



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 11, 2020

The Honorable Russell Vought
Director
Office of Management and Budget
Washington, DC 20503

Dear Mr. Director:

This letter responds to your request for the views and recommendations of the Department of Justice (the Department) on enrolled bill S. 134, the “Combat Online Predators Act of 2019.” Despite the concerns expressed below, the Department recommends that the President sign the bill.

The “Combat Online Predators Act of 2019” is intended to do two things: it increases the maximum prison term for a stalking offense if the victim is under the age of 18, and the bill tasks the Department to develop best practices for enforcing laws related to stalking.

Section 2 of the bill would increase by five years the maximum prison term for the stalking offense under 18 U.S.C. 2261A, in cases where the victim is under the age of 18, subject to an exception. The exception is problematic. Specifically, the exception, appearing in proposed § 2261B(b), is for cases in which the offender is (1) subject to the baseline five-year maximum penalty under § 2261(b)(5) and either (2)(A) under the age of 18 or (2)(B) not more than three years older than a victim between the ages of 15 and 17.

The exception provision, in proposed § 2261B(b)(2), is objectionable because it is based in part on whether the defendant is a minor or a young adult with an older teen victim. We are aware of no other instance in federal law where a lower penalty is provided for minor and young adult defendants. This is due in large part because the federal prosecution of juveniles is rare and subject to strict statutory mandates. See Chapter 403 of Title 18, United States Code. Additionally, such an aberration is not warranted, as a judge can take the defendant’s age into account, along with all the other relevant factors, when fashioning a sentence.

Furthermore, we question the policy behind the first condition for the exception, appearing in proposed § 2261B(b)(1). Specifically, that provision says that the five year enhanced penalty shall not apply if the offender is subject to the baseline five-year maximum penalty under § 2261(b)(1). But this legislation is premised on the idea that stalking is a more

serious offense meriting higher potential penalties when committed against a minor. That policy judgement should hold true across all forms of stalking.

Finally, Section 3 of the bill would create a new Congressional reporting requirement, which mandates that the Attorney General submit a report on federal, tribal, state, and local efforts to enforce laws relating to stalking and to identify best practices in this area. This requirement substantially duplicates an existing biennial reporting requirement, which could be used to fulfill the same goals. Section 40610 of the Violence Against Women Act, as amended (34 U.S.C. 12409), requires that the Department submit a biennial report to Congress that “provides information concerning the incidence of stalking and domestic violence, and evaluates the effectiveness of State antistalking efforts and legislation.”

Despite these concerns, the Department recommends that the President approve the bill. Thank you for the opportunity to present our views. Please do not hesitate to contact this office if we may be of additional assistance to you.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Blanche Hankey". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Mary Blanche Hankey
Deputy Assistant Attorney General and
Chief of Staff