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104TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 104–555

MEGAN'S LAW

MAY 6, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 2137]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2137) to amend the Violent Crime Control and Law Enforcement Act of 1994 to require the release of relevant information to protect the public from sexually violent offenders, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as "Megan's Law".

SEC. 2. RELEASE OF INFORMATION AND CLARIFICATION OF PUBLIC NATURE OF INFORMATION.

Section 170101(d) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 1407(d)) is amended to read as follows:

"(d) RELEASE OF INFORMATION.—

"(1) The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State.

"(2) The designated State law enforcement agency and any local law enforcement agency authorized by the State agency shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released.".

PURPOSE AND SUMMARY

This bill would amend a provision enacted as part of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322). Title XVII of that Act, the "Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act" (42 U.S.C. 14071), requires States to implement a system where all persons who commit sexual or kidnapping crimes against children or who commit sexually violent crimes against any person (whether adult or child) are required to register their addresses with the State upon their release from prison. The 1994 Act also provides that law enforcement agencies may release "relevant information" about an offender if they deem it necessary to protect the public. This bill will require the release of such information when law enforcement officials deem it to be necessary to protect the public.

While the 1994 Act does not mandate that States comply with its provisions, a State's failure to implement such a system by September 1997 will result in that State losing part of its annual federal crime-fighting funding.

BACKGROUND AND NEED FOR THE LEGISLATION

Perhaps no type of crime has received more attention in recent years than crimes against children involving sexual acts and violence. Several recent tragic cases have focused public attention on this type of crime and resulted in public demand that government take stronger action against those who commit these crimes.

In partial response to this demand, Congress passed Title XVII of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322). That title, the "Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act," attempted to address the concerns about these crimes by encouraging States to establish a system where every person who commits a sexual or kidnapping crime against children or who commit sexually violent crimes against any person (whether adult or child) would be required to register his or her address with the State upon their release from prison. As a further protection, the 1994 Act required States to allow law enforcement agencies to release "relevant information" about an offender if they deemed it necessary to protect the public.

The 1994 Act provision with respect to notification only required States to give law enforcement agencies the discretion to release offender registry information when they deemed it necessary to protect the public. It has been brought to the attention of the Committee, however, that notwithstanding the clear intent of Congress that relevant information about these offenders be released to the public in these situations, some law enforcement agencies are still reluctant to do so. This bill would amend the 1994 Act to mandate that States require their law enforcement agencies to release "relevant information" in all cases when they deem it "necessary to protect the public."

The bill also amends the 1994 Act to provide that information collected under a State registration program may be disclosed for any purpose permitted under the laws of that State. The 1994 Act required that information collected by the registration program be

kept confidential. In some instances this requirement limited public access to what had been public records before the 1994 Act became law. H.R. 2137 will correct this unintended consequence of the 1994 Act by allowing each State to determine the extent to which the public may gain access to the information kept by the State.

HEARINGS

The Committee's Subcommittee on Crime held one day of hearings on H.R. 2137 on March 7, 1996. Testimony was received from two witnesses, Representative Dick Zimmer of New Jersey, the sponsor of H.R. 2137, and Kevin Di Gregory, Deputy Assistant Attorney General, Department of Justice, with no additional material submitted.

COMMITTEE CONSIDERATION

On March 21, 1996, the Subcommittee on Crime met in open session and ordered reported the bill H.R. 2137, as amended, by a voice vote, a quorum being present. On April 25, 1996, the Committee met in open session and ordered reported favorably the bill H.R. 2137, without amendment, by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes in Committee with respect to this bill.

COMMITTEE OVERSIGHT FINDINGS

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

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

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

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2137, the following cost estimate for the next five fiscal years.

The Committee estimates that the costs associated with the implementation of H.R. 2137 will not be substantial. A significant number of variables are associated with the States' costs as a result of the bill's implementation. For example, the number of offenders released from prison subject to notification requirements will vary from one State to another. Also, methods of notification will be different depending upon the nature of the community involved. It is important to note that the bill does not impose conditions on federal funds to the States beyond what was contained in the 1994 Act.

While States which choose to comply with the bill will be required to give public notice as to the residence of certain offenders, the frequency of this notice will depend upon when offenders subject to the reporting requirement are released, a fact which cannot be estimated. Also, under current law, State law enforcement officials have the discretion as to the type of notice to be given to the public, a fact that further complicates any estimate of the costs of this bill.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 2137 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Title. Section 1 states the short title of the bill as "Megan's Law."

Sec. 2. Release of Information and Clarification of Public Nature of Information. Section 2 restates the entire text of section 170101(d) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(d)) as amended by the bill. Specifically that section of title 42 will now provide that States must requires law enforcement agencies to release "relevant information that is necessary to protect the public" in all cases in order to comply with the 1994 Act and not lose the federal crime fighting funds tied to compliance with the Act. In other words, whenever State law enforcement officials believe that releasing relevant information about an offender required to register with the State's offender registry would be necessary to protect the public, they must release that information in order to comply with the 1994 Act.

Section 2 also amends current law with respect to the question of whether information collected in a State's offender registry will be treated as public or private information. The 1994 Act required States to treat all such information as private data. However, some States had already established policies pursuant to State's law whereby some of the information was available to the public. H.R. 2137 amends the 1994 law to provide that each State may decide to what extent information in its State offender registry will be made available to the public.

AGENCY VIEWS

The Committee received a letter from Andrew Fois, Assistant Attorney General, U.S. Department of Justice, providing Administration views on H.R. 2137 and other bills. The letter addressed the issues presented in H.R. 2137, in pertinent part, as follows:

H.R. 2137—MEGAN'S LAW

H.R. 2137 would require the release of relevant information to protect the public from child molesters and other sexually violent offenders. The Department of Justice supports the enactment of this legislation.

The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act provides a financial incentive for States to establish effective registration system for released child molesters and other sexually violent offenders. States that fail to establish conforming registration systems will be subject to a 10 percent reduction of formula Byrne Grant funding, and resulting surplus funds will be reallocated to States that are in compliance. The current provisions of the Jacob Wetterling Act permit, but do not require, States to release relevant registration information that is necessary to protect the public concerning persons required to register.

H.R. 2137 would make the disclosure of registration information necessary to protect the public mandatory rather than permissive under the Act's standards. The Department of Justice supports the reform. Where a State has information through its registration system concerning a child molester or other sexually violent criminal who poses a continuing danger to others, the State should not withhold this information from persons who need it for the security of themselves and their families. A number of States already provide for community notification or other forms of disclosure in appropriate circumstances, and the change in the Jacob Wetterling provisions proposed in H.R. 2137 would encourage additional States to adopt such measures.

In the Department's proposed guidelines for the Jacob Wetterling Act (60 Fed. Reg. 18617, April 12, 1995), we have explained that the Act accords States discretion concerning the standards and procedures to be applied in determining whether a registering offender constitutes a danger to the public, and concerning the nature and extent of disclosure necessary to protect the public from such an offender. H.R. 2137 makes the "public safety" disclosure provision of the Act mandatory—changing "may" to "shall"—but does not otherwise change the language of this provision.

Hence, States will need to provide for such disclosure following the enactment of H.R. 2137 to comply with the Act, but they will retain discretion concerning specific standards and procedures and the nature and extent of disclosure in implementing this requirement. For example, New Jersey's multitiered system for classifying offenders

based on risk and making varying degrees of disclosure on the basis of that classification would be consistent with the "public safety" disclosure provision of the Jacob Wetterling Act as amended by H.R. 2137.

In addition to endorsing the particular change proposed in H.R. 2137, we recommend an additional amendment to the provision of the Jacob Wetterling Act relating to the release of information. Section 170101(d) of the Jacob Wetterling Act provides that information collected under State registration programs "shall be treated as private data," subject to three exceptions—disclosure to law enforcement agencies for law enforcement purposes, disclosure to government agencies conducting confidential background checks, and disclosure for public safety reasons (as discussed above).

The requirement that registration information generally be created as private data is not necessary or helpful in realizing the objectives of the Jacob Wetterling Act, and it imposes a limitation on the States that did not exist prior to the enactment of the Jacob Wetterling Act. We see no reason why States should not generally be free to make their own decisions concerning the extent to which registration data should or should not be treated as private data, as they have been in the past.

We accordingly recommend deletion of the provision that information collected under State registration systems is generally to be treated as private data. This change, together with the change proposed in H.R. 2137, could be implemented by revising subsection (d) of § 170101 of the Violent Crime Control and Law Enforcement Act of 1994 to read as follows:

"(d) RELEASE OF INFORMATION.—(1) The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State.

"(2) The designated State law enforcement agency and any local law enforcement agency authorized by the State agency shall release relevant information collected under the registration program that is necessary to protect the public concerning a specific person required to register under this section, provided, that this paragraph shall not be construed to require the disclosure of the identity of a victim of an offense that requires registration under this section."

Beyond the notification issue raised by H.R. 2137, discussion with the States indicates that some of the more detailed prescription in the registration provisions of the Jacob Wetterling Act may impede some State compliance, though that level of detail may be unnecessary to realize the essential objectives of the Act. We would be pleased to work with interested members of Congress to strengthen the Act by addressing legitimate concerns regarding impediments to effective State implementation.

Finally, we believe that in conjunction with our efforts to encourage and strengthen State-based registration sys-

tems under the Jacob Wetterling Act, we should consider developing additional forms of federal assistance for the States that would complement and magnify the benefits of the Act.

On at least one front, such assistance already is being provided. The FBI has developed a powerful tool known as CODIS to assist States in investigating and solving crimes involving biological evidence, including particularly serial and stranger sexual assaults. CODIS (short for "Combined DNA Index System") permits DNA examiners in crime laboratories to exchange forensic DNA data on an intrastate level, and will enable States to exchange DNA records among themselves through the national CODIS system. In the Final Guidelines implementing the Jacob Wetterling Act, which we plant to publish in the near future, we encourage States to collect DNA samples from registering sex offenders to be typed and stored in State DNA databases, and to participate in CODIS.

In addition, we are exploring a modification to the National Crime Information Center, which is operated by the FBI, that would provide further assistance to law enforcement in this area. Under existing law and administrative arrangements, the information on sex offenders that is provided by the FBI is generally limited to "rap sheet" information, and does not include residence address information for the offenders. The Jacob Wetterling Act contemplates that States will have central registration authorities that administer their sex offender registration systems, and will provide mechanisms for ensuring that address information is kept up to date when the offender moves elsewhere in the State or to another State.

However, implementation of these tracking systems will depend on compliance by the various States with these aspects of the Jacob Wetterling system. As States comply with Jacob Wetterling, the resulting databases would be maintained at the State level.

Currently, the FBI is working with its Criminal Justice Information Services (CJIS) Advisory Policy Board, which advises the Director on criminal justice and law enforcement agency matters, to establish a Sex Offender Registration Index in the National Crime Information Center (NCIC). The FBI is working on additional technical and legal research related to this expansion of the NCIC 2000 "Individuals on Supervised Release" database, and expansion of NCIC 2000 to include a category of records for persons registered under the requirements of the Jacob Wetterling Act. We anticipate implementation of the Sex Offender Registration Index in NCIC 2000 sometime after 1999.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted

is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 170101 OF THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

SEC. 170101. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—

* * * * * * *

[(d) RELEASE OF INFORMATION.—The information collected under a State registration program shall be treated as private data except that—

[(1) such information may be disclosed to law enforcement agencies for law enforcement purposes;

[(2) such information may be disclosed to government agencies conducting confidential background checks; and

[(3) the designated State law enforcement agency and any local law enforcement agency authorized by the State agency may release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released.]

(d) RELEASE OF INFORMATION.—

(1) The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State.

(2) The designated State law enforcement agency and any local law enforcement agency authorized by the State Agency shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released.

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ADDITIONAL VIEWS

This bill amends the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, enacted as part of the 1994 Crime Bill to require, rather than permit, states to release certain information regarding persons convicted of molesting or kidnapping children, and certain other sex crimes when it is necessary to protect the public.

While we are concerned about the costs of this bill and query whether this is yet another unfunded mandate, we understand the impetus behind the legislation. Anyone who has children certainly would want to know if a convicted child molester moved in next door.

Nonetheless, we are always concerned about passing legislation with potential constitutional problems and we believe that the Committee has not adequately addressed these concerns with respect to this legislation. A federal district court has already found a similar statute unconstitutional, finding the notification provisions to constitute more a form of punishment than a regulatory scheme, and therefore, violative of the prohibition on ex post facto clause of the Constitution.[1]

On appeal, the Court of Appeals for the Third Circuit noted that the defendant's arguments that the community notification provisions could expose him to vigilantism and threats, harm his ability to find and hold a job and subject him to public shame.[2] Nevertheless, the Court declined to rule on the constitutionality of the notification provision because the defendant had not registered with the police and the state had not officially notified anyone about his record. As a result, the court held that it could not make a decision based on a hypothetical situation and dismissed the case.[3]

We share the Third Circuit's concern that this legislation may lead to harassment and even physical harm against people who have served their debt to society and this legislation has the effect of presuming them guilty of some future wrong which may never be committed. We hope that people will not take the passage of this legislation as "open season" on released felons. The fact of the matter is that once a person has been released from prison, they are deemed to have paid their debt to society. This legislation should not be used to make citizens into vigilantes who might decide that a particular offender has not paid enough.

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[1] *Artway* v. *Attorney General,* 876 F. Supp. 666, 692 (D. N.J. 1995), *aff'd in part, vacated in part, claim dismissed,* Nos. 95–5157, 95–5194, 95–5195, 1996 U.S. App. LEXIS 7573 (3rd Cir. April 12, 1996).

[2] *Artway* v. *Attorney General,* Nos. 95–5157, 95–5194, 95–5195, 1996 U.S. App. LEXIS 7573 (3rd Cir. April 12, 1996).

[3] *Id.*

We believe that this matter deserves further consideration, and hope that the Committee will pay close attention to the progress of similar legislation through the federal courts.

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