect  
1739 to whether we ought to use Federal resources for such a  
1740 purpose. And eventually, this committee decided that, in  
1741 fact, there was an important purpose to be served, and that  
1742 the Federal government, in fact, could utilize its resources  
1743 in an effective way to, in a sense, supplement or complement  
1744 that what was happening on the State level.

1745           We then went into a period of time in which there was a  
1746 big argument about whether or not registered sex offenders'  
1747 registration would be made available to the public. And  
1748 that was a debate that raged in many States, including mine  
1749 of California.

1750           And I recall how we carefully looked at that and  
1751 attempted to move into that field, and put a lot of  
1752 restrictions around that information because there was  
1753 concern about whether the public could be trusted with that  
1754 information, and that this in some way, shape, or form  
1755 violated the privacy rights of registered sex offenders.  
1756 And, of course, that was a misnomer to begin with because as  
1757 a product of their prior action, their conviction required  
1758 them to register as sex offenders.

1759           And we passed laws on the State level, and we passed  
1760 laws on the Federal level which work with those State laws  
1761 to allow the public to know the identity of people who are  
1762 registered sex offenders so that they might take -- that is,  
1763 members of the public -- appropriate action to protect  
1764 themselves, and particularly their children, against known  
1765 sex offenders.

1766           Now the argument that some sex offenders are not  
1767 registered, and, therefore, it does not protect us against  
1768 all has been raised. But it is not received the kind of  
1769 credence that would allow us to dismantle the registration.

1770           What we are asking for here is administrative subpoenas  
1771 for the purpose of affecting the apprehension of those who  
1772 are violating the various laws around the country with  
1773 respect to registered sex offenders. It is not limited to  
1774 just those who are child molesters, that is true. But the  
1775 fact of the matter is we do not limit that with respect to  
1776 the various laws that we have passed in the various States.  
1777 It is registered sex offenders.

1778           The gentleman from Virginia keeps bringing up the idea  
1779 about urination in public and so forth. No system is

1780 perfect. There are anomalies to every system whatsoever.  
1781 But that is no reason to essentially dismantle the system  
1782 that we have if, in fact, we think registered sex offender  
1783 registries serve a useful purpose. And I do believe they  
1784 do.

1785 Mr. Conyers. Would the gentleman yield?

1786 Mr. Lungren. I will yield in just a moment.

1787 Mr. Conyers. Thank you.

1788 Mr. Lungren. And if, in fact, you believe that sex  
1789 offender registries serve a purpose, the question before us  
1790 is whether or not that purpose will be enhanced by allowing  
1791 for administrative subpoenas in these cases.

1792 Now administrative subpoenas, as I understand, do not go  
1793 to the content, for instance, of telephone conversations.  
1794 They are the kind of subpoenas that allow a marshal to go  
1795 and find the motel records, for instance if you are trying  
1796 to find out where someone is living. Why is that important?  
1797 Because, in fact, if they have not registered as to where  
1798 they are living, we are trying to find out where they are.

1799 There are consequences to that. My State, for instance,  
1800 has laws against registered sex offenders living within

1801 1,000 feet or 2,000 feet of a school or a park. Why do we  
1802 do that? Because we believe that on balance, that achieves  
1803 a protection of those most vulnerable. In most cases, those  
1804 would be children. In some cases, those are folks who have  
1805 a mental disability and are taken advantage of by sex  
1806 offenders.

1807 Yes, the ambit is larger than those who already are  
1808 registered for sex offenses against youth, but we have found  
1809 in legislature after legislature, State after State, that  
1810 this serves a good purpose.

1811 So the question before us is a simple one. Do we think  
1812 administrative subpoenas, which go to the question such as  
1813 where someone is living, motel records, that kind of thing,  
1814 should be allowed for Federal marshals to complement or  
1815 supplement the efforts being made by the 50 States of the  
1816 Union with respect to fighting against sexual exploitation,  
1817 sexual assault.

1818 While the title of the bill does deal with juvenile or  
1819 children and this deals with all sex offenders, those are  
1820 the facts before us. That is the question before us.

1821 I would be happy to yield to my friend from Michigan.

1822 Mr. Conyers. Thank you. Thank you very much. Do you  
1823 believe or understand --

1824 Chairman Smith. The gentleman's time has expired, and  
1825 without objection, be granted and yielded an additional  
1826 minute.

1827 Mr. Conyers. Thank you. Do you think that taking out  
1828 administrative subpoenas, my friend from California, that we  
1829 would dismantle the system embodied in this bill?

1830 Mr. Lungren. I think we would lessen the effectiveness  
1831 of the programs within this bill because oftentimes  
1832 timeliness is of the essence with respect to attempting to  
1833 track down a sex offender who is not properly registered.  
1834 That is, you are trying to find their most recent residence,  
1835 and oftentimes, as I say, it is very difficult to determine  
1836 that. You needed to get your administrative subpoena  
1837 immediately so you can gather that information, which may  
1838 not be kept for historical purposes by the business concern  
1839 to which it is directed. I yield back the rest off --

1840 Chairman Smith. The gentleman's time has expired.

1841 The question is on the amendment.

1842 All in favor, say aye?

1843 Opposed, no?

1844 In the opinion of the chair, the noes have it, and the  
1845 amendment is not agreed to.

1846 Mr. Scott. Mr. Chairman?

1847 Chairman Smith. The gentleman from Virginia.

1848 Mr. Scott. I have another amendment.

1849 Chairman Smith. Does the gentleman have another  
1850 amendment?

1851 Mr. Scott. Yes, Mr. Chairman.

1852 Chairman Smith. Okay. The clerk will report the  
1853 amendment.

1854 Mr. Scott. It is apparently on the way to the desk.

1855 They have it, Mr. Chairman.

1856 Chairman Smith. The clerk will report the amendment.

1857 Ms. Kish. Amendment to H.R. 6063, offered by Mr. Scott,

1858 page 7, beginning on line 23, strike "the director of the

1859 United States Marshal Service," and insert the following:

1860 "at the request of the director of the United States Marshal

1861 Service, the Attorney General."

1862 Page 8, line 11, insert after the Sex Offender

1863 Registration and Notification Act, 42 U.S.C., 16901, the

1864 following: "by reason of having been convicted of a  
1865 specified offense against a minor as such term is defined in  
1866 Section 111(a) of the Sex Offender Registration and  
1867 Notification Act."

1868 [The amendment of Mr. Scott follows:]

1869

1870 Chairman Smith. The gentleman from Virginia recognized  
1871 to explain his amendment.

1872 Mr. Scott. Thank you, Mr. Chairman. Mr. Chairman, I  
1873 apologize for the late notice on this. I did not think this  
1874 would be necessary because I thought the last amendment  
1875 would pass. But this amendment would replace the section of  
1876 the bill giving the administrative subpoena authority, the  
1877 U.S. Marshal authority, and conform that authority to the  
1878 same kind of authority that the Secret Service has when  
1879 faced with a threat to the President of the United States.

1880 It keeps the authority at the Cabinet level, which the  
1881 Secret Service has to get a Cabinet-level official to  
1882 authorize the subpoena. It also it turns out that it  
1883 conforms the amendment is in conformity with what the  
1884 criticism of the last amendment was, that it did not cover  
1885 offenses against children. This limits the application to  
1886 defenses against children.

1887 Mr. Chairman, we have testimony that the Marshal Service  
1888 is rounding up tens of thousands of people without any  
1889 apparent just because they are not in technical compliance  
1890 with the reporting requirements under SORNA. They are able

1891 to do this without this extraordinary power. If they in  
1892 appropriate cases need this extraordinary power, they cannot  
1893 possibly need this power any more than the Secret Service  
1894 does when faced with an imminent threat to the President of  
1895 the United States.

1896 They do not need this power for chasing down people who  
1897 might have gotten caught with a prostitute or caught  
1898 urinating in public. If we are going to do it for cases  
1899 that involve an offense against children, then let us have  
1900 it for offenses against children.

1901 I would hope, Mr. Chairman, that we would adopt this  
1902 amendment. It conforms to all that the people have said in  
1903 criticism of the last amendment. And, Mr. Chairman, I think  
1904 it is more in compliance with last year's bill.

1905 Chairman Smith. Does the gentleman yield back his time?

1906 Mr. Scott. I yield.

1907 Chairman Smith. Okay. I am going to rise in opposition  
1908 to the amendment for a couple of reasons.

1909 First of all, as the gentleman says, this allows or  
1910 makes it impossible for the director of the United States  
1911 Marshal Service to approve the administrative subpoenas.

1912 Instead the Attorney General has to approve them. I tend to  
1913 think that will slow down the process. That will make it a  
1914 little bit more difficult to get the administrative  
1915 subpoenas, and perhaps unnecessarily burden the Attorney  
1916 General.

1917 The second provision, the second paragraph of the  
1918 amendment limits the application to sex offenders against  
1919 minors, but it omits the instance where sex offenders might  
1920 molest or tape an adult. And that is not a category I think  
1921 we ought to exclude from the provisions of the bill. So I  
1922 oppose the amendment.

1923 Mr. Scott. Would the gentleman yield?

1924 Chairman Smith. And I will yield to the gentleman.

1925 Mr. Scott. Is the chairman saying that in cases like  
1926 this, the administrative procedures need to be more  
1927 streamlined in these cases than the case of an actual  
1928 imminent threat against the President of the United States?

1929 Chairman Smith. My guess is that there are far more  
1930 instances of sex offenders than there are threats against  
1931 the President. And I can understand why that would be  
1932 elevated to the Attorney General, but in this case where we

1933 are talking about administrative procedures, it is the  
1934 director of the United States Marshal Service that has  
1935 historically been the one to approve those and who does, in  
1936 fact, approve those and all the other categories. So I do  
1937 not know why we would, again, take it out of his hands in  
1938 this one instance.

1939 Are there any other members who wish to be heard on this  
1940 amendment?

1941 [No response.]

1942 Chairman Smith. If not, the question is on the  
1943 amendment.

1944 All in favor, say aye?

1945 All opposed, nay?

1946 In the opinion of the chair, the noes have it, and the  
1947 amendment is not agreed to.

1948 The gentleman from Virginia requests a roll call vote,  
1949 and the clerk will call the role.

1950 Chairman Smith. No.

1951 Ms. Kish. Mr. Smith votes no.

1952 Mr. Sensenbrenner?

1953 [No response.]

1954 Ms. Kish. Mr. Coble?  
1955 [No response.]  
1956 Ms. Kish. Mr. Gallegly?  
1957 [No response.]  
1958 Ms. Kish. Mr. Goodlatte?  
1959 [No response.]  
1960 Ms. Kish. Mr. Lungren?  
1961 Mr. Lungren. No.  
1962 Ms. Kish. Mr. Lungren votes no.  
1963 Mr. Chabot?  
1964 Mr. Chabot. No.  
1965 Ms. Kish. Mr. Chabot votes no.  
1966 Mr. Issa?  
1967 [No response.]  
1968 Ms. Kish. Mr. Pence?  
1969 [No response.]  
1970 Ms. Kish. Mr. Forbes?  
1971 Mr. Forbes. No.  
1972 Ms. Kish. Mr. Forbes votes no.  
1973 Mr. King?  
1974 Mr. King. No.

1975 Ms. Kish. Mr. King votes no.

1976 Mr. Franks?

1977 Mr. Franks. No.

1978 Ms. Kish. Mr. Franks votes no.

1979 Mr. Gohmert?

1980 [No response.]

1981 Ms. Kish. Mr. Jordan?

1982 Mr. Jordan. No.

1983 Ms. Kish. Mr. Jordan votes no.

1984 Mr. Poe?

1985 [No response.]

1986 Ms. Kish. Mr. Chaffetz?

1987 [No response.]

1988 Ms. Kish. Mr. Griffin?

1989 [No response.]

1990 Ms. Kish. Mr. Marino?

1991 Mr. Marino. No.

1992 Ms. Kish. Mr. Marino votes no.

1993 Mr. Gowdy?

1994 [No response.]

1995 Ms. Kish. Mr. Ross?

1996 Mr. Ross. No.

1997 Ms. Kish. Mr. Ross votes no.

1998 Mrs. Adams?

1999 Mrs. Adams. No.

2000 Ms. Kish. Mrs. Adams votes no.

2001 Mr. Quayle?

2002 [No response.]

2003 Ms. Kish. Mr. Amodei?

2004 Mr. Amodei. No.

2005 Ms. Kish. Mr. Amodei votes no.

2006 Mr. Conyers?

2007 Mr. Conyers. Aye.

2008 Ms. Kish. Mr. Conyers votes aye.

2009 Mr. Berman?

2010 [No response.]

2011 Ms. Kish. Mr. Nadler?

2012 Mr. Nadler. Aye.

2013 Ms. Kish. Mr. Nadler votes aye.

2014 Mr. Scott?

2015 Mr. Scott. Aye.

2016 Ms. Kish. Mr. Scott votes aye.

2017 Mr. Watt?

2018 Mr. Watt. Aye.

2019 Ms. Kish. Mr. Watt votes aye.

2020 Ms. Lofgren?

2021 Ms. Lofgren. Aye.

2022 Ms. Kish. Ms. Lofgren votes aye.

2023 Ms. Jackson Lee?

2024 Ms. Jackson Lee. No.

2025 Ms. Kish. Ms. Jackson Lee votes no.

2026 Ms. Waters?

2027 Ms. Waters. No.

2028 Ms. Kish. Ms. Waters votes no.

2029 Mr. Cohen?

2030 [No response.]

2031 Ms. Kish. Mr. Johnson?

2032 Mr. Johnson. Aye.

2033 Ms. Kish. Mr. Johnson votes aye.

2034 Mr. Pierluisi?

2035 [No response.]

2036 Ms. Kish. Mr. Quigley?

2037 Mr. Quigley. No.

2038 Ms. Kish. Mr. Quigley votes no.

2039 Ms. Chu?

2040 Ms. Chu. Aye.

2041 Ms. Kish. Ms. Chu votes aye.

2042 Mr. Deutch?

2043 [No response.]

2044 Ms. Kish. Ms. Sanchez?

2045 Ms. Sanchez. Aye.

2046 Ms. Kish. Ms. Sanchez votes aye.

2047 Mr. Polis?

2048 Mr. Polis. Aye.

2049 Ms. Kish. Mr. Polis votes aye.

2050 Chairman Smith. The gentleman from California?

2051 Mr. Berman. Aye.

2052 Ms. Kish. Mr. Berman votes aye.

2053 Chairman Smith. The other gentleman from California,

2054 Mr. Issa.

2055 Mr. Issa. No.

2056 Ms. Kish. Mr. Issa votes no.

2057 Chairman Smith. The gentleman from Texas.

2058 Mr. Gohmert. No.

2059 Ms. Kish. Mr. Gohmert votes no.

2060 Chairman Smith. The gentleman from North Carolina.

2061 Mr. Coble. No.

2062 Ms. Kish. Mr. Coble votes no.

2063 Chairman Smith. The gentleman from Arkansas.

2064 Mr. Griffin. No.

2065 Ms. Kish. Mr. Griffin votes no.

2066 Chairman Smith. The gentleman from Ohio, if he has not

2067 already voted. Very good. And the clerk will report.

2068 Ms. Kish. Mr. Chairman, 10 members voted aye, 18

2069 members voted nay.

2070 Chairman Smith. A majority having against the

2071 amendment, the amendment is not agreed to.

2072 A reporting quorum being present, the question is on

2073 reporting the bill favorably to the House.

2074 Those in favor, say aye?

2075 Opposed, no?

2076 The ayes have it, and the bill is order reported

2077 favorably. Members will have 2 days to submit their views.

2078 Pursuant to notice, I now call up H.R. 4362 for purposes

2079 of markup.

2080           And the clerk will report the bill. But the clerk will  
2081 suspend. I just want to notify members that we do not  
2082 expect to take up today the Adam Walsh Reauthorization Act.  
2083 So at this point, we will proceed with H.R. 4362, then H.R.  
2084 6062.

2085           And without objection, the bill will be considered as  
2086 read and open for amendment at any point.

2087           [The information follows:]

2088

2089 Chairman Smith. I will recognize myself and then the  
2090 ranking member for opening statements. This is 4362.

2091 Tax fraud through identity theft is a rapidly-growing  
2092 problem in the United States. In stealing identity  
2093 information, social security numbers, and their  
2094 corresponding names and birth dates, criminals have  
2095 electronically filed thousands of false tax returns and have  
2096 received hundreds of millions of dollars in wrongful  
2097 refunds.

2098 Is this mic on? Okay.

2099 The criminals deceive the Internal Revenue Service and  
2100 file a return before the legitimate taxpayer files. The  
2101 criminals then receive the refund, sometimes by check, but  
2102 often through a convenient, but hard to trace, pre-paid debt  
2103 card. The criminals then wait for the mail to deliver the  
2104 cards and checks at abandoned addresses.

2105 According to media reports, postal workers have been  
2106 harassed, robbed, and, in one case, murdered as they have  
2107 made their rounds with mail trucks full of debit cards and  
2108 master keys to mailboxes.

2109 Tax thieves victimize innocent taxpayers in a number of

2110 ways. They often file fake returns under a false name or  
2111 claim someone who is no longer living as a dependent on  
2112 their own forms. Often the fraud is not detected until an  
2113 individual files a tax return that is rejected by the IRS  
2114 because someone else has already falsely filed and claimed  
2115 their return.

2116 J. Russell J George, the Treasury Inspector General for  
2117 Tax Administration, testified before Congress that the IRS  
2118 detected 940,000 fake returns for 2010 in which identity  
2119 thieves would have received \$6.5 billion in refunds, and  
2120 those were just the ones they caught early. The IRS  
2121 estimated that they missed an additional 1.5 million returns  
2122 with possible fraudulent refunds worth more than \$5.2  
2123 billion. The number of these cases has increased by  
2124 approximately 300 percent every year since 2008.

2125 Tax fraud is a very real problem, and Congress should do  
2126 all it can to protect all citizens from this costly crime.  
2127 I am proud to be an original co-sponsor of H.R. 4362, the  
2128 Stop Identity Theft Act of 2012, with Congresswoman Debbie  
2129 Wasserman Schultz. This is a bipartisan bill that  
2130 strengthens criminal penalties for tax return identity

2131 thieves.

2132 H.R. 4362 adds tax return fraud to the list of predicate  
2133 offenses for aggravated identity theft and expands the  
2134 definition of an identity theft victim to include businesses  
2135 in charitable organizations. H.R. 4362 also improves  
2136 coordination between the Justice Department and State and  
2137 local law enforcement officials in order to better protect  
2138 groups that are most vulnerable to tax fraud so they are not  
2139 future victims.

2140 The changes to Federal law proposed by H.R. 4362 are  
2141 important to keep pace with this ever-increasing crime. Tax  
2142 identity theft cost American families and taxpayers billions  
2143 of dollars each year. It is critical that we take further  
2144 steps to reduce the number of people who are victimized by  
2145 this crime. So I urge my colleagues to join me in support  
2146 of H.R. 4362.

2147 I will yield back the balance of my time and recognize  
2148 the gentleman from Michigan, Mr. Conyers, for his opening  
2149 statement.

2150 Mr. Conyers. Thank you, Chairman Smith.

2151 This is a good bill. I commend our former member,

2152 Debbie Wasserman Schultz, the chairman, and the ranking  
2153 member on the subcommittee on crime, Bobby Scott, for all  
2154 supporting this measure.

2155       And as I do, there is one provision in here that creates  
2156 a problem that I need to discuss with the members of this  
2157 committee. And that is the imposition of a mandatory  
2158 minimum sentence on the crime of tax fraud, which as a  
2159 statute, aggravated identity theft already has a mandatory  
2160 minimum. And as has been discussed here, mandatory minimum  
2161 sentencing laws require automatic prison terms for those  
2162 convicted of certain crimes without allowing the judge to  
2163 take facts and circumstances of the crime, or circumstances  
2164 surrounding the defendant into particular account in each  
2165 case.

2166       And so identity theft crimes need stiff punishments,  
2167 even increased punishments. But mandatory sentences are  
2168 extremely problematic, and that is why I will, with Bobby  
2169 Scott of Virginia, introduce an amendment that will increase  
2170 the statutory maximum for tax fraud, but will delete the  
2171 mandatory minimums. And I will talk about that when my  
2172 amendment is brought forward.

2173           And for now, I will ask unanimous consent to put my  
2174 entire statement into the record, and return the balance of  
2175 my time.

2176           [The information follows:]

2177

2178 Chairman Smith. Thank you, Mr. Conyers. Are there any  
2179 amendments? The gentleman from Virginia, Mr. Scott.

2180 Mr. Scott. Mr. Chairman, I have an amendment at the  
2181 desk.

2182 Chairman Smith. The clerk will report the amendment.

2183 Ms. Kish. Amendment to H.R. 4362, offered by Mr.  
2184 Conyers and Mr. Scott, page 3, line 3, insert A in general  
2185 before "section." Page 3, after line 10, insert the  
2186 following: "(b) increased penalty."

2187 Section 1028(a) of Title 18, United States Code, is  
2188 amended, (1) in paragraph 1 by inserting "except for an  
2189 offense described in Section (c)(12), the term of  
2190 imprisonment may be any term up to 4 years" before the  
2191 period at the end, and (2) in paragraph 2, by inserting  
2192 "except for an offense described in Section (c)(12) for  
2193 which the term of imprisonment may be any term up to 10  
2194 years" before the period at the end.

2195 [The amendment of Mr. Conyers and Mr. Scott follows:]

2196

2197 Chairman Smith. The gentleman is recognized to explain  
2198 his amendment.

2199 Mr. Scott. Thank you, Mr. Chairman.

2200 Mr. Chairman, fraud and identity theft is a serious and  
2201 growing problem. We just heard last week from the victim of  
2202 a tax repair fraud at a hearing before the subcommittee, and  
2203 we know how disruptive such fraud can be to a person's life.  
2204 But when we address problems of fraud and identity, our  
2205 response should be effective and measured. And while I  
2206 appreciate the sentiments and efforts behind H.R. 4362, I  
2207 cannot support the effort that seeks to stop one injustice  
2208 by imposing another.

2209 H.R. 4362 adds fraud as a predicate aggravated identity  
2210 theft to the Code section, and the penalty for that is a  
2211 mandatory prison terms of 2 years for an offense related to  
2212 terrorism, 5 years. Because the mandatory minimum sentences  
2213 are included in H.R. 4362, this bill is not an intelligent  
2214 solution to the problem of identity theft.

2215 I am not saying that somebody who commits these crimes  
2216 should not be sentenced to 2 or 5 years or even more. But  
2217 to require any sentence to be imposed before the facts or

2218 circumstances of a case or the characteristics or  
2219 involvement of the defendant are taken into account, it is  
2220 an unnecessary wrong and unjust.

2221 Mandatory minimums have been studied extensively and  
2222 have been found to distort the rational sentencing systems  
2223 to discriminate against minorities, to waste taxpayers'  
2224 money, and often violate common sense. Even if everyone on  
2225 the case, from the arresting officer, the prosecutor, judge,  
2226 and the victim, believe that the mandatory minimum would be  
2227 an unjust sentence for a particular defendant in a  
2228 particular case, it still must be imposed.

2229 Mandatory minimum sentences based merely on the name of  
2230 the crime removes sentencing discretion from the judge.  
2231 Regardless of the role of the offender in the particular  
2232 case, the offender's record or lack thereof, or the facts  
2233 and circumstances of the case, the judge has no discretion  
2234 but to impose the mandatory minimum set by legislators long  
2235 before the crime has been committed.

2236 This would bring about results such as the recent case  
2237 of Marisa Alexander, the mother of 3, a graduate student who  
2238 was sentenced to a mandatory minimum sentence of 20 years

2239 for discharging a firearm to warn off an abusive husband  
2240 during a dispute. Discharging a firearm to warn off an  
2241 abusive husband during a dispute, mandatory minimum 20  
2242 years. Ironically, if she has just shot and killed him, the  
2243 maximum penalty for voluntary manslaughter in Florida, 15  
2244 years.

2245 Two- and 5-year mandatory sentences in H.R. 4362 are,  
2246 therefore, problematic although I do support the intent of  
2247 the sponsors to do more to address identity theft. For  
2248 these reasons, Mr. Chairman, we have offered this amendment  
2249 to replace the mandatory minimums in the bill with an  
2250 increased penalty. Instead of 2 to 5, make it 4 to 10, but  
2251 make it discretionary to the judge. Working with the  
2252 sentencing commission, the just can impose a more severe  
2253 penalty in appropriate cases. But we should not require the  
2254 judge to impose a sentence that violates common sense.

2255 I would hope that we would adopt the amendment and deal  
2256 with the situation where we are trying to eliminate  
2257 mandatory minimums.

2258 Mr. Chairman, I would point out, this is the third  
2259 mandatory minimum we have considered this month alone. We

2260 keep hearing that this not a new mandatory minimum. We are  
2261 just adding a crime to the statute that already has a  
2262 mandatory minimum, or just one more. And if we do not  
2263 accept the mandatory minimum, a good bill might not pass.  
2264 We added mandatory minimums in the synthetic drug bill, and  
2265 violence against women. Now it is identity theft.

2266 If we are going to get rid of the mandatory minimums on  
2267 the books, the first thing we have to do is stop passing new  
2268 ones. This would be a new one. We should not pass it.  
2269 Identity theft is a serious problem, but mandatory minimums  
2270 should not be the solution. I would hope we would adopt the  
2271 amendment.

2272 Chairman Smith. Thank you, Mr. Scott. I will recognize  
2273 myself in opposition.

2274 The gentleman is correct. We have debated this issue of  
2275 mandatory minimums many times over, but there is a  
2276 justification for them.

2277 This amendment defeats the main purpose of this  
2278 bipartisan bill, which is to increase penalties on those who  
2279 victimize people and fraudulently steal their income tax  
2280 refunds. This bill properly places tax return fraud where

2281 it belongs, within the aggravated identity theft statute in  
2282 Section 1028(a). This means that a person prosecuted and  
2283 convicted for stealing someone's identity in order to commit  
2284 felony tax fraud will, in fact, face mandatory punishment.

2285 Media reports have shown that this type of fraud is on  
2286 the rise. The billions of dollars in fraudulent tax returns  
2287 that are paid each year harm not just the individual  
2288 victims, but taxpayers as a whole because in many cases the  
2289 IRS pays 2 refunds, one to the scam artist and one to the  
2290 actual taxpayer. Tax fraud through identity theft also can  
2291 be devastating to the individual victim, who must prove  
2292 their own identity to the IRS. These victims often wait  
2293 months or years to receive refunded money that is rightfully  
2294 owed to them and to reestablish their identity.

2295 So I oppose this amendment and urge my colleagues to  
2296 oppose it as well.

2297 Ms. Waters. Mr. Chairman?

2298 Chairman Smith. The gentlewoman from California, Ms.  
2299 Waters, is recognized.

2300 Ms. Waters. I would like to rise in support of this  
2301 amendment. We have worked too long and too hard dealing

2302 with the unfairness of mandatory minimums to start reversing  
2303 what we already concluded was taking away discretion, all  
2304 discretion, from judges.

2305 Every judge that we have talked to, the courts,  
2306 everybody recognizes that mandatory minimums simply is  
2307 unfair, that we should not be trying to sit here and make  
2308 decisions for judges. Let them hear the case. Let them  
2309 understand what took place. Let them make decisions about  
2310 the crime. But let us not revert to creating more mandatory  
2311 minimums when we know that they have not served us well.

2312 So I would simply ask this committee to support this  
2313 amendment.

2314 Mr. Conyers. Would the gentlelady yield?

2315 Ms. Waters. Yes, I yield to the gentleman.

2316 Mr. Conyers. I want to thank her for her statement, and  
2317 to point out that the Conyers-Scott amendment actually  
2318 increases the amount of time a guilty defendant may be  
2319 incarcerated for. We are going from 2 to 5 years, and in  
2320 our amendment, the term sentence could go from 4 to 10  
2321 years.

2322 So let everyone understand that what we are doing is

2323 giving the court, the judge, greater discretion to sentence  
2324 longer than the mandatory for which you have so excellently  
2325 stated. It is generally recognized that mandatory sentences  
2326 are discriminatory. And it is for that reason that we bring  
2327 the term change, extending it forward.

2328 We are not trying to make it easier for anybody, but we  
2329 are making it more discretionary to the court rather than  
2330 having this term loosely and now continually applied in our  
2331 legislation before the house Judiciary Committee.

2332 Ms. Waters. I thank the gentleman for clarifying and  
2333 making that point so that all of the members could  
2334 understand what you are doing. You are saying that we want  
2335 the judge to be as tough as a judge can be within the  
2336 guidelines that you are creating, giving up to 10 years if,  
2337 in the judge's discretion, they decide that the crime that  
2338 has been committed deserves that kind of sentencing.

2339 So I think that is a great point that you are increasing  
2340 the possibility of this sentencing. And I would hope this  
2341 would be enough for the members of this committee to  
2342 understand, we do not have to revert to mandatory minimums,  
2343 which are discriminatory and which have not served the

2344 courts or this country well. I yield back.

2345 Chairman Smith. The gentlewoman yields back her time.

2346 Are there any other members who wish to be heard?

2347 [No response.]

2348 Chairman Smith. If not, the question is on the  
2349 amendment.

2350 All in favor, say aye?

2351 Opposed, no?

2352 Chairman Smith. In the opinion of the chair, the noes  
2353 have it, and the amendment is not agreed to.

2354 Ms. Lofgren. Mr. Chairman?

2355 Chairman Smith. I thought you were not going to get a  
2356 recorded vote. Who seeks recognition? The gentlewoman from  
2357 California.

2358 Ms. Lofgren. I move to strike the last word.

2359 Chairman Smith. The gentlewoman is recognized for 5  
2360 minutes.

2361 Ms. Lofgren. I have a concern about the bill, and I  
2362 wanted to explore the reasons why.

2363 As members may recall, several years ago, there was an  
2364 incident in Iowa where immigrants who were working at a

2365 packing plant were arrested, herded into cattle holding  
2366 pens, and charged with aggravated identity theft with a  
2367 penalty of 2 years. To make a long short, the case went all  
2368 the way to the Supreme Court, *Flores-Figueroa v. United*  
2369 *States*.

2370 And the Court basically decided that you cannot be, as  
2371 an immigrant who uses a social security number that is not  
2372 your own just to get a job, you cannot be charged with  
2373 aggravated ID theft unless you knew that the social security  
2374 number belonged to another person.

2375 I think in a sort of backdoor way this bill overturns  
2376 *Flores-Figueroa v. the Unites States*, and here is my  
2377 thinking, and I would love if someone can tell me I am  
2378 wrong, I would love to know it. Under this bill, filing a  
2379 W-4, which is a willful filing of information, would be  
2380 transformed into aggravated identity theft. And so the  
2381 immigrant, who is the bus boy, who has a social security  
2382 number, is now transformed, despite *Flores-Figueroa v. the*  
2383 *United States*, into an aggravated identity theft felon  
2384 facing a 2-year penalty.

2385 And I have a concern about that. I think the Supreme

2386 Court got it right, but there has been no discussion of  
2387 this.

2388 Chairman Smith. Will the gentlewoman yield?

2389 Ms. Lofgren. I certainly would yield.

2390 Chairman Smith. It is neither the intent of the  
2391 legislation, nor do I believe there is any provision in the  
2392 legislation that would overturn or impact that Supreme Court  
2393 case.

2394 At one point, we considered offering an amendment to do  
2395 just what the gentlewoman is concerned about, but decided  
2396 not to offer it. So I do not think her concerns are well-  
2397 founded.

2398 Ms. Lofgren. So let me, if I may, Mr. Chairman, I  
2399 appreciate that guidance. The provision in the section -- I  
2400 am looking for it here -- thank you very much -- on line 9  
2401 on page 3. That would not, in fact, relate to the  
2402 circumstances that I have just outlined, overturning the  
2403 *Flores* case?

2404 Chairman Smith. Let us take a look, but we are  
2405 convinced that it does not.

2406 Ms. Waters. Will the gentleman yield? Will the lady?

2407 Ms. Lofgren. Certainly.

2408 Ms. Waters. What harm could be done by making sure that  
2409 it does not overturn the court decision? I think the  
2410 gentlelady makes a good case. And if the chair, in fact,  
2411 did not intend that it would impact immigrants who are  
2412 simply guilty of seeking a job with minor security  
2413 violations, then why not either strike or amend the  
2414 provision to clarify that, and let us move forward on the  
2415 bill?

2416 We have bipartisan support on this bill because we all  
2417 understand what is happening with identity theft,  
2418 particularly in South Florida, where it is way out of  
2419 control. And we all want to support it, but then we are  
2420 concerned that we do not want to go overboard and do exactly  
2421 what was attempted as was described by the gentlelady from  
2422 California.

2423 So, Mr. Chairman, why do we not just clear this up and  
2424 strike that, or if the gentlelady has simple language that  
2425 would exclude that, let us do it so we can get this done and  
2426 move it out of here?

2427 Ms. Lofgren. Reclaiming my time, we did ask the staff

2428 of the Ways and Means Committee, and did pose this scenario.  
2429 And it was their guess -- I do not want to put more to it --  
2430 that if you submitted a W-4 form and signed it, which you  
2431 have to do, then, in fact, you would be guilty, and that we  
2432 would, they think, be overturning the *Flores* case.

2433 And I thank the gentlelady. I think that is something  
2434 that I would like to know. We have not had hearings on  
2435 this, and if it is not the intent of the majority to do  
2436 that, I think it would be nice to get some more guidance on  
2437 this, if I could, Mr. Chair.

2438 Chairman Smith. If the gentlewoman will yield, we will  
2439 be happy to get more guidance. I am convinced by counsel  
2440 that that, again, was not the intent, and there is nothing  
2441 in this bill that would allow to occur. As I say, we did  
2442 consider it, but decided at the request of the lead sponsor,  
2443 Debbie Wasserman Schultz, not to put in the bill at her  
2444 request.

2445 So let me just assure you, if there is any way or need  
2446 to clarify that, we will do so.

2447 Ms. Lofgren. Pardon me? I did not hear you.

2448 Chairman Smith. I said let me assure the gentlewoman

2449 that if there is any need to clarify what we have been  
2450 discussing, we will be happy to do so.

2451 Ms. Lofgren. I appreciate that, Mr. Chairman. And with  
2452 that understanding, we will yield back.

2453 Chairman Smith. Okay, thank the gentlewoman.

2454 A reporting quorum being present, the question is on  
2455 reporting the bill favorably to the House.

2456 Those in favor, say aye?

2457 Those opposed, no?

2458 In the opinion of the chair, the ayes have it, and the  
2459 bill is ordered reported favorably. Members will have 2  
2460 days to submit their views.

2461 Pursuant to notice, I now call up H.R. 6062 for purposes  
2462 of markup. And the clerk will report the bill.

2463 Ms. Kish. H.R. 6062, to reauthorize the Edward Byrne  
2464 Memorial Justice Assistance Grant Program through Fiscal  
2465 Year --

2466 Chairman Smith. Without objection, the bill will be  
2467 considered as read and open for amendment at any point.

2468 [The information follows:]

2469

2470 Chairman Smith. I will recognize myself for an opening  
2471 statement, then the ranking member.

2472 The Edward Byrne Memorial Justice Assistance Grant  
2473 Program was established in 2005 when two existing Federal  
2474 grant programs were combined to create one streamlined grant  
2475 program at the Justice Department for State and local  
2476 criminal justice programs.

2477 Byrne JAG is the cornerstone of the Federal government's  
2478 assistance to State and local law enforcement agencies and  
2479 other criminal justice entities. Byrne JAG provides funds  
2480 to States through a formula that is based on each State's  
2481 population and crime rate. A portion of the money is kept  
2482 by the States themselves, but much of it is required by  
2483 statute to be distributed to localities.

2484 The Byrne JAG program has several broadly-written  
2485 purpose areas, which include support for law enforcement  
2486 entities, the courts, prevention and education, and drug  
2487 treatment and enforcement.

2488 States and localities know their unique law enforcement  
2489 needs better than we here in Washington do. Byrne JAG is  
2490 intended to allow State and local governments the

2491 flexibility to decide how this money is best spent to  
2492 address their specific criminal justice challenges.

2493       Byrne JAG is currently authorized at approximately \$1.1  
2494 billion a year through the end of the current Fiscal Year.  
2495 In Fiscal Year 2012, Congress appropriated \$470 million for  
2496 the Byrne JAG program, although \$100 million of these funds  
2497 are a one-time set aside for this year's presidential  
2498 nomination conventions. H.R. 6062 introduced by Mr. Marino  
2499 reauthorizes Byrne JAG at \$800 million a year for 5 years.

2500       Byrne JAG is a bipartisan program, and H.R. 6062 is a  
2501 bipartisan bill. I urge my colleagues to join me and Mr.  
2502 Marino in support of this legislation.

2503       I yield back the balance of my time, and the gentleman  
2504 from Michigan is recognized for his statement.

2505       Mr. Conyers. Thank you, Mr. Chairman.

2506       I think most here support the Edward Byrne Memorial  
2507 Justice Assistance program emanating from the Department of  
2508 Justice. What I would like to leave with my colleagues here  
2509 is that we need to do more for prevention with this billion  
2510 plus dollars. And I am hoping that those that dispense the  
2511 program will take this discussion into serious

2512 consideration.

2513 Now Byrne JAG grants are vital when budgets are being  
2514 cut at the municipal, county, State levels, which is very,  
2515 very important. And so we want to make sure that this  
2516 program continues.

2517 And we need to support the full range of programs that  
2518 assist State and local public safety initiatives, including  
2519 the COPS program, which has funded the hiring of over  
2520 123,000 local police officers and sheriffs deputies in  
2521 communities across this country.

2522 And so with these thoughts in mind, I urge this bill be  
2523 adopted, and I yield back the balance of my time.

2524 Chairman Smith. Thank you, Mr. Conyers.

2525 In the absence of the chairman of the Crime  
2526 Subcommittee, Mr. Sensenbrenner, the gentleman from  
2527 Pennsylvania, Mr. Marino, will be recognized to speak on his  
2528 bill.

2529 Mr. Marino. Thank you, Chairman. The Edward Byrne  
2530 Memorial JAG program is the primary provider of Federal  
2531 criminal justice funding to State and local jurisdictions,  
2532 and has been referred to by the district attorneys as the

2533 federal crime fighting program with teeth and proven  
2534 results.

2535       The JAG program provides State and local governments  
2536 with critically-needed resources to support a wide range of  
2537 law enforcement activities, including prosecution,  
2538 prevention, education, planning, corrections, treatment,  
2539 evaluations, and technology.

2540       As a former district attorney, I understand the  
2541 tremendous value of JAG-funded projects in fighting crime by  
2542 improving the processes, procedures, and operations of  
2543 criminal justice systems. And just as a side bar, I would  
2544 like to express to my friend and the ranking member that as  
2545 part of that program, we use some of those funds for  
2546 education in schools as young as kindergarten.

2547       My legislation being considered today reauthorizes the  
2548 JAG program for 5 years through Fiscal Year 2017. The  
2549 legislation is supported by the National Criminal Justice  
2550 Association, the International Association of Chiefs of  
2551 Police, the Major Cities Chiefs Association, the National  
2552 Sheriffs Association, the National District Attorneys  
2553 Association, and many more law enforcement organizations.

2554 Mr. Chairman, I would ask unanimous consent that these  
2555 letters of support be inserted into the record.

2556 Chairman Smith. Without objection.

2557 [The information follows:]

2558

2559 Mr. Marino. Again, I would like to thank the chairman  
2560 for considering this important legislation today, and I  
2561 would like to thank the bipartisan group of co-sponsors from  
2562 this committee for their support. I urge all of my  
2563 colleagues to join in the support of our State and local law  
2564 enforcement agencies by voting in favor of H.R. 6062.

2565 Thank you, Mr. Chairman, and I yield back the balance of  
2566 my time.

2567 Chairman Smith. Thank you, Mr. Marino.

2568 The gentleman from Virginia, Mr. Scott, ranking member  
2569 of the Crime Subcommittee, is recognized.

2570 Mr. Scott. Thank you, Mr. Chairman. I join in support  
2571 of the bill as an important part of the comprehensive effort  
2572 to fund crime-fighting programs at the State and local  
2573 level.

2574 The Edward Byrne Memorial Justice Assistance Grant  
2575 program was created in 2005 as a combination of other  
2576 existing programs. Funding under the Byrne JAG program is  
2577 awarded to State and local governments based on statutorily-  
2578 defined formula. Each state's allocation is based on his  
2579 proportion of the country's population and the State support

2580 for the average number of total reported violent crimes in  
2581 the past 3 years.

2582 After a State's allocation is calculated, 60 percent  
2583 goes directly to the State government, and 40 percent is  
2584 awarded directly to units of local governments within the  
2585 State. State and local governments can use their Byrne JAG  
2586 funding for programs or projects in 7 purpose areas, such as  
2587 law enforcement, prosecution, prevention, corrections, drug  
2588 treatment planning and evaluation, and victim assistance.

2589 While I support all of these categories, I note that  
2590 placing so many eggs in one basket has not always served all  
2591 of the purpose areas adequately. Specifically, it is a  
2592 simple fact that we have not funded crime prevention  
2593 programs anywhere near the level that would be commensurate  
2594 with the importance of preventing crime. We have  
2595 traditionally engaged in and focused on crime strategies,  
2596 such as over incarceration, which are not as effective at  
2597 preventing crime as other initiatives, and which are very  
2598 expensive.

2599 I do support this bill because there is no doubt that  
2600 State and local governments need and deserve assistance and

2601 the types of programs that the Byrne JAG is designed to  
2602 fund. But I also support other programs designed to target  
2603 more funding for types of initiatives which have been proven  
2604 to prevent crime, such as putting more officers on the  
2605 streets through the COPS programs and the community  
2606 development crime prevention programs that will be funded  
2607 under the Youth Promise Act that I have introduced.

2608 Finally, I note that while we have recently conducted an  
2609 oversight hearing of the Office of Justice Programs, we  
2610 should have a hearing about the administration and  
2611 distribution of the funds under the Byrne JAG program. This  
2612 is a large and important program which in the past has been  
2613 subject to criticism for abuses. We need to examine how the  
2614 money is now being spent and allocated to ensure that we are  
2615 getting the best use of Federal resources.

2616 I commend my colleague, the gentleman from Pennsylvania,  
2617 Mr. Marino, for introducing the bill. I urge my colleagues  
2618 to support it and ask my colleagues to work with me in  
2619 additional efforts to fund other cost-effective crime  
2620 prevention measures. I yield back.

2621 Chairman Smith. Thank you, Mr. Scott.

2622 Are there any amendments? The gentleman New York, Mr.  
2623 Nadler, is recognized.

2624 Mr. Nadler. Thank you, Mr. Chairman. I have an  
2625 amendment at the desk.

2626 Chairman Smith. And the clerk will report the  
2627 amendment.

2628 Ms. Kish. Amendment to H.R. 6062, offered by Mr. Nadler  
2629 of New York, at the end of the bill add the following:

2630 "Section 3, incentive funds under the Byrne grant program  
2631 for States and units of local government that provide  
2632 certain services to victims of sexual assault. Section  
2633 505 --

2634 Mr. Nadler. Mr. Chairman, I would ask unanimous consent  
2635 that the reading of the amendment will be --

2636 Chairman Smith. Without the objection, the amendment  
2637 will be considered as read.

2638 [The amendment of Mr. Nadler follows:]

2639

2640 Chairman Smith. And the gentleman is recognized to  
2641 explain his amendment.

2642 Mr. Nadler. Thank you. Mr. Chairman, my amendment  
2643 would provide an incentive for States and localities to  
2644 increase Byrne JAG funding to improve the treatment of rape  
2645 victims and reduce the rape kit backlog. It is based on a  
2646 bill I have introduced, H.R. 2197, the Justice for Rape  
2647 Victims and Improving Use of DNA Evidence Act.

2648 Sexual crimes of violence continue to harm women in  
2649 alarmingly high numbers. Over 200,000 people in the United  
2650 States reported being the victim of a rape or sexual assault  
2651 in 2008, which comes out to 1 person every 2 and one-half  
2652 minutes. Over 80 percent of these victims were women with  
2653 past studies showing almost 20 percent of American women  
2654 have experienced rape or attempted rape in their lifetimes.  
2655 This is simply unconscionable, and we are not doing all we  
2656 can to properly deal with this scourge.

2657 It starts when victims are first treated in hospital  
2658 emergency rooms. The lack of concern, the failure to be  
2659 treated in a timely manner, and the absence of basic  
2660 information often make women who have just been sexually

2661 assaulted or raped to feel victimized all over again.

2662 Certain personnel -- a sexual assault nurse examiner or  
2663 SANE nurses, are trained specifically to treat and obtain  
2664 evidence in these cases. Even though studies suggest that  
2665 treatment by SANE nurses improves the experience of victims  
2666 and the collection of evidence making catching the  
2667 perpetrators more likely, not all injured women receive such  
2668 care.

2669 We heard testimony about the importance of SANE nurses  
2670 last Congress at a Crime Subcommittee hearing on the rape  
2671 kit backlog. We then fail to use evidence collected in what  
2672 is commonly called a rape kit to find and punish those who  
2673 commit sexual assaults and rapes. These kits often contain  
2674 DNA evidence, an incredible tool in our fight against crime,  
2675 particularly crimes of rape and sexual assault.

2676 If DNA evidence is left at a crime scene and we can find  
2677 the person whose DNA matches that evidence, we can know with  
2678 near certainty that we have the guilty party. Taking that  
2679 guilty party off the streets protects others from being  
2680 harmed and provides a measure of justice for those already  
2681 victimized. And as groups like the Innocence Project has so

2682 powerfully demonstrated, it can help set innocent men and  
2683 women free.

2684       The power of DNA evidence can only be utilized, however,  
2685 if such evidence is collected, tested, analyzed, and  
2686 compared with other DNA samples. Unfortunately, because of  
2687 a variety of factors, including resources and the increasing  
2688 number of samples, the DNA evidence from rape kits is not  
2689 always tested in a timely manner or, in some tragic cases,  
2690 ever tested at all. Rape kits are too often not tested,  
2691 misplaced, or ignored with thousands simply collecting dust  
2692 in some jurisdictions.

2693       For example, the National Institute of Justice published  
2694 a report last year showing that 18 percent of unsolved or  
2695 alleged sexual assaults that occurred from 2002 to 2007  
2696 contained forensic evidence that had not been submitted to a  
2697 crime lab for analysis. Even when a rape kit is sent to a  
2698 lab to be tested, there can be long delays before its DNA  
2699 evidence is examined, analyzed, and compared to other DNA  
2700 profiles. Such untested evidence represents opportunities  
2701 lost to provide justice for victims and to catch dangerous  
2702 criminals.

2703 My amendment would target these shortcomings and improve  
2704 how we respond to rape and sexual assault. It would provide  
2705 to States and localities an extra 10 percent of Federal  
2706 funding under the Byrne JAG program if a jurisdiction, one,  
2707 establishes a process by which each victim of sexual assault  
2708 or rape has access to a SANE nurse, two, establishes a  
2709 process by which each victim of sexual assault or rape can  
2710 have their rape kits tested within 180 days, and, three,  
2711 creates an online database showing its rape kits and the  
2712 status of their testing in order to help keep track of and  
2713 make sure rape kits are tested.

2714 The amendment does not force States or localities to do  
2715 anything, and it would not cost any jurisdiction any Byrne  
2716 JAG funding. It would simply provide an incentive to do the  
2717 right thing. It would encourage jurisdictions to treat  
2718 victims with sensitivity, law enforcement to see that rape  
2719 kits are tested in a timely manner, and empower victims and  
2720 advocates to keep the pressure on police departments by  
2721 allowing them to monitor what is happening with sexual  
2722 assault and rape kit evidence via the online database. And  
2723 it would assure that a much greater number of rape kits were

2724 tested and analyzed appropriately, and, therefore, a much  
2725 greater number of rapists were caught and brought to  
2726 justice, and a larger number of innocent people who are now  
2727 convicted in the absence of a proper analysis of DNA  
2728 evidence would not be wrongfully convicted.

2729 I encourage all members to support my amendment, and I  
2730 yield back the balance of my time.

2731 Chairman Smith. Thank you, Mr. Nadler.

2732 The gentleman from Pennsylvania, Mr. Marino.

2733 Mr. Marino. Thank you, Chairman. I move to strike the  
2734 last word.

2735 Chairman Smith. The gentleman is recognized for 5  
2736 minutes.

2737 I oppose this amendment offered by Mr. Nadler. But  
2738 before I get into the details, I want to state for the  
2739 record that I take no backseat to any prosecutor for  
2740 aggressively going after rapists, sexual abusers, child  
2741 abusers, women abusers. I put many, many of those in prison  
2742 for years and some for life.

2743 This amendment creates yet another bureaucratic hurdle  
2744 for law enforcement without substantive benefits.

2745 Flexibility in using Byrne JAG funding to meet specific and  
2746 evolving local needs has always been a hallmark of this  
2747 program. Unfortunately, this amendment would take the  
2748 program in exactly the wrong direction by making it less  
2749 flexible and more Washington focused.

2750 This amendment will divert State and local Byrne JAG  
2751 resources away from specific local needs in a community  
2752 originally funding the use of sexual assault nurse examiner  
2753 nurses, testing of rape kits, and creating an Internet rape  
2754 kit database of rape kits. Instead of this rigid approach,  
2755 State and local law enforcement should make these decisions  
2756 and set these priorities based on the needs of their  
2757 communities.

2758 There are already many Federal DNA programs in  
2759 existence, including the DNA Analysis Backlog Elimination  
2760 Act of 2000, and the Debbie Smith Act of 2004. The House-  
2761 passed the Violence Against Women Act reauthorization bill  
2762 requires 75 percent of DNA analysis backlogged funds to  
2763 actually go to testing.

2764 In addition to Byrne JAG, it is a formula grant, giving  
2765 formula money to States as an incentive. Grant means taking

2766 money away from other States and likely smaller States that  
2767 are not in a position to comply with the mandates of this  
2768 amendment. This leads us away from the priorities of crime  
2769 fighting and places one purpose, rape kit testing, above all  
2770 other law enforcement issues. Funding cops on the beat as  
2771 well as DNA testing in all murder cases and other law  
2772 enforcement needs also require significant attention.

2773 As a former county district attorney and United States  
2774 attorney, I know that law enforcement agents choose what to  
2775 submit to the labs based on sound, professional judgments.  
2776 And, again, as a side bar, I have come to understand and  
2777 realize, and actually viewed many rape test kits in labs or  
2778 in storage because when a crime is committed, particularly a  
2779 homicide, we do not know if there is any sexual assault, so  
2780 automatically rape test kits will be administered. But many  
2781 times there is other evidence indicating that there was no  
2782 rape, so there is no reason to further test that rape kit.

2783 In nearly all cases, law enforcement's choice to not  
2784 submit a kit to a lab is not a result of incompetence or  
2785 negligence. They do not want to bog down an already  
2786 overburdened lab system with unnecessary work. Creating a

2787 system that tests rape kits according to a pre-determined  
2788 schedule rather than the needs of the investigation is a  
2789 cookie cutter philosophy that will lead to inefficiency and  
2790 ineffectiveness.

2791       Unfortunately, this situation has often been exaggerated  
2792 by media reports. Instances of crime labs sitting on kits  
2793 are tremendously rare and are the exception. And I have  
2794 never had a situation where in 19 years in prosecuting  
2795 rapists and abusers where I have not made a phone call and  
2796 had, in fact, the rape kit expedited.

2797       While case processing times can always be improved upon,  
2798 many crime labs do not have the serious backlog crisis with  
2799 sexual assault evidence that is sometimes portrayed.  
2800 Creating a database of rape kit processing as if it were a  
2801 product is fraught with risk. Defendants and journalists  
2802 might be able to gain access to the system and thereby learn  
2803 where their law enforcement has begun an investigation, and  
2804 what status it has reached.

2805       Rape investigations are very sensitive processes, and we  
2806 should hesitate before putting any progress measures on the  
2807 Internet. These requirements would not solve the backlog

2808 problem, and it could actually make problems worse by  
2809 spending money on counting evidence kits rather than testing  
2810 them. In fact, the Subcommittee on Crime will hold a  
2811 hearing this fall on this issue, and we expect to delve more  
2812 deeply into this subject.

2813 A similar amendment was offered during the markup of  
2814 Violence Against Women Act, and it was defeated. For these  
2815 reasons, I strongly oppose this amendment and urge my  
2816 colleagues to oppose it as well.

2817 I yield back my time. Thank you.

2818 Mr. Conyers. Mr. Chairman.

2819 Chairman Smith. Thank you, Mr. Marino.

2820 The gentleman from Michigan, Mr. Conyers.

2821 Mr. Conyers. Thank you. I would like to clear up a few  
2822 issues that I consider to be good faith errors on the part  
2823 of one of our experienced district attorneys.

2824 First of all, this bill does not slow down the use of  
2825 rape kits, it increases and incentivizes it, and adds more  
2826 finances with a few conditions. It does not force any  
2827 jurisdictions to take this. If a jurisdiction is satisfied  
2828 with the way they are working, fine. And it does not place

2829 these rape kits above all others. It does, however, sir,  
2830 prioritize them. And I think that is just a part of the  
2831 process for us to get more people to use it.

2832 Now for me, to hear you announce that sitting on rape  
2833 kits does not occur and has never occurred in your  
2834 experience, I will be able to help you understand what is  
2835 going on.

2836 Mr. Marino. Will the gentleman yield?

2837 Mr. Conyers. In a minute. I will help you to  
2838 understand what is going on in the criminal systems around  
2839 the country. And now I will yield.

2840 Mr. Marino. First of all, I think you may have  
2841 misunderstood my statement. I said I personally --

2842 Mr. Conyers. Oh, okay.

2843 Mr. Marino. -- as a prosecutor have never experienced  
2844 that.

2845 Mr. Conyers. All right.

2846 Mr. Marino. And I have never heard a prosecutor --

2847 Mr. Conyers. It is okay if it is personal. I still  
2848 want to bring this to your attention, not just to you  
2849 personally --

2850 Mr. Marino. I appreciate that.

2851 Mr. Conyers. But to the entire committee. And I yield  
2852 back the balance of my time, and I hope that this amendment  
2853 will be supported.

2854 Chairman Smith. The question is on the amendment, and  
2855 the Judiciary Committee will stand in recess subject to a  
2856 call of the chair. We have a vote going on the floor. I do  
2857 not anticipate resuming the markup today. We might resume  
2858 the markup tomorrow.

2859 Mr. Nadler. Can we vote on the amendment?

2860 Chairman Smith. Is the gentleman going to request a  
2861 recorded vote?

2862 Mr. Nadler. Yes. Yes.

2863 Chairman Smith. Then we will stand in recess ,subject  
2864 to the call of the chair. Members will have adequate notice  
2865 before we resume the markup, as I say, that may be tomorrow.  
2866 We stand in recess.

2867 [Whereupon, at 12:41 p.m., the committee adjourned  
2868 subject to the call of the Chair.]