Pennsylvania Chiefs of Police Association

3905 North Front Street, Harrisburg, PA 17110 • Tel: (717) 236-1059 • Fax: (717) 236-0226 • Web Site: http://www.pachiefs.org

Kelly Callahan, Executive Director
Pennsylvania District Attorneys Association
2929 North Front Street
Harrisburg, PA 17110

Dear Executive Director Callahan:

On behalf of the Pennsylvania Chiefs of Police Association, I am writing regarding the increasing activity of private organizations commonly referred to as "predator hunter" groups, including organizations such as 814 Pred Hunters, and the difficult legal, investigative, and public-safety issues these activities create for Pennsylvania law enforcement agencies and district attorneys.

The Pennsylvania Chiefs of Police Association supports the efforts of Pennsylvania's district attorneys to ensure that allegations involving the sexual exploitation of children are investigated professionally, lawfully, and in a manner that produces evidence capable of supporting a successful prosecution.

We also recognize that private citizens and organizations may uncover information suggesting that an individual is attempting to engage in inappropriate or criminal sexual activity involving a minor. Such information should not be ignored. When credible evidence of potential criminal activity is developed, law enforcement should receive it, evaluate it, preserve it when appropriate, and determine whether an independent criminal investigation is warranted.

However, there is an important distinction between **providing information to law enforcement** and **conducting a private criminal investigation or vigilante-style sting operation**.

That distinction is expressly recognized in the Internet Crimes Against Children Task Force Program Operational and Investigative Standards.

The ICAC standards define a "Vigilante" as a non-Partner activist or activist organization engaged in investigative tactics or other law-enforcement-like activities. The standards further provide that only law-enforcement personnel may direct ICAC investigations and that authorized non-sworn personnel may participate only under law-enforcement direction and supervision.

Most significantly, Section 8.4 provides:

"Members shall not collaborate with Vigilantes. Further, Members shall not approve, condone, encourage, or promote Vigilante's activities."

At the same time, the standards expressly recognize that this prohibition does not prevent law enforcement from receiving and using information concerning criminal activity discovered and provided by civilians.

We believe that distinction provides an appropriate framework for Pennsylvania law enforcement.

Investigative and Prosecutorial Concerns

Private predator-hunter operations create several substantial issues for police departments and prosecutors.

First, civilian decoy operations may create charging difficulties under existing Pennsylvania law. Pennsylvania's Unlawful Contact with a Minor statute distinguishes between contact with an actual minor and circumstances involving a law-enforcement officer acting in an undercover capacity. Where an adult civilian independently assumes the identity of a minor, prosecutors may be required to rely upon attempt statutes or other offenses rather than the more straightforward charging theory available in a properly conducted law-enforcement investigation.

The fact that the intended "minor" is actually an adult civilian should not necessarily insulate an individual who knowingly and intentionally takes substantial steps toward sexually exploiting a person he believes to be a child. At the same time, the existence of that potential statutory issue should not serve as justification for encouraging privately conducted sting operations.

Second, civilian operations can compromise an ongoing or potential law-enforcement investigation. Once a suspect is publicly confronted, that individual knows that his activity has been discovered. He may destroy electronic evidence, delete accounts, dispose of devices, warn associates, or interfere with the identification of actual child victims.

The ICAC standards recognize this problem through their requirement that active investigations be deconflicted so that law-enforcement agencies do not inadvertently target the same offender or interfere with another ongoing investigation. Private organizations do not have access to those deconfliction systems and may unknowingly interfere with local, state, federal, or ICAC investigations.

Third, civilian investigations create significant evidentiary concerns. Police and prosecutors may subsequently be required to establish who operated a decoy account, who authored particular communications, whether all communications have been preserved, whether screenshots accurately represent the entire exchange, whether communications have been deleted or edited, and whether the suspect can reliably be connected to the account or device involved.

ICAC investigations, by contrast, require documentation, supervision, appropriate evidence management, and lawful procedures governing the retention, security, storage, and disposition of investigative information.

Fourth, the manner in which private decoys communicate with potential suspects can complicate prosecution. ICAC standards provide that, absent contrary prosecutorial guidance, investigators conducting online operations should generally allow the investigative target to establish the tone, pace, and subject matter of the conversation. Investigators are also directed to familiarize themselves with applicable entrapment law and consult prosecutors as needed.

Private individuals are not necessarily trained in these principles. Questions may therefore arise regarding who introduced sexual subject matter, who proposed a meeting, whether the purported age was clearly communicated, whether the suspect attempted to disengage, and whether the civilian decoy encouraged or escalated the conduct.

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Even when those circumstances do not establish a legal entrapment defense, they can substantially complicate a prosecution and provide significant material for cross-examination.

Fifth, civilian predator hunters themselves may become essential prosecution witnesses. Their credibility, investigative practices, prior operations, complete communications, social-media activity, financial or publicity interests, and preservation of evidence may all become relevant to the prosecution and defense.

A case that could otherwise have been built around trained investigators, properly authenticated digital evidence, search warrants, forensic examinations, and controlled communications may instead depend heavily upon the testimony and recordkeeping of private individuals.

Sixth, these confrontations create legitimate officer- and public-safety concerns. ICAC standards expressly recognize that individuals confronted with allegations of serious child-sex offenses may react violently because of the extraordinary personal consequences associated with discovery and arrest.

When a civilian organization selects the location, initiates the confrontation, introduces cameras and bystanders, and then summons police, responding officers inherit a volatile encounter they did not plan or control. A properly planned law-enforcement operation allows officers to consider surveillance, weapons, escape routes, arrest teams, search warrants, electronic-evidence preservation, victim identification, and the safety of everyone involved.

Law-Enforcement Position

For these reasons, the Pennsylvania Chiefs of Police Association believes Pennsylvania should maintain a clear operational distinction:

Private citizens and organizations should be encouraged to promptly report credible information concerning suspected child exploitation to law enforcement. Once that information has been reported, further investigative activity, communications, controlled meetings, evidence development, and apprehension should be conducted or directed by law enforcement in consultation with the appropriate district attorney.

Law-enforcement agencies should not routinely collaborate with, direct, encourage, approve, or promote privately conducted predator-hunter operations.

This approach is consistent with the ICAC standards and protects the integrity of subsequent criminal prosecutions. It does not diminish the seriousness of the conduct these organizations may uncover, nor does it suggest that information supplied by them should be disregarded.

Rather, it recognizes that the objectives of law enforcement extend beyond obtaining an incriminating video or public confrontation. Our responsibilities include identifying actual victims, preserving digital evidence, discovering additional offenders, protecting constitutional rights, maintaining officer safety, and ultimately building cases capable of surviving judicial scrutiny.

Legislative Consideration

We also believe there is merit in examining whether Pennsylvania's existing statutes should be clarified to address circumstances in which an offender genuinely believes that he or she is communicating with a minor when, in fact, the other participant is an adult civilian.

The appropriate statutory focus should be on the **defendant's criminal intent, belief concerning the age of the purported victim, and substantial steps taken toward committing the offense**, rather than on whether the person posing as the minor happened to be a sworn law-enforcement officer.

Any amendment should be carefully drafted, however, so that it does not inadvertently authorize, encourage, or confer law-enforcement status upon civilian predator-hunter organizations.

Such legislation could accomplish two objectives simultaneously:

1. Prevent offenders from escaping appropriate criminal liability solely because the purported minor was not an actual child or sworn law-enforcement officer; and
2. Preserve the principle that undercover criminal investigations and controlled enforcement operations should remain under professional law-enforcement and prosecutorial supervision.

The Pennsylvania Chiefs of Police Association strongly supports the mission shared by our district attorneys, police departments, ICAC Task Forces, and other legitimate partners to protect children from sexual exploitation.

We also support Pennsylvania's prosecutors when they insist that these cases be investigated in a manner consistent with the law, accepted investigative standards, proper evidence preservation, officer safety, and the requirements necessary to sustain a criminal prosecution.

Groups such as 814 Pred Hunters may sometimes identify conduct deserving immediate law-enforcement attention. Their information can serve as a valuable starting point. It should not, however, replace a professionally conducted criminal investigation.

The appropriate model is therefore: **Report the information. Preserve the evidence. Refer the matter to law enforcement. Allow trained investigators and prosecutors to take the investigation forward.**

PCPA would welcome the opportunity to work with the Pennsylvania District Attorneys Association, ICAC representatives, the Attorney General's Office, and members of the General Assembly to develop a consistent statewide approach and, if necessary, narrowly tailored statutory changes that strengthen Pennsylvania's ability to prosecute those who seek to sexually exploit children while protecting the integrity of our investigations and prosecutions.

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Sincerely,



Scott Bohn
Executive Director
Pennsylvania Chiefs of Police Association