

MEMORANDUM FOR: Office of Management and Budget

FROM: William W. Mercer
Acting Associate Attorney General

RE: Supporting Statement for PRA 1995 Submission: Mandatory Case Reporting Form For the Internet Crimes Against Children Task Forces

The Department of Justice (“DOJ”) seeks approval of a new case reporting for the Internet Crimes Against Children Task Forces (“ICACs”). The ICAC Task Force Program was created to help State and local law enforcement agencies enhance their investigative response to offenders who use the Internet, online communication systems, or other computer technology to sexually exploit children. The program is currently composed of 45 regional Task Force agencies and is funded by the Office Of Juvenile Justice and Delinquency Prevention within the Office of Justice Programs. The Office of Justice Programs reports to the Attorney General and the Deputy Attorney General through the Office of the Associate Attorney General. DOJ requests emergency processing of its request to implement a mandatory case reporting form for these task forces. As set forth below, this reporting requirement is essential to ensuring that federal tax dollars are being used in the manner intended by Congress and the Administration and to ensuring optimal intergovernmental and interagency coordination by ICACs. Emergency processing is required because grant renewals and new ICAC grantee awards are imminent. If the mandatory, quarterly reporting requirement is not incorporated in ICAC grant renewals, then DOJ’s efforts to monitor and confirm the effective use of taxpayer dollars through mandatory reporting and to coordinate the efforts of ICACs with U.S. Attorney’s offices may be delayed for another twelve months.

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

In developing the Project Safe Childhood Initiative, we consulted with ICAC leaders, federal agents, federal prosecutors, and other state and local law enforcement representatives and learned a great deal about existing data sources. We found that data from the Executive Office of U.S. Attorneys documented with accuracy all child pornography and internet coercion and enticement cases charged by U.S. Attorneys’ Offices, including information on convictions and sentences. These data include cases presented by ICACs and subsequently prosecuted by federal prosecutors. Outcome data for referrals to prosecutors from ICACs was less precise. Specifically, of individuals referred for either Federal or state prosecution as the result of ICAC investigations, we could not confirm how many were charged, by whom they were charged, what crimes were alleged in each case, whether the charges resulted in convictions, and the sentences

imposed upon conviction.

A principal purpose of the Justice Department's Project Safe Childhood ("PSC") is to increase the number of prosecutions of individuals responsible for on-line predation of children and the possession, distribution and publishing of child pornography. It is crucial to develop a system to report case data to demonstrate the outcomes of investigations and the impact of this very important work. Both before and after the initiation of PSC, we have heard a variety of concerns (e.g., federal prosecutors are not interested in ICAC cases; some ICACs will not present cases to U.S. Attorneys' Offices; sentences imposed in some state courts fail to advance the primary purposes of punishment (to protect the public, to promote respect for the law, to deter other crimes, and to rehabilitate); certain federal prosecutors decline cases involving only possession of child pornography, etc.). The Attorney General is committed to eliminating such obstacles in order to achieve the principal objective of increasing the number of child pornography and coercion/enticement prosecutions. The success of a highly effective and productive task force is dependent upon an equally engaged and prolific prosecutorial effort. As with all programs funded by the Office of Justice Programs through monies appropriated by Congress, it is our collective obligation to ensure that financial investment results in coordinated and effective action.

OJP is authorized to hold grantees accountable for their use of federal dollars through quarterly reporting requirements. *See* 28 C.F.R. § 66.40(b). This quarterly case reporting requirement is simply one element in that accountability.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

This is a new collection. The information will be used by the Office of the Associate Attorney General and the Office of Justice Programs. These DOJ entities will use the information to assess the performance of ICACs given prosecution referrals and case outcomes and to follow up where necessary with U.S. Attorneys' Offices where ICAC referrals have been made, but declined.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

It is intended that the excel spreadsheet will be submitted electronically to a designated email account at DOJ.

In the (highly unlikely) event that an ICAC does not have computing or email capability, the spreadsheet may be filled out by hand and faxed to the Office of the Associate Attorney General.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

As noted above, the information sought from the ICACs is simply not being collected from other sources. Data from the Executive Office of U.S. Attorneys (“EOUSA”) documents all child pornography and internet coercion and enticement cases charged by U.S. Attorney’s Offices, including information on convictions and sentences. However, that data may not indicate an ICAC task force as the source of the referral if another federal partner presented it. Nor does EOUSA data necessarily include declinations of referrals by all U.S. Attorney’s Offices. Moreover, ICACs often make referrals to state and local prosecutors. This information would not be captured in the data collected from U.S. Attorneys’ Offices.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

DOJ does not believe the collection of information impacts small businesses or other small entities. In any event, for purposes of the proposed reporting requirement, an ICAC case that must be reported is one in which an investigative agency receiving \$20,000 or more a year in monies directly or indirectly from the ICAC program served as the principal agency in an investigation of child pornography possession, distribution and/or production and/or an on-line predator or as an equal partner such an investigation with another state, federal, or local law enforcement agency. Entities receiving minimal financial resources through or from the ICAC program (those receiving less than \$20,000) are not considered major grantees or subgrantees for purposes of this reporting requirement and need not report their cases or have their cases reflected on the report form. Also, DOJ has developed a definition section which clarifies what information is sought on this form so as to minimize the burden on reporting parties.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

At present the Justice Department cannot confirm the outcomes of cases investigated by ICACs and, therefore, the effectiveness of individual ICACs. We simply have no accurate

records of what cases they are referring, much less how many were charged, by whom they were charged, what crimes were alleged in each case, whether the charges resulted in convictions, and the sentences imposed upon conviction. As noted above, because a principal purpose of the Justice Department's Project Safe Childhood is to increase the number of prosecutions of individuals responsible for on-line predation of children and the possession, distribution and publishing of child pornography, it is crucial to develop a system to report case data to demonstrate the outcomes of investigations and the impact of this very important work. The success of a highly effective and productive task force is dependent upon an equally engaged and prolific prosecutorial effort. As with all programs funded by the Office of Justice Programs through monies appropriated by Congress, it is our collective obligation to ensure that financial investment results in coordinated and effective action. Without a case reporting requirement, we cannot assess the effectiveness of use of federal dollars nor can we identify obstacles to the prosecution of case referrals from ICACs.

Quarterly reporting will be adequate to monitor performance without being unduly burdensome to the grantees. The form is cumulative, so there will be no need for grantees to recreate forms with data previously presented.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- Requiring respondents to report information to the agency more often than quarterly;

n/a

- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

n/a

- requiring respondents to submit more than an original and two copies of any document;

n/a

- requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;

ICACs would be required to provide updated information on cases they referred for prosecution. If a conviction or acquittal and appellate process took more than three years after the referral to a prosecutor, ICACs would nonetheless be expected to update the information requested on the attached form. However, as noted above, such historical information would already be included on the form and there would not be any need for a grantee to start the information collection process anew.

- In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

n/a

- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

n/a

- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

n/a

- requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

n/a

8. If applicable, provide a copy and identify the data and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden. If no comments are received, please state that "no public comments were received."

Such information has not been obtained in conjunction with this request for emergency processing pursuant to 5 CFR 1320.13. A 60-day emergency notice has been posted in the Federal Register.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

n/a

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

This collection of information includes limited personally identifiable information

necessary to make the data usable within DOJ (specifically, the names of individuals who are referred for prosecution by the ICACs), and such information will be retrievable by reference to that personal identifier. The retention and retrieval of such information is covered by system of records notice for the Office of Associate Attorney General, available at 69 Fed. Reg. 22872 (Apr. 27, 2004).

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to person's form whom the information is requested, and any steps to be taken to obtain their consent.

n/a

12. Provide estimates of the hour burden of the collection of information. The statement should:

There are 45 ICAC Task Forces. Each will be asked to submit quarterly reports, resulting in 180 responses annually ($45 \times 4 = 180$). As noted in section 12A, the ICACs consulted believe it is difficult to estimate the time required to comply with this reporting requirement until they have actually attempted to assemble and record this information. However, based on discussions with others within DOJ that use reporting requirements, we believe that the average time required for completing the response will be 3 hours. Although completing the form the first time may be more burdensome, we expect it to be substantially easier with each successive iteration, given that the form is cumulative. Thus, we believe 12 hours per year per grantee should be adequate, for a total of 540 annual hours. ($45 \times 4 \times 3 = 540$).

At present, DOJ funds 45 ICAC task forces and expects to fund more in FY07. Each ICAC task force has law enforcement agencies affiliated with it. If the grantees and any affiliated agencies receiving \$20,000 or more through the ICAC grants refers cases for prosecution they will be required to enter information at different stages of the prosecutorial decisionmaking process and during the pendency of a case. In our interactions with ICAC task forces, it is clear that some task forces will have little difficulty in determining what has happened with a prosecution referral and that little time will be required to compile and enter such information. Other ICACs, presumably those with multiple subgrantees receiving more than \$20,000 in OJJDP monies through the grantee, believe that this reporting requirement will be cumbersome and time-consuming. As one ICAC grantee has noted, "[w]ith that in mind, it appears problematic to generate a meaningful estimate [on the time necessary to gather the relevant information and complete this documentation] until we have tried to complete at least one submission."

Moreover, for some ICAC task forces, collecting and compiling this information may already be part of their customary and usual business practices. If not, it should be. DOJ believes it is incumbent for task forces to generate cases worthy of prosecution. Moreover, it is essential that ICACs are cognizant of the fact that case outcomes (convictions and terms of incarceration) are central to protecting the public. The work of an ICAC task force is inextricably linked to the outcomes in cases referred by it to a prosecutor.

Our assessment of the time necessary to complete the form is such that the actual costs and opportunity costs to the ICACs will be negligible.

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.
- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government or (4) as part of customary and usual business or private practices.

We do not foresee any capital expenditures associated with this case tracking reporting requirement. The form can be completed via excel spreadsheet, by any wordprocessor, or cold

be handwritten if a grantee had no computer (a highly improbable event for an ICAC task force). There should not be any costs associated with submitting reports other than the de minimis time associated with completing the form quarterly. Reports will be forward to a dedicated email account controlled by the Office of the Associate Attorney General at DOJ.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

Reports will be analyzed by existing DOJ staff. Therefore DOJ does not anticipate additional personnel costs. DOJ does not foresee additional expenses such as equipment or overhead costs. In printing out reports submitted by ICACs, DOJ will incur minimal costs.

15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.

n/a

16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

n/a

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

n/a

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.

Item 19(i) is inapplicable.