# SB

# 132

# SENATE COMMITTEE REPORT
## First Committee of Referral

DATE: 3/12/97

FURTHER: Judiciary
Finance

**Date of 5-Day Notice:** 3/20/97
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 4/16/97

HESS Committee considered SENATE BILL NO. 132

"An Act relating to registration of sex offenders and central registry of sex offenders; relating to access to, release of, and use of criminal justice information and systems; relating to notices concerning sex offender registrants; and providing for an effective date."

and recommends:

[ ] be **replaced** with _____ CS _____ (_____)

[ ] adopt **previous** _____ CS _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

**Senate Bill:**
[ ] same title
[ ] new title

**House Bill:**
[ ] same title
[ ] technical title
[ ] new: SCR#_____

| *SIGNING DO PASS* | *DP* | *OTHER RECOMMENDATIONS* | *NR* | *DNP* | *AM* |
|---|---|---|---|---|---|
| Drew A. Thomas | ✓ | | | | |
| Ward | ✓ | | | | |
| Ellis | ✓ | | | | |
| | | | | | |
| Lyda Green | ✓ | | | | |
| | | | | | |
| *CHAIR:* Gary Wilken | ✓ | *CHAIR:* | | | |

**NEW FISCAL NOTE(S):**

| Department | Date | Zero | Fiscal |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

**PREVIOUS FISCAL NOTE(S):***

| Department | Date | Zero | Fiscal |
|---|---|---|---|
| Public Safety | 3/10/97 | | 9.5 |
| Public Safety | 2/5/97 | | 15.0 |
| Admin | 2/5/97 | | Indis |
| Admin | 2/5/97 | | Indis |
| | | | |
| | | | |

[ ] **APPROPRIATION -- no fiscal note**

***include fiscal notes accompanying Governor's bill**

# FISCAL NOTE

No. 1
Bill Version: SB 132
(S) Publish Date: 3/12/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: ____

Revision Date: 3/10.97
Title: Sex Offender Registration Update
Sponsor: Rules Committee
Requestor: Governor

Dept. Affected: Public Safety
BRU: Alaska State Troopers
Component: AST Director's Office

COMPONENT SERIAL NO. 508

**EXPENDITURES/REVENUES: (Thousands of Dollars)** (inflation not included)

| OPERATING | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | 7.7 | 7.7 | 7.7 | 7.7 | 7.7 | 7.7 |
| TRAVEL | | | | | | |
| CONTRACTUAL | 1.5 | 1.5 | 1.5 | 1.5 | 1.5 | 1.5 |
| SUPPLIES | .3 | .3 | .3 | .3 | .3 | .3 |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 9.5 | 9.5 | 9.5 | 9.5 | 9.5 | 9.5 |
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
| CHANGE IN REVENUES ( ) Revenue Code | -0- | -0- | -0- | -0- | -0- | -0- |

**FUNDING: (Thousands of Dollars)**

| | | | | | | |
|---|---|---|---|---|---|---|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program | 9.5 | 9.5 | 9.5 | 9.5 | 9.5 | 9.5 |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 9.5 | 9.5 | 9.5 | 9.5 | 9.5 | 9.5 |

Estimate of current year (FY 97) impact: $ ____

**POSITIONS:**

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary.)
A consequence of not passing this bill would be to have Alaska fail to comply with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1996 which would put in excess of $200.0 in jeopardy of being withdrawn from Alaska's share of the Byrne Formula Grant moneys.
This bill will require contact every 90 days with an estimated 500 lifetime registrants. Additional agencies will have to be notified whenever a change occurs or whenever an offender fails to make the required contacts. Registrants who fail to comply will have to be located and appropriately charged.

Prepared By: Capt. Ted Bachman
Division: Alaska State Troopers
Phone 269-5650
Date: February 3, 1997

Approved by Commissioner: Ted Smith
Agency: Ronald L. Otte, Department of Public
Date: 3/10/97

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# FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO:

No. 2
Bill Version: SB 132
(S) Publish Date: 2/12/97

Revision Date:
Title: Sex offender registration/release of criminal justice information
Sponsor: Rules Committee
Requestor: Governor

Dept. Affected: Public Safety
BRU: Statewide Support
Component: Information Systems
COMPONENT SERIAL NO. 0528

**EXPENDITURES/REVENUES: (Thousands of Dollars)** (inflation not included)

| OPERATING | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | $15.0 | 0 | 0 | 0 | 0 | 0 |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | $15.0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL EXPENDITURES | | | | | | |
| CHANGE IN REVENUES ( ) Revenue Code | | | | | | |

**FUNDING: (Thousands of Dollars)**

| | | | | | | |
|---|---|---|---|---|---|---|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | $15.0 | 0 | 0 | 0 | 0 | 0 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | $15.0 | 0 | 0 | 0 | 0 | 0 |

Estimate of current year (FY 97) impact: $ 0

**POSITIONS:**

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary.)

Section 10. Modify Alaska Public Safety Information Network (APSIN) and sex offender registration application software to track 15 year cumulative registration instead of registration based on estimated unconditional discharge date: 200 hours X $75/hour = $15,000.

Prepared By: Diane Shenker
Division: Administrative Services
Phone: (907) 269-5092
Date: 2/4/97

Approved by Commissioner: Dale Smith
Agency: Ronald L. Otte, Dept. of Public Safety
Date: 2/5/97

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# FISCAL NOTE

No. 3
Bill Version: SB 132
(S) Publish Date: 3/12/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Revision Date:
Title: "An Act relating to registration of sex offenders..."
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy
COMPONENT SERIAL NO. 43

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | *** | *** | *** | *** | *** | *** |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | *** | *** | *** | *** | *** | *** |
| CAPITAL EXPENDITURES | *** | *** | *** | *** | *** | *** |
| CHANGE IN REVENUES ( ) | *** | *** | *** | *** | *** | *** |

**FUND SOURCE:** (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| 1002 Federal Receipts | *** | *** | *** | *** | *** | *** |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| OTHER | | | | | | |
| TOTAL | *** | *** | *** | *** | *** | *** |

**Estimate of any current year (FY 97) cost: $ 0**

**POSITIONS:**

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | *** | *** | *** | *** | *** | *** |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

**ANALYSIS:** (Attach a separate page if necessary.)

This bill will increase both the number of potential defendants in failure to report cases and the time of exposure to such charges of some classes of sex offenders. Further, it will increase the number of sex offense trials because defendants will be less likely to plead guilty if they are subject to branding as sex offenders and many years of reporting. It is not possible to estimate the fiscal impact of this legislation with any precision.

Prepared by: Brant McGee, Public Advocate
Phone: 269-3500
Division: Office of Public Advocacy
Date:

Approved by Commissioner: Mark Bover
Agency: Administration
Date: 2/5/97

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# FISCAL NOTE

No. 4
Bill Version: SB 132
(S) Publish Date: 3/12/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Revision Date:
Title: "An Act relating to registration of sex offenders..."
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | *** | *** | *** | *** | *** | *** |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | *** | *** | *** | *** | *** | *** |
| CAPITAL EXPENDITURES | *** | *** | *** | *** | *** | *** |
| CHANGE IN REVENUES ( ) | *** | *** | *** | *** | *** | *** |

FUND SOURCE: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| 1002 Federal Receipts | *** | *** | *** | *** | *** | *** |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| OTHER | | | | | | |
| TOTAL | *** | *** | *** | *** | *** | *** |

Estimate of any current year (FY 97) cost: $ -0-

POSITIONS:

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | *** | *** | *** | *** | *** | *** |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary.)

This bill amends sex offender registration laws in a number of ways. It adds to the offenses that give rise to the requirement to register upon conviction, including even misdemeanors if the offense included a sixteen or seventeen-year old. It enlarges the category of sex offenders who must register for life from recidivists only, to even first offenders if convicted of sexual assault or sexual abuse in the first degree. It is a misdemeanor crime to fail to comply with the provisions of sex offender registration. Each of these charges enlarges the pool of people who may be charged with a crime for noncompliance. Fiscal impact is certain, but with no accurate forecast of numbers of cases, unquantifiable.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency
Phone: (907) 264-4414
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 2/5/97

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 10, 1997

The Honorable Mike Miller
Senate President
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Miller:

Reducing the number of people, especially children, who are victimized by violent and repeat sex offenders is an important part of my goal of ensuring safe, healthy communities for Alaskans. This bill strengthens the sex offender registration statutes and broadens access to criminal records in an effort to better protect the public from these criminals.

The bill is prompted, in part, to comply with the requirements of the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act which requires registration of sex offenders whose victims were under 18 years old. Compliance with the Act will maintain the state's eligibility for $200,000 in grant funds.

The state already complies with much of the Wetterling Act by requiring registration of most sex offenders who victimize children. For full compliance with the act, this bill adds to the list of offenses that require registration to include kidnaping when the victim is under 18; sexual abuse of a minor in the fourth degree if the victim is 16 or 17 years old; and promoting prostitution in the third degree, if the offender induces a person 16 or 17 years of age to engage in prostitution.

The bill also enlarges the category of sex offenders who must register for life. Under present law, only repeat sex offenders must register for life while other sex offenders register for 15 years. This bill requires life registration for first-time offenders convicted of the most serious sex offenses, the unclassified felonies of sexual assault in the first degree and sexual abuse of a minor in the first degree. The state must verify the addresses of life registrants every 90 days.

By requiring those most serious first-time offenders to register for life, the state is expecting to avoid the costly and time-consuming procedure recommended by the Wetterling Act. That is to require a sentencing court, with the advice of a statewide board of experts in the treatment and behavior of sex offenders, to determine whether each sex offender is a sexually violent predator. The expense of establishing such a board of experts and the costs of open-ended litigation concerning whether a sex offender continues to be a predator would be very high. Registration for life and address verification is not only less expensive, but will better protect the public.

Separate from the Wetterling Act requirements, the bill also changes when the time begins on the 15-year requirement for sex offender registration. Currently the clock starts at the time of unconditional discharge, which is an elusive date determined by a complex formula based on Department of Corrections information which is not available in the record system of the Department of Public Safety. The bill would start the clock at the time the offender registers, which will actually create an incentive for the offender to register as quickly as possible. It is a misdemeanor to fail to comply with the sex offender registration law; thus it is important the period of registration be absolutely clear.

Finally, the bill expands public access to information on all convictions by opening state criminal history records beyond the current 10-year limit. Broader information to the public will enable people to better protect themselves and their families.

This bill is one more step the state can take to keep our communities safe. I urge your favorable action.

Sincerely,

Tony Knowles
Governor

SOR/12.62/Byrne

NEW LAW WILL REQUIRE:

- Registrant to include description of any physical identifying features
  (Current law requires photo and fingerprints)

- Registrant to register for life if convicted of Sex Assault in the first degree or Sexual Abuse of a Minor in the First Degree
  (Current law 15 years 1st offense; lifetime for recidivism)

- Verification of address every 90 days for life time registrants
  (Notification of change of address due w/in 10 days of change)

- Addition of the following offenses to the definition of sex offense:
  -Sex Abuse of a Minor in the 4th degree (AS 11.41.440(a) (2)
  -Kidnapping of a person under 18 yr. of age by a person not a parent of the victim
  -Promoting Prostitution in t he 3rd degree (AS 11.61.130(a)(2)

- Adds "sexually violent offense" to include Sexual Assault in the 1st degree or Sexual Abuse of a minor in the 1st degree

Provided by the Depar'ment of Public Safety

## SENATE BILL 132/ HOUSE BILL 186

**Prepared by the Department of Public Safety**

### EXPLANATIONS RE. AMENDMENTS TO AS 12.62:

**Section 2** would allow Public Safety to include all past convictions in a criminal history report, instead of excluding those convictions for which the subject has been unconditionally discharged for ten years or more. This change is needed because

(1) Public Safety cannot accurately calculate the unconditional discharge date, and

(2) the 10-year limit excludes many convictions that may be important for a potential employer, licensing agency, or other record user to consider.

### UNCONDITIONAL DISCHARGE DATE COMPUTATION EXAMPLE

Greg was arrested on May 1, 1976 and convicted of 8 counts of Forgery on May 1, 1977. He received a sentence of 6 years in jail and 5 years probation. One third of his jail time is automatically deducted for "mandatory good time." Here's how Public Safety *could* compute his unconditional discharge date:

| | |
|---|---|
| Date of Sentence | 5/1/77 |
| Add Jail | + 6 years |
| Deduct "good time" | - 2 years (1/3 of 6 years) |
| Add Probation | + 5 years |
| **Discharge Date** | **= 5/1/86** |

But there's a problem: Greg received "credit for time served" while awaiting sentencing in this case. This means he essentially started serving his sentence earlier, so his unconditional discharge date would also be earlier. Unfortunately, information about credit for time served is not recorded in APSIN. The only way to avoid "overestimating" discharge dates, then, is to use the arrest date, rather than the sentence date, as the beginning point to calculate the discharge date. This is the formula Public Safety must use:

| | |
|---|---|
| Date of Arrest | 5/1/76 |
| Add Jail | + 6 years |
| Deduct "good time" | - 2 years (1/3 of 6 years) |
| Add Probation | + 5 years |
| **Discharge Date** | **= 5/1/85** |

The problem is that Greg's credit for time served really didn't include the entire year between the arrest date and sentence date. Although it is not recorded in APSIN, Greg was actually released on bail immediately after his arrest. It was not until six months later, when he violated his bail conditions, that the court revoked his bail and he went to jail to await his trial and sentencing. So Greg really only received six months of credit for time served. Greg's *actual* unconditional discharge date should be figured as follows (the shaded information is not available in APSIN):

| | |
|---|---|
| Date of Sentence | 5/1/77 |
| Add Jail | + 6 years |
| Deduct "good time" | - 2 years (1/3 of 6 years) |
| *Less Credit for Time Served* | *- 6 months* |
| Add Probation | + 5 years |
| **Discharge Date** | **= 11/1/85** |

But there are more factors to consider in Greg's case - none of which can be discerned from data in APSIN. When Greg was released from prison on 11/1/80, he began serving 5 years of probation, concurrent to serving mandatory parole for the 2 years he received as credit for "good time." The Parole Board revoked Greg's "mandatory parole" on 11/1/81, after he'd already completed 1 year of the mandatory parole period. The Parole Board has the discretion to revoke the entire 2 years of Greg's mandatory parole, not just the year he has remaining, and the board did so in Greg's case. So on 11/1/81, Greg returned to prison to serve 2 years of mandatory parole time. Greg didn't have to serve 2 years, though, because he again received the "mandatory good time" reduction for his revoked "mandatory parole" which reduced his new jail time to only 16 months (2/3 of 2 years). But during that time, Greg was found guilty by a correctional disciplinary board of possessing drugs. As punishment, the disciplinary board took away Greg's 8 months of "good time credit." That delayed Greg's jail release date until 11/1/83. After he successfully finishes his 4 remaining years of probation, Greg is finally unconditionally discharged on 11/1/87:

| | |
|---|---|
| Date of Sentence | 5/1/77 |
| Add Jail | + 6 years |
| Deduct "good time" | - 2 years (1/3 of 6 years) |
| Less Credit for Time Served | - 6 months |
| Add Probation | + 5 years |
| Add revoked mandatory parole | + 2 years |
| Deduct "good time" | - 8 months (1/3 of 2 years) |
| Add "lost" good time | + 8 months |
| **Discharge Date** | **= 11/1/87** |

If someone requested Greg's criminal history record on May 1, 1995, Public Safety would exclude Greg's eight Forgery convictions from the report, having erroneously calculated Greg's discharge date to be 5/1/85 based on data available in APSIN. Believing that Greg was unconditionally discharged ten years prior to the record request, Public Safety would have

continued making this same error anytime Greg's record was requested over the next 2 ½ years. Not until 11/1/97 would Public Safety actually be correct to exclude Greg's convictions from a criminal history report.

Greg's hypothetical case is actually uncharacteristically simple. It involved only one court case, only one "statutory good time" formula, no consecutive sentences, no discretionary parole, nor any suspension of jail or probation. It is not uncommon for actual cases to involve dozens of overlapping charges (or "counts"). There are frequently overlapping periods of jail, probation, discretionary parole, mandatory parole, and pretrial detention time during which "credit for time served" applies to some, but not other charges, any of which may be served concurrently or consecutively. Neither does Greg's example address the varying "statutory good time" formulae and rules which have been in effect at different times over the past decades. The Department of Corrections uses a voluminous "time accounting" manual to track the rules for computing discharge dates and is nevertheless faced with constant litigation disputing computation of discharge dates. Removing the 10-year unconditional discharge date limit for criminal history reports will allow Public Safety to escape similar endless litigation.

## EXAMPLES OF EXCLUDING RELEVANT CONVICTIONS FROM REPORTS

It is important to remember that a person cannot anonymously request another person's criminal history report. To get the report, the requester must submit the subject's fingerprints to Public Safety or ask the subject to get his or her own report from Public Safety, based on photo ID. The record subject's past convictions are therefore available to another person only if the record subject agrees to the background check. Because of this, most records are requested when someone is applying for a job or license for which a background check is required.

Another problem with the "10-year limit" is that some convictions, no matter how old, may be very relevant to the purpose of the record check. Recognizing this, the current law exempts "serious offense" convictions from the 10-year limit, but only if the report is for an "interested person" - one who is screening an applicant to have "supervisory or disciplinary power over a minor or dependent adult." This definition of "serious offense" poses yet another problem - it includes all felonies, and certain misdemeanors, including those that involve domestic violence. Unfortunately, APSIN "rap sheets" don't describe the relationship between a victim and an offender, so there's no way to know if a misdemeanor conviction "involves domestic violence." Public Safety plans to begin "flagging" domestic violence convictions in APSIN if the courts will provide that information on criminal judgments. Unfortunately, this solution won't help identify "serious offense - domestic violence" convictions among the tens of thousands of existing APSIN criminal history records.

Even if APSIN could accurately compute the unconditional discharge date *and* accurately identify all "serious offenses" many relevant convictions would be withheld, either because a record requester doesn't qualify as an "interested person" or because a crime is not considered "serious" or both. The following examples illustrate the why limits should not be placed on conviction records. It is impossible to predict every appropriate consideration for every

individual record check – it is better simply provide all past convictions and let the record user weigh the importance of them in light of the particular job, license, or other privilege being considered. This is why:

**Example 1:** John was convicted of Arson in the Second Degree (a class B felony) fifteen years ago in Bethel. As a volunteer firefighter, John had been setting fires himself and then calling them in so he could participate in the "rescue" effort. He was unconditionally discharged eleven years ago, after which he left the state and returned to live in Palmer last year. He applies to become a volunteer firefighter in Palmer. He lies to the volunteer coordinator and denies having ever been convicted of arson. The volunteer fire department asks John to submit his fingerprints for a criminal history record check. The fire department's report won't show John's arson conviction because of the 10-year rule. If John had been applying for a job in a daycare center, the center would have been told of the arson conviction, because, as a felony, arson is considered a "serious offense" and the daycare center is considered an "interested person." The fire department arguably has just as much need as a daycare center to consider John's arson conviction, no matter how much time has elapsed.

**Example 2.** The same volunteer fire department also screens volunteer paramedics. Joe was convicted of multiple counts of Sexual Abuse of a Minor in the Second Degree (a class B felony) after sexually abusing young children under the guise of "playing doctor." Joe was unconditionally discharged in 1983. Again, the volunteer fire department will not learn of Joe's past even if it requests a criminal history record check, because of the 10-year rule. A paramedic would certainly have opportunities to be alone with and touch children, especially vulnerable children who may be injured or unconscious. A paramedic might even be seen as an "authority figure" during an emergency situation. However, the fire department does not fall under the definition of an "interested person" because a paramedic does not actually have "supervisory or disciplinary power" over a minor or dependent adult.

**Example 3.** Fifteen years ago Bob was convicted of Misconduct Involving a Corpse (a class A misdemeanor). At the time, Bob worked in a mortuary and was discovered sexually penetrating the corpse of a five year old child. Bob was unconditionally discharged for that crime fourteen years ago. Eleven years ago, Bob broke into a neighbor's house at night and was found standing over the bed of a five year old boy, with his pants halfway unzipped and a crowbar in his hand. He pled guilty to Possession of Burglary Tools (a class A misdemeanor) and Criminal Trespass (a Class B misdemeanor). He was unconditionally discharged for those offenses ten years ago. He left the country afterwards and has just returned to Alaska, so there's no telling whether he has been crime-free during the past ten years. Bob applies for a job babysitting for a five year old boy in a private residence. The boy's mother submits Bob's fingerprints to Public Safety to get an "interested person" criminal history report. The report does not show any criminal convictions for Bob because he was unconditionally discharged for all his crimes ten or more years ago, and none of Bob's misdemeanors is a "serious offense." The other applicant's criminal history record shows a conviction for shoplifting nine years ago, so the woman chooses the candidate with the "no record" – Bob.

**Example 4.** June applies for a job as a bookkeeper for a restaurant. The job is open because the owner's previous bookkeeper has just been indicted for embezzling over $50,000 from the business. Nearing bankruptcy and extremely wary, the owner is more than willing to pay $20 to have June fingerprinted plus $35 to get a fingerprint-based criminal history record from Public Safety. His money is not well-spent, though, because the criminal history report he receives will show no convictions since June was unconditionally discharged ten years ago for Theft, Credit Card Fraud, Issuing Bad Checks, and Embezzlement. Because some of June's convictions are felonies they meet the definition of a "serious offense." Ironically, these "property crime" convictions would have been made available to someone considering June to work in a daycare center, even if that position would not have involved any financial responsibilities, but they are withheld from the owner of this business.

**Example 5.** Harry was convicted of three counts of Sexual Assault in the Second Degree (a Class B felony) and unconditionally discharged 13 years ago. The crimes occurred when Harry entered women's houses using copies of their house keys he obtained as a carpenter working for a construction and home remodeling company. All the sexual assaults were alcohol-related. Within the past five years, he has been twice convicted of DWI. Harry applies for a job as a carpenter with Angelo's construction company, which specializes in home remodeling. Because the job involves entering private homes, both when residents are home and away, Angelo requires criminal history background checks of all applicants. Angelo receives a criminal history report showing only that Harry has been convicted twice for DWI. Angelo never learns of Harry's prior job- and alcohol-related rape convictions because of the 10-year limit. The carpentry position does not involve driving company vehicles, and it is not uncommon for the seasonal workers who apply for this sort of job to have some misdemeanor criminal convictions. Angelo, a recovering alcoholic himself, decides to take a chance on Harry based on the criminal history report showing only two DWI convictions. Two months later when Harry is arrested for allegedly raping one of the company's customers, Angelo is stunned to learn (from news reports) that Harry had been convicted of raping three other women in similar circumstances before.

**Example 6.** Ted was found "guilty but mentally ill" of twenty-five counts of Cruelty to Animals (a Class A misdemeanor) for intentionally setting neighborhood cats on fire, trapping and dismembering squirrels, and conducting other brutal and sadistic rituals on "pets" that he obtained from the local animal shelter. He was unconditionally discharged for his concurrent sentences ten years ago, after which he relocated to a rural area and has since lived alone on an isolated piece of land. Ted has recently volunteered to provide "animal therapy" once a week for his nearest neighbors, an 80 year old woman and her 85-year old husband, who is afflicted with Parkinson's Disease. Ted proposes to "borrow" animals from the local animal shelter twice a week, take them to visit the Parkinson's patient, then return the animals to the shelter. The couple's daughter is uneasy with the idea, although she has nothing more than a suspicious hunch that something is "wrong" with Ted. She asks Ted to provide fingerprints so she can get a criminal history report before allowing Ted into her parents' home. She will get a report showing no convictions for Ted because of the unconditional discharge date rule. Even if she qualified as an "interested person" (which is doubtful, since Ted would not really have

"supervisory or disciplinary power" over the Parkinson's patient) she would not learn of Ted's past convictions because Cruelty to Animals, even when a person "intentionally inflicts severe and prolonged pain or suffering on an animal" is not a "serious offense."

**Example 7.** Eleven years ago in Fairbanks, Susan was convicted of Criminal Use of a Computer (a Class C felony). She was unconditionally discharged ten years ago. Susan applies for a job as a computer programmer for the State of Alaska, in Ketchikan. She lies on the state's employment application, checking "No" in response to the question "Have you ever been convicted of a felony?" She knows that even if her employer requests a criminal history background check, it won't show her conviction because of the ten-year limit. She's hired. Her supervisor later mentions Susan's name to a relative in Fairbanks, who happened to know about Susan's conviction because of extensive local news coverage at the time. Armed with this information, including the approximate date of conviction, the supervisor in Ketchikan may dispatch someone to go through the manual records at the Fairbanks courthouse, a time-consuming process. (The court records are not protected by the same kinds of confidentiality as Public Safety's records.) Upon finding court documentation of Susan's conviction, the supervisor can begin the lengthy, costly process of termination since Susan lied on her employment application.

**Example 8.** Jerry was convicted twice for Assault in the Third Degree (a class C felony), once for Stalking in the First Degree (a class C felony), and ten more times for Assault in the Fourth Degree (a class A misdemeanor). In all the cases, the victims were Jerry's wives, ex-wives, women he had dated, or the children of those women. Jerry was unconditionally discharged for the last of the charges ten years ago. Nine years ago he was indicted for Assault in the First Degree, (a Class A felony) for allegedly attacking his then-wife with a kitchen knife, causing her permanent blindness in one eye, a ruptured spleen, and other serious injuries. However, after spending two years in jail awaiting trial, he was found "Not Guilty By Reason of Insanity." The court immediately committed Jerry to the custody of the Commissioner of Health and Social Services. Jerry was released from a mental institution seven years later - he's been out for two months now. Jerry has just moved to a rural Alaskan village and has volunteered to provide building maintenance services at a counseling center for battered women. The center requests a criminal history report, which contains none of Jerry's convictions because of the 10-year limit. Naturally, Jerry's acquittal is not included in the report, so the center has no way of knowing that Jerry's past ten years of "crime-free" behavior coincided with ten years of institutionalization. Since Jerry's duties don't involve "supervisory or disciplinary power" over children or dependent adults, the center does not qualify for an "interested person" report that would include Jerry's convictions - all of which meet the definition of "serious offense."

## EXPLANATION OF "INTERESTED PERSON" REPORTS FROM FBI

**Section 3** is a technical amendment to ensure that Alaska's law will continue to allow "interested persons" to request national criminal history records as well as state criminal history records.

Federal law restricts access to F.B.I. (national criminal history) records to (1) criminal justice agencies, and (2) persons authorized access by a state or federal law that has been approved by the U.S. Attorney General. This means that when Alaska enacts a law specifically requiring school teachers, school bus drivers, or foster parents to undergo a criminal history check, Public Safety can submit it to the FBI for federal approval. If approved, Public Safety enters the "approved statute" citation on fingerprint cards that it sends to the FBI for national criminal history record checks under that law.

The F.B.I. has already approved Alaska's law allowing "interested persons" to get national criminal history records to screen applicants for working with children or vulnerable adults. If Alaska eliminates the need for an "interested person" report at the state record level, by making all past convictions available to all persons, it needs to retain the "interested person" provisions that have already been approved by the FBI for record checks at the national level.

Only a government agency may view the FBI report. If the record is requested by someone other than a government agency, some government agency must "screen" the report. The government agency may only tell the requester whether or not the subject has been convicted of a "serious offense" but cannot tell the details of the record.

Many "interested persons" are government agencies, for example the Department of Education may screen teachers, the Department of Administration may screen state nursing home employees, and the Department of Health and Social Services may screen day care centers. In each of these examples, Public Safety may release F.B.I. records to the government agency with jurisdiction over the particular employment, license, or permit being sought.

However, if DHSS contracts with a private firm to handle background screening for foster parents, Public Safety cannot give the F.B.I. record to the private contractor. Instead, Public Safety must give it to the government agency responsible for the private contractor's work (DHSS).

Sometimes there is no government agency with jurisdiction over an activity that involves "supervisory or disciplinary power over a minor or dependent adult." For example, no state agency is responsible for licensing or otherwise screening Boy Scout volunteers or privately employed babysitters. Since these examples meet the "interested person" definition that has already been approved by the F.B.I., however, national criminal history checks may be requested. Public Safety must screen the FBI record since no other government agency is involved. Public Safety will tell the Boy Scout Troop or private person whether or not the FBI record shows any "serious offense" convictions but may not provide details of the FBI record.

# States' Sex Offender Registration Deadline in September

States have until September 1997 to comply with a federal law that mandates the creation of public registries for convicted sex offenders or risk losing 10 percent of their formula grant funding.

The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Pub. L. 103-322), which provides financial incentives to the states to establish effective registration systems for sex offenders, was amended with two pieces of legislation during the past session. The first, the federal "Megan's Law" (Pub. L. 104-145), requires states to make public relevant information about violent sex offenders released from prison or placed on parole. Megan's Law has the same September 1997 compliance deadline set forth under the Jacob Wetterling Act.

*States have wide latitude in designing sex offender registries, according to the recently released guidelines for the Jacob Wetterling Act. However, states must also comply with new mandates for community notification and reporting to a national data base.*

The Pam Lychner Sexual Offender Tracking and Identification Act of 1996 (Pub. L. 104-236) calls for the creation of a national data base to help track sex offenders across state lines. This effort must be phased in to state sex offender policies over the next three years in order for states to retain their entire allocation of funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance grant program.

### Jacob Wetterling Act

The Jacob Wetterling Act, Title XVII of the Violent Crime Control and Law Enforcement Act of 1994, was named for an 11-year-old boy who was abducted near his home in St. Joseph, Minn., by an armed, masked man in October 1989. Similarities between Jacob's abduction and a case involving a boy from a neighboring town who was abducted and sexually assaulted earlier that year, prompted police to believe that the two cases were linked. Jacob Wetterling was never found.

The Jacob Wetterling Act calls for a two-tier system for sex offender registration. Individuals who have committed a "criminal offense against a victim who is a minor" or a "sexually violent offense" are required to register annually until 10 years have elapsed from their release from prison, parole, or probation. The second tier is reserved for individuals classified as "sexually violent predators" -- those who have committed sexually violent offenses, or who suffer from a mental abnormality or personality disorder that would predispose them to commit predatory and violent sex offenses. Sexually violent predators are subject to more stringent registration requirements, and must report address information to the appropriate state law enforcement agency every 90 days. In addition, an offender in this category is required to register until it is determined that he no longer suffers from the abnormality or disorder.

Aside from these requirements, the final guidelines implementing the Jacob Wetterling Act (*Federal Register*, April 4, 1996, pp. 15110-17) give states wide latitude in designing registration programs that best meet their public safety needs. The guidelines should be interpreted as a minimum standard for state registries. States do not risk losing any part of their Byrne formula grant funding by going beyond these established minimum standards.

For example, the classification of a "sexually violent predator" is to be determined by a state board of experts. Under the guidelines, this board is to consist of two or more experts in fields relating to the behavior and treatment of sex offenders. The standards of qualification for experts is for the states to determine, according to the guidelines. Experts can be from the state, or drawn from another state. The guidelines allow discretion in the establishment of the boards. For example, a state could establish a single permanent board for the purpose of assisting the sentencing court on these issues, or could authorize the designation of different boards for different courts, geographic areas, or case types.

The regulations clarify the extent to which juveniles convicted of sex offenses must report to the state registry. States are not required to mandate registration for juveniles who are adjudicated delinquent, even if they committed a crime that would require registration if perpetrated by an adult. Juveniles convicted of sex offenses in adult criminal court, however, are required to register.

The guidelines make clear that states have discretion in choosing which state agency is designated as the appropriate law enforcement agency to collect and maintain registration information. For example, states may give any law enforcement or public safety agency the responsibility for sex offender registration, including a correctional agency or criminal records agency. Further, states are permitted to employ private contractors to carry

**Summary of Federal Legislative and Regulatory Action Regarding Sex Offender Registration**

*Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. 103-322, § 170101, signed by the president on Sept. 13, 1994 (codified at 42 U.S.C. § 14071)*: Subjects states to 10-percent reduction in Edward Byrne Memorial State and Local Law Enforcement Assistance formula grant funding if they do not require sexually violent offenders to register with a designated state law enforcement agency. Final guidelines were issued by the U. S. attorney general on April 4, 1996 (*Federal Register*, April 4, 1996, pp. 15110-17).[1]

*Megan's Law, Pub. L. 104-145, signed by the president on May 17, 1996 (to be codified at 42 U.S.C. § 14071(d))*: Amends the Jacob Wetterling Act in the following ways: 1) information collected under a state registration program may be disclosed for any purpose permitted under state law and 2) requires state and local law enforcement agencies to release "relevant information that is necessary to protect the public" concerning registered sexually violent offenders. Guidelines have not yet been issued.

*Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. 104-236, signed by the president on Oct. 3, 1996 (to be codified at 42 U.S.C. § 14071)*: Amends the Jacob Wetterling Act in a number of ways, including: 1) requiring the U. S. Department of Justice, Federal Bureau of Investigation (FBI) to establish a national data base to track sexually violent offenders and 2) requiring sexually violent offenders living in states that have not established a "minimally sufficient sexual offender registration program" to register with the FBI. Guidelines have not yet been issued.

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[1] Sen. Judd Gregg (R-N.H.) introduced S. 2138 on Sept. 27, 1996, which would have amended the Jacob Wetterling Act to allow states that have sexually violent offender registration programs in place to be in compliance with the Act and not be in jeopardy of losing a portion of their Byrne funding for failure to comply with the Act's mandates. The bill was not passed before the 104th Congress adjourned on Oct. 4, 1996, but is expected to be reintroduced in the 105th Congress.

out the functions of the state's sex offender registry.

Information contained under a state's registry may be disclosed to law enforcement agencies for law enforcement purposes; to government agencies conducting confidential background checks; and when necessary, to the public for the purpose of maintaining public safety. The regulations do not impose any limitations on the standards and procedures that states may adopt for determining when public safety necessitates community notification.

While not required under the act, the guidelines "strongly encourage" states to collect DNA samples from registering offenders to be typed and stored in state DNA data bases. The guidelines also urge the states to participate in the U. S. Department of Justice, Federal Bureau of Investigation's Combined DNA Index System (CODIS), which is a technical assistance program that allows state and local crime laboratories to match DNA records from convicted offenders and crime scene evidence.

States that do not require convicted sex offenders to register with a state law enforcement agency by September 1997 face a 10-percent reduction in Edward Byrne Memorial State and Local Law Enforcement Assistance formula grant funding. However, the deadline may be extended up to two years at the attorney general's discretion, if the state is making "good faith" efforts to implement the law.

**Megan's Law**

Megan's Law, signed by President Clinton on May 17, 1996, amends the Jacob Wetterling Act in two ways. Megan's Law now requires states to release any relevant information about registered sex offenders necessary to maintain and protect public safety. The former Jacob Wetterling Act provisions allowed for this type of community notification by the states, but it was not a mandated policy. According to the amendment's sponsor, Rep. Dick Zimmer (R-N.J.), "A minority of states actually require the disclosure of this critical [registration] information to those whose families might be in danger, [and] that is why we need to go this extra step ... so that all 50 states will be held to a common standard of community

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notification." Megan's law also allows disclosure of information collected under a state registration program for any purpose permitted under the laws of the state.

The first community notification law was enacted in New Jersey in 1994, in the wake of seven-year-old Megan Kanka's rape and murder by a convicted sex offender who lived across the street from her family. Although all states have enacted laws mandating the registration and tracking of sex offenders, only 15 have any sort of provision for notifying communities when sex offenders are released from custody and move into a neighborhood, according to the National Center for Missing and Exploited Children.

The constitutionality of notification laws has been challenged in many states. Federal judges have ruled the statutes unconstitutional in Alaska, New York, and Washington, according to the *National Law Journal*. Cases in other jurisdictions are pending.

This amendment to the Jacob Wetterling Act was crafted in part to help states avoid court challenges of this type in the future, according to recent *New York Times* article. Guidelines for the implementation of Megan's Law have not yet been issued.

**Lychner Act**

The Pam Lychner Sexual Offender Tracking and Identification Act was named after a victims' rights advocate who was killed in the TWA flight 800 earlier this summer. The law amends the Jacob Wetterling Act by directing the U. S. Department of Justice's Federal Bureau of Investigation (FBI) to establish a national data base to track individuals convicted of sex crimes.

By creating an FBI tracking system, law enforcement officials will be able to access information about convicted sex offenders across state lines, according to Sen. Phil Gramm (R-Texas), one of the amendment's sponsors. "The problem with only having state laws is that people are moving across state lines to try and avoid detection." Gramm said. "What our bill does is set up an FBI-based federal tracking system, which will track all movements of sexual predators, whether they move across town or across state lines. This system will give us an interactive data base, and it will greatly enhance the ability of our communities, our law enforcement officials, and our families to protect our children against sexual predators."

The amendment also requires states that have not established a "minimally sufficient sexual offender registration" program to provide the FBI with a current address, fingerprints, and a photograph of convicted sex offenders. "Minimally sufficient" registries are those that meet the two-tier registration requirement laid out in the original Jacob Wetterling Act, as well as the address verification and reporting requirements established in the act.

Guidelines for compliance with this law have not yet been issued, although states have three years to comply with the mandates set forth in the act. As with the original Jacob Wetterling Act, the attorney general may grant a two year extension to states that are taking the appropriate steps to implement the act.

**Other Compliance Issues**

Sen. Judd Gregg (R-N.H.) introduced a bill late in the 104th Congress that would allow states with already-established registration systems to be in compliance with the new federal mandates concerning sex offender registration. Gregg indicated, when introducing the bill, that many states with successful sex offender registration programs in place are likely not in compliance with the narrowly drawn provisions of the Jacob Wetterling Act. Although the bill did not come to a vote before the Congress adjourned on Oct. 4, 1996, Gregg is expected to reintroduce his proposal once the 105th Congress reconvenes in January 1997.

The Jacob Wetterling regulations require a designated state agency to obtain information about registrants by a mail-in address verification system. Gregg's bill, however, would allow sex offenders to register using other protocols, and would enable different agencies to collect the registration information from sex offenders. For example, in Gregg's home state of New Hampshire, offenders register in person at local police departments, which distribute registry information to relevant state agencies and the FBI.

Further, Gregg's proposal would relax the requirements for determining a convicted sex offender's status as a "sexually violent predator," replacing the Jacob Wetterling Act's requirement of a two-person board of experts to make that determination. The proposal would allow states to maintain their current protocols for assessing the mental capacities of an offender and advising the sentencing court on the individual's status as a sexually violent predator.

For additional information concerning the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, contact Bonnie J. Campbell, Director, Violence Against Women Office, U. S. Department of Justice, Tenth and Pennsylvania Avenue. NW, Washington, D.C. 20530, or by telephone at (202) 616-8894.

SENATE BILL 132

Sectional Analysis

Senate Bill 132 amends the sex offender registration provisions of Alaska law to bring them into compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C. 14071, and with the final guidelines adopted under the Wetterling Act. It also simplifies release of state criminal history records by removing unworkable release restrictions based on the length of time since unconditional discharge for past convictions. Finally, by clarifying the state's current compliance with federal guidelines for obtaining national criminal background checks, it allows Alaskans continued access to FBI criminal history records to screen people for positions involving children and dependent adults.

Section 1 makes it a violation for a sex offender required to register for life as a sex offender to fail to cooperate with the Department of Public Safety in its address verification program.

Section 2 would allow the release of past conviction information to any person, for any purpose, as long as the record subject consents to the release. This is the same standard for the release of current offender information. Current law restricts the release of past conviction information based on the length of time that has elapsed since the record subject's unconditional discharge date. The unconditional discharge date has proved to be complicated to determine, and is not readily available to the Department of Public Safety. Errors in calculating this date result in the illegal release or withholding of information. Because the record subject must consent to the release, the inclusion of all past convictions will avoid problems with illegal release or withholding of information without unreasonably compromising the privacy of the record subject.

Section 3 clarifies that an "interested person" may request a *national* criminal history record from the FBI. Since Section 2 eliminates the need for "interested person" status to obtain state records, it is necessary to restate this requirement for FBI records.

An Alaskan may not request a national criminal history from the FBI unless the U.S. Attorney General as approved the Alaska statute authorizing release of the information. The U.S. Attorney General has approved Alaska's law allowing access to national criminal history information for an "interested person". However, the FBI requires that the statute explicitly state that 1/ fingerprints of the record subject are required; 2/ the information will be released only to a government entity; and 3/ a non-government entity may be told only whether the

record contains disqualifying information. Section 3 is drafted to meet federal requirements for access to FBI records and will not change current procedures.

Sections 4 and 5 amend the definitions of "current offender information" and "past conviction information" to eliminate redundancy, because both categories of information would be subject to the same release criteria under the bill.

Section 6 corrects a technical error in the definition of "serious offense" which currently refers to a subsection of AS 11.51.130 that does not exist.

Section 7 defines "applicant" and "national criminal history system" to correspond with the provisions for requesting national criminal history records from the FBI in Section 3.

Section 8 requires that a person, when registering as a sex offender, provide information about his or her appearance, future residences, and whether the person has had treatment for a mental abnormality or personality disorder since conviction of the offense requiring registration as a sex offender.

Section 9 specifies that a sex offender who must register for life comply with the laws and regulations adopted by the Department of Public Safety for address verification.

Section 10 adds to those sex offenders who must register for life, presently recidivists, persons convicted for the first time of Sexual Assault in the First Degree and Sexual Abuse of a Minor in the First Degree, both unclassified felonies. Section 10 also provides that the period of registration for other sex offenders is 15 years from the date of registration, rather than from the date of unconditional discharge. It also provides that a sex offender doesn't get credit toward the 15 year registration requirement if he or she fails to notify the department of address changes or to check in with the department annually; further, it provides that an offender can get credit toward the 15 year registration requirement for complying with sex offender registration laws in another state or with regulations adopted by the FBI.

Section 11 adds offenses to the definition of "sex offense" for sex offender registration as required by the Wetterling Act. The additional offenses include kidnaping by a person who is not a parent of a person under 18 years of age and inducing a person who is 16 or 17 years of age to engage in prostitution (the statute presently includes inducing a person under 16 years of age to engage in prostitution).

Section 12 is a technical correction that provides that a person convicted of incest be identified as convicted of "felony sexual abuse" rather than "felony sexual abuse of a minor", because incest does not necessarily involve a minor.

Section 13 requires the Department of Public Safety to adopt regulations addressing the notification of the FBI and local law enforcement agencies when a sex offender changes

residence, and to notify the FBI if the department is unable to locate a sex offender. It also requires the department adopt regulations for address verification every 90 days of sex offenders registered for life .

Section 14 provides that the Department of Public Safety and other law enforcement agencies may not be found civilly liable for an error in administering the sex offender registration requirements.

Section 15 clarifies the duties of the Departments of Public Safety and Corrections for registration as a sex offender of an inmate being released from prison.

Section 16 requires the Department of Corrections to inform a person of sex offender registration requirements when taking supervision of the person under the Interstate Corrections Compact.

Sections 17 and 18 contain repealers. They are described in two sections because of different effective dates.

Section 19 attributes the burden of showing that a person is not required to register as a sex offender as a result of being unconditionally discharged before July 1, 1984, to the person claiming the exempt status.

Sections 20 - 22 contain procedural and effective date provisions.

## DEPARTMENT OF JUSTICE

### Office of Redress Administration; Civil Rights Division; Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of Information Collection Under Review; Redress Payments for Japanese Americans: Guidelines for Individuals Who Involuntarily Relocated to Japan During the War, and Guidelines under *Ishida* v. *United States.*

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the Federal Register.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact the Office of Redress Administration Clearance Officer, 202–219–6900, or Telephone Device for the Deaf (TDD) 202–219–4710, Civil Rights Division, U.S. Department of Justice, Room N1519, 200 Constitution Avenue, NW, Washington, DC 20001 or P.O. Box 66260, Washington, DC 20035–6260. Additionally, comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Comments may be submitted to DOJ via facsimile to 202–514–1534.

Request for Emergency Approval

*Overview of This Information Collection*

*(1) Type of information collection.* Existing Collection in Use without an OMB Number.

*(2) The title of the form/collection.* Redress Payments for Japanese Americans: Guidelines for Individuals Who Involuntarily Relocated to Japan During the War and Guidelines under *Ishida* v. *United States.*

*(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection.* Form: None. Two forms are used to collect the information. Office of Redress Administration, Civil Rights Division, United States Department of Justice.

*(4) Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: Individuals or households. Other: None. This collection contains the forms which persons of Japanese ancestry will use to apply for redress compensation under the Civil Liberties Act of 1988.

*(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond.* 140 respondents: Declaration at 10 minutes per response; 2,000 respondents: Declaration at 10 minutes per response.

*(6) An estimate of the total public burden (in hours) associated with the collection.* 356 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: March 28, 1996.

Robert B. Briggs,

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 96–8345 Filed 4–3–96; 8:45 am]

BILLING CODE 4410–13–M

## Office of the Attorney General

**[AG Order No. 2014–96]**

**RIN 1105–AA36**

### Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act

**AGENCY:** Department of Justice.

**ACTION:** Final guidelines.

**SUMMARY:** The United States Department of Justice (DOJ) is publishing Final Guidelines to implement the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.

**EFFECTIVE DATE:** April 4, 1996.

**FOR FURTHER INFORMATION CONTACT:** Bonnie J. Campbell, Director, Violence Against Women Office, U.S. Department of Justice, Tenth and Pennsylvania Avenue, NW, Washington, DC 20530, 202–616–8894.

**SUPPLEMENTARY INFORMATION:** Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, 108 Stat. 1796, 2038 (codified at 42 U.S.C. 14071), contains the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (hereafter referred to as the "Jacob Wetterling Act" or "the Act"). The Act provides a financial incentive for states to establish 10-year registration requirements for persons convicted of certain crimes against minors and sexually violent offenses, and to establish a more stringent set of registration requirements for a sub-class of highly dangerous sex offenders, characterized as "sexually violent predators." States that fail to establish such systems within three years (subject to a possible two year extension) face a 10% reduction in their Byrne Formula Grant funding (under 42 U.S.C. 3756), and resulting surplus funds will be reallocated to states that are in compliance with the Act.

#### Summary of Comments on the Proposed Guidelines

On April 12, 1995, the U.S. Department of Justice published Proposed Guidelines in the Federal Register (60 FR 18613) to implement the Jacob Wetterling Act. The original 90 day comment period expired on July 11, 1995. To ensure the public ample opportunity to review and comment on the Proposed Guidelines, on September 14, 1995, the Department published a notice in the Federal Register to reopen the comment period for an additional 45 days (60 FR 47760). In addition, the Department mailed copies of the Proposed Guidelines to state registration authorities and requested their comments. The extended comment period closed on October 30, 1995.

Following the publication of the Proposed Guidelines, the Department of Justice received 19 letters, mostly from state officials. These letters contained numerous comments, questions, and recommendations, all of which were carefully considered in developing the Final Guidelines. A summary of the comments and responses to them are provided in the following paragraphs.

*A. Coverage of the Jacob Wetterling Act*

One respondent expressed concern that the Act does not provide for sex offender registration and notification in relation to military offenders who are convicted in court martial proceedings, in prosecutions under the federal criminal code, or in prosecutions by foreign host nations. In order to extend registration as far as possible to categories of convicted sex offenders who may not be within the scope of the statute as presently formulated, the Guidelines have been revised to encourage states to consider including federal and military sex offenders within their registration programs.

*B. "Sexually Violent Predator" Determinations*

1. Necessity for Determination

A number of respondents questioned the need for a two-tier registration system under which states must adopt means for determining whether an offender is a "sexually violent predator" and follow more stringent registration procedures for offenders so classified. The Department recognizes that this scheme may require states to make changes in their existing registration systems. The two-tier scheme was established by the Act, however, and cannot be modified by the Guidelines, absent legislative changes. As explained in the Final Guidelines, a two-tier approach can be dispensed with only if a state is willing to subject all persons convicted of a "sexually violent offense" to the more stringent registration requirements and standards provided by the Act for "sexually violent predators."

2. State Board of Experts

A number of commenters posed questions about the composition and activities of the state boards of experts that will assist sentencing courts in determining whether an offender is a "sexually violent predator". In particular, respondents questioned the necessity for using such boards, inquired as to what qualification experts must possess to serve on the boards, and raised concerns about the timing of the "sexually violent predator" determination. One commenter also expressed concerns about the ability of small states to assemble panels of experts.

States wishing to comply with the Act must utilize boards of experts to assist sentencing courts in making "sexually violent predator" determinations because the statue expressly requires this procedure. The Guidelines have been clarified to address commenters' other concerns, however. In particular, the Guidelines make clear that states are free to (1) determine who qualifies as an expert for purposes of board participation, (2) utilize out-of-state experts, and (3) decide at what point the "sexually violent predator" determination will be made.

3. Definition of "Sexually Violent Predator"

A number of commenters expressed concerns about the definition of "sexually violent predator" and sought various clarifications in the definition. The Guidelines have not been changed to reflect these concerns. The Act itself contains definitions of "sexually violent predator" and the component term "mental abnormality." The Guidelines cannot alter definitions appearing in the statute. Since the Act does not define the component term "personality disorder," the Guidelines already provide that the definition of this term is a matter of state discretion.

4. Required Documentation

One respondent expressed concern about the extent of documentation required by the Act concerning treatment received by a "sexually violent predator" for a mental abnormality or personality disorder. The Guidelines have been modified to reflect this concern. Under the Final Guidelines, states may comply with the requirement to document an offender's treatment history simply by noting that the offender received treatment.

The respondent also proposed that the Guidelines clarify that documentation of treatment history is a one-time event. However, this change is unnecessary because nothing in the Act or Guidelines states or suggests that the treatment history of a "sexually violent predator" must be updated following the initial submission of information.

5. Interaction with Insanity Defense

One respondent raised questions about the possible interaction between a determination that an offender is a "sexually violent predator" and the insanity defense. The commenter questioned whether a state may classify an offender as a "sexually violent predator" only when the offender successfully raised an insanity defense, and also questioned whether a determination that an offender is a "sexually violent predator" could bolster the offender's insanity claim.

The Guidelines have not been revised to reflect these concerns because there is no relationship between the two legal categories. Of course, if an offender had successfully raised an insanity defense, he could not be convicted for the offense charged, and no registration requirement based on that offense would arise under the Jacob Wetterling Act. Further, because the elements in the statutory definition of "sexually violent predator" do not establish the necessary elements of an insanity defense under state laws, a state could conclude that an offender is a "sexually violent predator," though the offender could not successfully raise an insanity defense. Finally, with regard to an offender who was classified as a "sexually violent predator" in connection with a previous prosecution and conviction, the Act does not contemplate any impact from that determination on the offender's ability to raise an insanity defense in a later prosecution.

*C. State Law Enforcement Agency*

1. Designation of Agency

One commenter posed questions concerning how, when, and by whom the state law enforcement agency responsible for registration matters is to be designated, and another expressed concerns about the types of entities that may be selected. The Guidelines have been revised to clarify that states have discretion with regard to the means by which an agency is designated as the state law enforcement agency, the timing of such a designation, and the agencies that may be designated.

2. Necessity for using a State Agency

A number of respondents questioned the necessity for using a state agency to receive registration information and conduct address verification. These commenters noted that in several states, registration and verification is conducted at the county or local level, rather than at the state level.

The Guidelines have not been revised to reflect these concerns. Although the Act provides that registration information is to be shared with local law enforcement agencies, it requires that this information be submitted to a *state* law enforcement agency and that the state agency also conduct address verification. These procedures, which are set forth clearly in the Act, cannot be modified by the Guidelines, absent statutory changes.

*D. Public Access to Registration Information*

One commenter expressed concern about the effect of the Act on a state's ability to disseminate registration information to the public. The Guidelines have not been modified to reflect this concern because they already

afford states the maximum discretion in this area that is consistent with the terms of the Act. The Guidelines make it clear that any restrictions placed by the Act on the disclosure of information do not constrain the release of information that a state would have independently of the operation of the registration system. Further, the Guidelines note and elaborate on the Act's provisions that registration information may be disclosed for certain law enforcement and background check purposes, and as necessary for public safety. The Guidelines also provide that states have discretion concerning the nature and extent of disclosure (including community notification and access to information on request by members of the public) that is necessary for public safety.

*E. Compliance Review*

One commenter suggested that the Department provide states with written feedback concerning their compliance with the Act no later than the date on which a state receives its Byrne Formula Grant Funding. This recommendation has not been adopted in the Guidelines because the Department is still in the process of developing compliance review procedures. States will be notified about these procedures as they are developed.

**Final Guidelines**

These guidelines carry out a statutory directive to the Attorney General, in section 170101)a)(1), to establish guidelines for registration systems under the Act. Before turning to the specific provisions of the Act, four general points should be noted concerning its interpretation and application.

First, states that wish to achieve compliance with the Jacob Wetterling Act should understand that its requirements constitute a floor for state registration systems, not a ceiling, and that they do not risk the loss of part of their Byrne Formula Grant funding by going beyond its standards. For example, a state may have a registration system that covers a broader class of sex offenders than those identified in the Jacob Wetterling Act, or requires address verification for such offenders at more frequent intervals than the Act prescribes, or requires offenders to register for a longer period of time than the period specified in the Act.

Exercising these options creates no problem of compliance, since the provisions in the Jacob Wetterling Act concerning duration of registration, covered offenders, and other matters, do not preclude states from imposing additional or more stringent requirements than encompass the Act's baseline requirements. The general objective of the Act is to protect people from child molesters and violent sex offenders through registration requirements. It is not intended, and does not have the effect, of making states *less* free than they were under prior law to impose registration requirements for this purpose.

Second, states that wish to achieve compliance with the Jacob Wetterling Act also should understand that they may, within certain constraints, use their own criminal law definitions in defining registration requirements, and will not necessarily have to revise their registration systems to use technical definitions of covered sex offenses based on federal law. This point will be explained more fully below.

Third, the Jacob Wetterling Act contemplates the establishment of programs that will impose registration requirements on offenders who are subsequently convicted of offenses in the pertinent categories. The Act does not require states to attempt to identify and impose registration requirements on offenders who were convicted of offenses in these categories prior to the establishment of a conforming registration system. Nevertheless, the Act does not preclude states from imposing any new registration requirements on offenders convicted prior to the establishment of the registration system.

Fourth, the Act gives states wide latitude in designing registration programs that best meet their public safety needs. For instance, the Act allows states to release relevant information necessary to protect the public, including information released through community notification programs. Some state registration and notification systems have been challenged on constitutional grounds. A few courts have struck down registration requirements in certain cases. *See Rowe* v. *Burton*, 884 F. Supp. 1372 (D. Alaska 1994) (on motion for preliminary relief); *State* v. *Babin*, 637 So.2d 814 (La. App. 1994), *writ denied*, 644 So.2d 649 (La. 1994); *State* v. *Payne*, 633 So.2d 701 (La. App. 1993), *writ denied*, 637 So.2d 497 (La. 1994); *In re Peed*, 663 P.2d 216 (Cal. 1983) (en banc). However, a majority of courts that have dealt with the issue have held that registration systems like those contemplated by the Jacob Wetterling Act do not violate released offenders' constitutional rights.

Some recent decisions have held that aspects of New Jersey's community notification program violate due process guarantees, or violate ex post facto guarantees as applied to persons who committed the covered offense prior to enactment of the notification statute. *See Artway* v. *Attorney General of New Jersey*, 876 F. Supp. 666 (D.N.J. 1995) (appeal pending); *W.P.* v. *Poritz*, No. 96–97 (JWB) (D.N.J. Mar. 15, 1996); *Diaz* v. *Whitman*, No. 94–6376 (JWB) (D.N.J. Jan. 6, 1995). However, the Department of Justice believes that the New Jersey community notification statute at issue in those cases does not violate the Ex Post Facto Clause and that the Fourteenth Amendment's Due Process Clause of its own force does not require recognition of such a liberty interest on the part of offenders affected by that statute, and has filed "friend of the court" briefs in cases challenging the New Jersey law. Moreover, the New Jersey Supreme Court, in *John Doe* v. *Deborah Poritz*, 662 A.2d 367 (N.J. 1995), upheld the New Jersey statute, although it imposed certain procedural protections under federal and state law.

There has been ongoing litigation over the validity of notification systems in other states as well. *see, e.g., Doe* v. Pataki, No. 96 Civ. 1657 (DC) (S.D.N.Y.); *Nitz* v. *Otte*, No. A95–486CI (JWS) (D. Alaska Jan. 25, 1996) (appeal pending).

The remainder of these guidelines address the provisions of the Jacob Wetterling Act in the order in which they appear in Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994.

*General Provisions—Subsection (a)(1)–(2)*

Paragraph (1) of subsection (a) of § 170101 directs the Attorney General to establish guidelines for state programs that require:

(A) Current address registration for persons convicted of "a criminal offense against a victim who is a minor" or "a sexually violent offense," and

(B) Current address registration under a different set of requirements for persons who are determined to be "sexually violent predators."

For purposes of the Act, "state" should be understood to encompass the political units identified in the provision defining "state" for purposes of eligibility for Byrne Formula Grant funding (42 U.S.C. 3791(a)(2)) in light of the tie-in between compliance with the Act and the allocation of Byrne Formula Grant funding. Hence, the "states" that must comply with the Act to maintain full eligibility for such funding are the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

Paragraph (2) of subsection (a) states that the determination whether a person is a "sexually violent predator" (which brings the more stringent registration standards into play), and the determination that a person is no longer a "sexually violent predator" (which terminates the registration requirement under those standards), shall be made by the sentencing court after receiving a report by a state board composed of experts in the field of the behavior and treatment of sexual offenders.

"State board" in paragraph (2) should be understood to mean a body or group containing two or more experts that is authorized by state law or designated under the authority of state law. Beyond the requirement that a board must be composed of experts in the field of the behavior and treatment of sexual offenders, the Act affords states discretion concerning the selection and composition of such boards. For example, a state could establish a single permanent board for this purpose, could establish a system of state-designated boards, or could authorize the designation of different boards for different courts, time periods, geographic areas or cases. In addition, the Act permits states to set their own standards concerning who qualifies as an expert in the field of the behavior and treatment of sexual offenders for purposes of board participation, and to utilize qualifying experts from outside the state to serve on the boards.

As noted above, subsection (a)(1) requires states to register persons convicted of certain crimes against minors and sexually violent offenses, but states are free to go beyond the Act's minimum standards and include other classes of offenders within their sex offender registration programs. For example, states are encouraged to require sex offenders convicted in federal or military courts who reside in their jurisdictions to register. Although the Act does not require states to register such offenders, the presence of any convicted sex offender in the state—whether the offender was prosecuted in a state, federal, or military court—raises similar public safety concerns. Some states, including Washington and California, already require sex offenders convicted in federal or military courts to register.

*Definition of "Criminal Offense Against a Victim Who is a Minor"—Subsection (a)(3)(A)*

The Act prescribes a 10-year registration requirement for persons convicted of a "criminal offense against a victim who is a minor." Subparagraph (A) of paragraph (3) of subsection (a) defines the term "criminal offense against a victim who is a minor." "Minor" should be understood to mean a person below the age of 18, consistent with the normal understanding.

The specific clauses in the definition of "criminal offense against a victim who is a minor" are as follows:

(1) Clauses (i) and (ii) cover kidnapping of a minor (except by a parent) and false imprisonment of a minor (except by a parent). All states have statutes that define offenses—going by such names as "kidnapping," "criminal restraint," or "false imprisonment"—whose gravamen is abduction or unlawful restraint of a person. States can comply with these clauses by requiring registration for persons convicted of these statutory offenses whose victims were below the age of 18. The Act does not require inclusion of these offenses in the registration requirement when the offender is a parent, but states may choose to require registration for parents who commit these offenses.

(2) Clause (iii) covers offenses consisting of "criminal sexual conduct toward a minor." Such offenses include convictions under general provisions defining sexually assaultive crimes—such as provisions defining crimes of "rape," "sexual assault," or "sexual abuse"—in cases where the victim is in fact a minor. Coverage is not limited to cases where the victim's age is an element of the offense (such as prosecutions for specially defined child molestation offenses).

States can comply with clause (iii) by requiring registration for persons convicted of all statutory sex offenses under state law whose elements involve physical contact with a victim, where the victim was below the age of 18 at the time of the offense. Offenses that do not involve physical contact, such as exhibitionism, are not subject to the Act's mandatory registration requirements pursuant to clause (iii), but states are free to require registration for persons convicted of such offenses as well if they so choose.

(3) Clause (iv) covers offenses consisting of solicitation of a minor to engage in sexual conduct. This covers any conviction for an offense involving the solicitation of conduct that would be covered by clause (iii) if carried out.

(4) Clause (v) covers offenses consisting of using a minor in a sexual performance. This includes both live performances and using minors in the production of pornography.

(5) Clause (vi) covers offenses consisting of solicitation of a minor to practice prostitution.

(6) Clause (vii) covers offenses consisting of any conduct that by its nature is a sexual offense against a minor. This clause is intended to insure uniform coverage of convictions under statutes defining sex offenses in which the status of the victim as a minor is an element of an offense, such as specially defined child molestation offenses, and other offenses prohibiting sexual activity with underage persons. States can comply with this clause by including convictions under these statutes uniformly in the registration requirement.

(7) Considered in isolation, clause (viii) gives states discretion whether to require registration for attempts to commit offenses described in clauses (i) through (vii). However, any verbal command or attempted persuasion of the victim to engage in sexual conduct would bring the offense within the scope of the solicitation clause (clause (iv)), and make it subject to the Act's mandatory registration requirements. Moreover, this provision must be considered in conjunction with the Act's requirement of registration for persons convicted of a "sexually violent offense," which does not allow the exclusion of attempts if they are otherwise encompassed within the definition of a "sexually violent offense."

Hence, state discretion to exclude attempted sexual offenses against minors from registration requirements pursuant to clause (viii) is limited by other provisions of the Act. The simplest approach for states would be to include attempted sexual assaults on minors (as well as completed offenses) uniformly as predicates for the registration requirement.

At the conclusion of the definition of "criminal offense against a victim who is a minor," the Act states that (for purposes of the definition) conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger. For example, suppose that state law prohibits sexual relations with a person below the age of 16, where the defendant is more than 4 years older than the victim. Suppose further that an 18-year-old is convicted of violating this prohibition by engaging in consensual sexual relations with a 13-year-old, where the conduct would not violate state law but for the victim's age. Under the provision, if a state did not require such an offender to register, the state would still be in compliance with the Act. However, here again, states are free to go beyond the Act's baseline requirements. The exemption of certain offenders based on age from

the Act's mandatory registration requirements does not bar states from including such offenders in their registration systems if they wish. Moreover, the scope of subsection (a)(3)(A)'s exemption is also limited by other provisions of the Act that require registration of persons convicted of "sexually violent offenses" (as defined in (a)(3)(B)), with no provision excluding younger offenders where the criminality of the conduct depends on the victim's age.

Since the Act's registration requirements depend in all circumstances on conviction of certain types of offenses, states are not required to mandate registration for juveniles who are adjudicated delinquent—as opposed to adults convicted of crimes and juveniles convicted as adults—even if the conduct on which the juvenile delinquency adjudication is based would constitute an offense giving rise to a registration requirement if engaged in by an adult. However, states remain free to require registration for juvenile delinquents, and the conviction of a juvenile who is prosecuted as an adult does count as a conviction for purposes of the Act's registration requirements.

*Definition of "Sexually Violent Offense"—Subsection (a)(3)(B)*

The Act prescribes a ten-year registration requirement for offenders convicted of a "sexually violent offense," as well a for those convicted of a "criminal offense against a victim who is a minor."

Subparagraph (B) of paragraph (3) defines the term "sexually violent offense" to mean any criminal offense that consists of aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18, United States Code, or as described in the State criminal code), or an offense that has as its elements engaging in physical contact with another person with intent to commit such an offense. In light of this definition, there are two ways in which a state could satisfy the requirement of registration for persons convicted of "sexually violent offenses":

First, suppose that a state has offenses in its criminal code that are designated "aggravated sexual abuse" and "sexual abuse," or has a definitional provision that characterizes certain offenses in its criminal code (however denominated) as constituting "aggravated sexual abuse" and "sexual abuse" for registration purposes or other purposes. Such a state could comply simply by requiring registration for all offenders who are convicted of these state offenses, and all offenders convicted of any state crime that has as its elements engaging in physical contact with another person with intent to commit such an offense.

Second, a state could comply by requiring registration for offenders convicted for criminal conduct that would violate 18 U.S.C. 2241 or section 2242—the federal "aggravated sexual abuse" and "sexual abuse" offenses—if subject to federal prosecution. (The second part of the definition in subparagraph (B) of paragraph (3), relating to physical contact with intent to commit aggravated sexual abuse or sexual abuse, does not enlarge the class of covered offenses under the federal law definitions, since sections 2241 and 2242 explicitly encompass attempts as well as completed offenses.)

Specifically, 18 U.S.C. §§ 2241–42 generally proscribe non-consensual "sexual acts" with anyone, "sexual acts" with persons below the age of 12, and attempts to engage in such conduct. "Sexual act" is generally defined (in 18 U.S.C. 2246(2)) to mean an act involving any degree of genital or anal penetration, oral-genital or oral-anal contact, or direct genital touching of a victim below the age of 16 in certain circumstances even without penetration.

States that elect this second option—requiring registration for offenses that consist of aggravated sexual abuse or sexual abuse as defined in federal law provisions (18 U.S.C. 2241–42)—do not necessarily have to refer to these federal statutes in their registration provisions, but could alternatively achieve compliance by requiring registration for the state law offenses that encompass types of conduct proscribed by 18 U.S.C. 2241–42. Moreover, a state does not have to have sex offenses whose scope is congruent with 18 U.S.C. 2241–42 to take the latter approach. If state law does not criminalize some types of conduct that are covered by 18 U.S.C. 2241–42, then a person who engages in the conduct will not be subject to prosecution and conviction under state law, and there will be no basis for a registration requirement. On the other hand, if state sex offenses are defined more broadly than 18 U.S.C. 2241–42, then states are free to require registration for all offenders convicted under these state provisions (notwithstanding their greater breadth), and this would be sufficient to ensure coverage of convictions for criminal conduct that would violate 18 U.S.C. §§ 2241–42 if subject to federal prosecution.

*Definition of "Sexually Violent Predator"—Subsection (a)(3)(C)–(E)*

Offenders who meet the definition of "sexually violent predator" are subject to more stringent registration requirements than other sex offenders.

(1) Subparagraph (C) defines "sexually violent predator" to mean a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(2) Subparagraph (D) essentially defines "mental abnormality" to mean a condition involving a disposition to commit criminal sexual acts of such a degree that it makes the person a menace to others. There is no definition of "personality disorder" in the Act; hence, the definition of this term is a matter of state discretion. For example, a state may choose to utilize the definition of "personality disorder" that appears in the Diagnostic and Statistical Manual of Mental Disorders: DSM–IV. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (4th ed. 1994).

(3) Subparagraph (E) defines "predatory" to mean an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

As noted earlier, the Act provides that the determination whether an offender is a "sexually violent predator" is to be made by the sentencing court with the assistance of a board of experts. The Act does not require, or preclude, that all persons convicted of a sexually violent offense undergo a determination as to whether they satisfy the definition of "sexually violent predator." It also does not specify under what conditions such an inquiry must be undertaken. A state that wishes to comply with the Act must adopt some approach to this issue, but the specifics are a matter of state discretion. For example, a state might provide that the decision whether to seek classification of an offender as a "sexually violent predator" is a matter of judgment for prosecutors, or might provide that a determination of this question should be undertaken routinely when a person is convicted of a sexually violent offense and has a prior history of committing such crimes.

Similarly, the Act affords states discretion with regard to the timing of the determination whether an offender is a "sexually violent predator." A sate may, but need not, provide that a determination on this issue be made at the time of sentencing or as a part of the

original sentence. It could, for example, be made instead by the sentencing court when the offender has served a term of imprisonment and is about to be released from custody. In addition, a determination whether an offender is a "sexually violent predator" need not be made by the judge who imposed the original sentence, so long as the determination is made in the same court that imposed the sentence.

As with other features of the Jacob Wetterling Act, the sexually violent predator provisions only define baseline requirements for states that wish to maintain eligibility for full Byrne Formula Grant funding. States are free to impose these more stringent registration requirements on a broader class of offenders, and may use state law categories or definitions for that purpose, without contravening the Jacob Wetterling Act.

If a state chooses to subject all persons convicted of a "sexually violent offense" to the more stringent registration requirements and standards provided by the Act for "sexually violent predators," then a particularized determination that an offender is a "sexually violent predator" would have no practical effect and would be superfluous. Hence, if a state elected this approach, it would not be necessary for the state to have "sexually violent predator" determinations made by the sentencing court, or to constitute boards of experts to advise the courts concerning such determinations, prior to the commencement of registration. In a state that eschewed particularized "front end" determinations of "sexually violent predator" status in this manner, however, it would still be necessary to condition termination of the registration requirement on a determination by sentencing court (assisted by a board of experts) pursuant to section 170101(b)(6)(B) of the Act that the person does not suffer from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.

*Specifications concerning State Registration Systems under the Act—Subsection (b)*

Paragraph (1) of subsection (b) sets out duties for prison officials and courts in relation to offenders required to register who are released from prison, or who are placed on any form of post-conviction supervised release "parole, supervised release, or probation").

The duties, set out in subparagraph (A) of paragraph (1), include: (i) informing the person of the duty to register and obtaining the information required for registration (i.e., address information), (ii) informing the person that he must give written notice of a new address within 10 days to a designated state law enforcement agency if he changes residence, (iii) informing the person that, if he changes residence to another state, he must inform the registration agency in the state he is leaving, and must also register the new address with a designated state law enforcement agency in the new state within 10 days (if the new state has a registration requirement), (iv) obtaining fingerprints and a photograph if they have not already been obtained, and (v) requiring the person to read and sign a form stating that these requirements have been explained.

Beyond these basic requirements, which apply to all registrants, subparagraph (B) of paragraph (1) of subsection (b) requires that additional information be obtained in relation to a person who is required to register as a "sexually violent predator." The information that is specifically required under subparagraph (B) is the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person. The Act does not require that prison officials or courts conduct an investigation to determine the offender's treatment history. For purposes of documenting the treatment received, prison officials and courts may rely on information that is readily available to them, either from existing records or the offender. In addition, prison officials and courts may comply with the requirement to document an offender's treatment history simply by noting that the offender received treatment for a mental abnormality or personality disorder. If states want to require the inclusion of more detailed information about the offender's treatment history, however, they are free to do so.

States that wish to comply with the Act will need to adopt statutes or administrative provisions to establish the duties specified in subsection (b)(1) and ensure that they are carried out. These informational requirements, like other requirements in the Act, only define minimum standards, and states may require more extensive information from offenders. For example, the Act does not require that information be obtained relating to registering offenders' employment, but states may legitimately wish to know if a convicted child molester is seeking or has obtained employment that involves responsibility for the care for children.

As a second example, although it is not required under the Act, states are strongly encouraged to collect DNA samples from registering offenders to be typed and stored in state DNA databases. States also are urged to participate in the FBI's Combined DNA Index System (CODIS). CODIS is the FBI's program of technical assistance to state and local crime laboratories that allows them to store and match DNA records from convicted offenders and crime scene evidence. The FBI provides CODIS software, in addition to user support and training, free of charge, to state and local crime laboratories for performing forensic DNA analysis. CODIS 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. Thus, collection of DNA samples and participation in CODIS greatly enhances a state's capacity to investigate and solve crimes involving biological evidence, especially serial and stranger rapes.

Paragraph (2) of subsection (b) states that the responsible officer or court shall forward the registration information to a designated state law enforcement agency within three days after receipt of the information. The Act leaves states discretion in designating an agency as the responsible "state law enforcement agency," including the means by which such a designation is made, the timing of such a designation, and the agencies that may be designated. States are not required to select the state police as the designated agency, and may choose any agency with functions relating to the enforcement of law or protection of public safety. For example, states may designate as the pertinent "State law enforcement agency" a correctional agency, a crime statistics bureau or criminal records agency, or a department of public safety. States also are permitted to employ a private contractor to carry out the functions of the designated state law enforcement agency.

After receiving the registration information from the responsible officer or court, the designated state law enforcement agency must immediately enter the information into the appropriate state law enforcement record system and notify a law enforcement agency having jurisdiction where the person expects to reside. The Act leaves states discretion in determining which state record system is appropriate for storing registration information. States that wish to achieve compliance with the Act, however, may need to modify state record systems if

they are not currently set up to receive all the types of information that the Act requires from registrants.

The state law enforcement agency is also required to transmit immediately the conviction data and fingerprints to the Federal Bureau of Investigation. No changes will be required in the national records system because the Act only requires transmission of conviction data and fingerprints, which the FBI already receives. The Act should not be understood as requiring duplicative transmission of conviction data and fingerprints to the FBI at the time of initial registration if the state already has sent this information to the FBI (e.g., at the time of conviction).

Paragraph (3) of subsection (b) relates to verification of the offender's address. In essence, annual verification of address with the designated state law enforcement agency is required for offenders generally, through the return within ten days of an address verification form sent by the agency to the registrant. However, the verification intervals are 90 days (rather than a year) for "sexually violent predators." As noted earlier, these are baseline requirements which do not bar states from requiring verification of address at shorter intervals than those specified in the Act.

Paragraph (4) requires the designated state law enforcement agency to notify other interested law enforcement agencies of a change of address by the registrant. Specifically, when a registrant changes residence to a new address, the designated law enforcement agency must (i) notify a law enforcement agency having jurisdiction where the registrant will reside, and (ii) if the registrant moves to a new state, notify the law enforcement agency with which the offender must register in the new state (if the new state has a registration requirement).

Paragragph (5) further requires an offender who moves out of state to register within ten days with a designated state law enforcement agency in his new state of residence (if the new state has a registration requirement). This partially reiterates the requirements concerning notice of changes of address by the offender that were described above.

Subparagraph (A) of paragraph (6) states that the registration requirement remains in effect for ten years. As noted earlier, states may choose to establish longer registration periods.

Subparagraph (B) of paragraph (6) states that the registration requirement for "sexually violent predators" under the Act terminates upon a determination that the offender no longer suffers from a mental abnormality or personality disorder that would make him likely to engage in a predatory sexually violent offense. This provision does not require review of the offender's status at any particular interval. For example, a state could set a minimum period of 10 years before entertaining a request to review the status of a "sexually violent predator," the same period as the general minimum registration period for sex offenders under the Act.

Moreover, this termination provision only affects the requirement that a person register as a "sexually violent predator" under subparagraph (B) of subsection (a)(1) of the Jacob Wetterling Act. It does not limit states in imposing more extensive registration requirements under their own laws, and does not limit any registration requirement that arises independently under other provisions of the Jacob Wetterling Act from the person's conviction of a "criminal offense against a victim who is a minor" or a "sexually violent offense."

*Criminal Penalties for Registration Violations—Subsection (c)*

The Act provides that a person required to register under a state program established pursuant to the Act who knowingly fails to register and keep such registration current shall be subject to criminal penalties. Accordingly, states that wish to comply with the Act will need to enact criminal provisions covering this situation as part of, or in conjunction with, the legislation defining their registration systems, if they have not already done so. If the violation by a registrant consists of failing to return an address verification form within 10 days of receipt, the state may allow a defense if the registrant can prove that he did not in fact change his residence address, as provided in subsection (b)(3)(A)(iv).

*Release of Registration Information—Subsection (d)*

Subsection (d) governs the disclosure of "information collected under a State registration program." Restrictions on the release of information under this subsection do not constrain the release of information that a state would have independently of the operation of the registration system. For example, a state will normally have criminal history information about an offender, and will often have current address information as part of general probation or parole supervision requirements, independently of any special requirements imposed as part of the sex offender registration system. The Act does not limit the release of such information.

Subsection (d) states specifically that the information collected under a state registration program shall be treated as private data, except under specified conditions.

The first condition under which disclosure is authorized—paragraph (1)—is that "such information may be disclosed to law enforcement agencies for law enforcement purposes." This exemption permits use of the information for all law enforcement purposes, including all police, prosecutorial, release supervision, correctional, and judicial uses.

Paragragph (2) in subsection (d) says that registration information may be disclosed to government agencies conducting confidential background checks. "Confidential" should be understood to mean a background check where information is disclosed to an interested party or parties—such as a background check conducted by a government agency that provides information concerning prospective employees to public or private employers—as opposed to release of the information to the general public. Release to the public, and other non-law enforcement, non-background check uses, are governed by paragraph (3).

Paragragph (3) in subsection (d) says that 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. The Act does not impose any limitations on the standards and procedures that states may adopt for determining when public safety necessitates community notification. For example, states could implement this authority by engaging in particularized determinations that individual offenders are sufficiently dangerous to require community notification concerning the offender's presence. Alternatively, states could make categorical judgments that protection of the public necessitates community notification with respect to all offenders with certain characteristics or in certain offense categories.

Releases of information for public-protection purposes short of general community notification—such as giving notice about an offender's location to the victims of his offenses, or to agencies or organizations in specified categories—are also permitted under paragraph (3).

The language in paragraph (3), like that in paragraphs (1) and (2), is permissive, and does not require states

to release information. Paragraph (3) also does not deprive states of the authority to exercise centralized control over the release of information, or if the state prefers, to generally authorize local agencies to release information as necessary. In addition to permitting proactive community notification and other notification, as discussed above, paragraph (3) and other provisions of the Act do not bar states from making registration information available upon request, if it is determined that such access is necessary for the protection of the public concerning who are required to register.

A proviso at the end of paragraph (3) in subsection (d) states that the identity of the victim of an offense that requires registration under the Act shall not be released. The purpose of this proviso is to protect the privacy of victims, and its restrictions may accordingly be waived at the victim's option. The proviso only applies to paragraph (3), and does not limit the disclosure of victim identity pursuant to paragraphs (1) and (2), relating to law enforcement uses and confidential background checks.

*Immunity for Good Faith Conduct—Subsection (e)*

Subsection (e) states that law enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct under the Act.

*Compliance—Subsection (f)*

States have three years from the date of enactment (i.e., September 13, 1994) to come into compliance with the Act unless the Attorney General grants an additional two years where a state is making good faith efforts at implementation. States that fail to come into compliance within the specified time period will be subject to a mandatory 10% reduction of Byrne Formula Grant funding, and any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance. The reallocated funds will be distributed among complying states in proportion to their populations.

States are encouraged to submit descriptions of their existing or proposed registration systems for sex offenders to the Department of Justice as promptly as possible. States may find it convenient, for example, to submit such descriptions in conjunction with their applications for Byrne Formula Grant funding. These submissions will enable the Department of Justice to review the status of state compliance with the Act, and to suggest any necessary changes to achieve compliance before the funding reduction goes into effect.

To maintain eligibility for full Byrne Formula Grant funding following the end of the three-year implementation period provided by the Act, states will be required to submit information that shows compliance with the Act in at least one program year, or an explanation of why compliance cannot be achieved within that period and a description of good faith efforts that justify an extension of time (but not more than two years) for achieving compliance. States will also be required to submit information in subsequent program years concerning any changes in sex offender registration systems that may affect compliance with the Act.

Dated: March 27, 1996.

**Janet Reno,**

*Attorney General.*

[FR Doc. 96–8186 Filed 4–3–96; 8:45 am]

BILLING CODE 4410–01–M

## Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States* versus *American Recovery Company, et al.*, Civil Action No. 95–1590, was lodged on March 22, 1996 with the United States District Court for the Western District of Pennsylvania. The Consent Decree requires defendant Thomas A. Mekis & Sons, Inc. to pay $14,135 to reimburse a portion of the United States' past costs associated with the investigation and clean up of the Municipal & Industrial Disposal Company Superfund Site ("Site"), located in Elizabeth Township, Pennsylvania.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* versus *American Recovery Company, et al.*, DOJ Ref. #90–11–2–949.

The proposed consent decree may be examined at the office of the United States Attorney, 633 Post Office & Courthouse, 7th & Grant Streets, Pittsburgh, PA 15219; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 96–8194 Filed 4–3–96; 8:45 am]

BILLING CODE 4410–01–M

## Notice of Lodging of Amendment to Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed Amendment to Consent Decree in *United States* v. *Citizens Util. Co. of Ill.*, Civil Action No. 92 C 5132, was lodged on March 27, 1996, with the United States District Court for the Northern District of Illinois. The Amendment to Consent Decree modifies the injunctive relief provisions of a Consent Decree entered by the Court on March 23, 1995, to permit Citizens' to implement either the remedial program described in the original decree or an alternative remedial program set out in the Amendment to Consent Decree. The purpose of both the original remedial program and the alternative remedial program is to ensure that Citizens achieves and maintains compliance with its National Pollutant Elimination Discharge System ("NPDES") permit for the West Suburban Treatment Plant No. 1 ("WSB #1"), a wastewater treatment plant owned and operated by citizens in Bolingbrook, Illinois. The original remedial program included the construction of improvements and implementation of operational changes at WSB #1, primarily to improve the plant's secondary treatment capacity. The alternative remedial program, if elected by Citizens, would include connecting WSB #1 to a nearby publicly-owned treatment plant operated by the Town of Bolingbrook and thereafter eliminating all direct discharges from WSB #1, except for limited discharges of excess flow form an equalization lagoon in accordance with terms and conditions of the NPDES permit for the WSB #1 facility.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be

section to be submitted to the President and Congress by January 1, 1996.

### (d) Authorization of appropriations

There are authorized to be appropriated to carry out this section $1,000,000 for fiscal year 1996.

(Pub.L. 103-322, Title XV, § 150008, Sept. 13, 1994, 108 Stat. 2036.)

### HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 1994 Acts. House Report Nos. 103-324 and 103-489, and House Conference Report No. 103-711, see 1994 U.S. Code Cong. and Adm. News, p. 1801.

### LIBRARY REFERENCES

American Digest System

Appropriation and disbursement of federal funds, see United States ⇨82(1) et seq., 85.

Powers and duties of federal officers, agents, and employees generally, see United States ⇨40, 41.

Encyclopedias

Appropriation and disbursement of federal funds, see C.J.S. United States § 122 et seq.

Powers and duties of federal officers, agents, and employees generally, see C.J.S. United States § 38 et seq.

### WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

## SUBCHAPTER VI—CRIMES AGAINST CHILDREN

## § 14071. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program

### (a) In general

#### (1) State guidelines

The Attorney General shall establish guidelines for State programs that require—

(A) a person who is convicted of a criminal offense against a victim who is a minor or who is convicted of a sexually violent offense to register a current address with a designated State law enforcement agency for the time period specified in subparagraph (A) of subsection (b)(6) of this section; and

(B) a person who is a sexually violent predator to register a current address with a designated State law enforcement agency unless such requirement is terminated under subparagraph (B) of subsection (b)(6) of this section.

**(2) Court determination**

A determination that a person is a sexually violent predator and a determination that a person is no longer a sexually violent predator shall be made by the sentencing court after receiving a report by a State board composed of experts in the field of the behavior and treatment of sexual offenders.

**(3) Definitions**

For purposes of this section:

**(A)** The term "criminal offense against a victim who is a minor" means any criminal offense that consists of—

**(i)** kidnapping of a minor, except by a parent;

**(ii)** false imprisonment of a minor, except by a parent;

**(iii)** criminal sexual conduct toward a minor;

**(iv)** solicitation of a minor to engage in sexual conduct;

**(v)** use of a minor in a sexual performance;

**(vi)** solicitation of a minor to practice prostitution;

**(vii)** any conduct that by its nature is a sexual offense against a minor; or

**(viii)** an attempt to commit an offense described in any of clauses (i) through (vii), if the State—

**(I)** makes such an attempt a criminal offense; and

**(II)** chooses to include such an offense in those which are criminal offenses against a victim who is a minor for the purposes of this section.

For purposes of this subparagraph conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger.

**(B)** The term "sexually violent offense" means any criminal offense that consists of aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of Title 18 or as described in the State criminal code) or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse (as described in such sections of Title 18 or as described in the State criminal code).

**(C)** The term "sexually violent predator" means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disor-

der that makes the person likely to engage in predatory sexually violent offenses.

**(D)** The term "mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

**(E)** The term "predatory" means an act directed at a stranger, or a person with whom a relationship has been established or promoted for the primary purpose of victimization.

**(b) Registration requirement upon release, parole, supervised release, or probation**

An approved State registration program established under this section shall contain the following elements:

**(1) Duty of State prison official or court**

**(A)** If a person who is required to register under this section is released from prison, or placed on parole, supervised release, or probation, a State prison officer, or in the case of probation, the court, shall—

**(i)** inform the person of the duty to register and obtain the information required for such registration;

**(ii)** inform the person that if the person changes residence address, the person shall give the new address to a designated State law enforcement agency in writing within 10 days;

**(iii)** inform the person that if the person changes residence to another State, the person shall register the new address with the law enforcement agency with whom the person last registered, and the person is also required to register with a designated law enforcement agency in the new State not later than 10 days after establishing residence in the new State, if the new State has a registration requirement;

**(iv)** obtain fingerprints and a photograph of the person if these have not already been obtained in connection with the offense that triggers registration; and

**(v)** require the person to read and sign a form stating that the duty of the person to register under this section has been explained.

**(B)** In addition to the requirements of subparagraph (A), for a person required to register under subparagraph (B) of subsection

(a)(1) of this section, the State prison officer or the court, as the case may be, shall obtain the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person.

**(2) Transfer of information to State and the FBI**

The officer, or in the case of a person placed on probation, the court, shall, within 3 days after receipt of information described in paragraph (1), forward it to a designated State law enforcement agency. The State law enforcement agency shall immediately enter the information into the appropriate State law enforcement record system and notify the appropriate law enforcement agency having jurisdiction where the person expects to reside. The State law enforcement agency shall also immediately transmit the conviction data and fingerprints to the Federal Bureau of Investigation.

**(3) Verification**

**(A)** For a person required to register under subparagraph (A) of subsection (a)(1) of this section, on each anniversary of the person's initial registration date during the period in which the person is required to register under this section the following applies:

**(i)** The designated State law enforcement agency shall mail a nonforwardable verification form to the last reported address of the person.

**(ii)** The person shall mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form.

**(iii)** The verification form shall be signed by the person, and state that the person still resides at the address last reported to the designated State law enforcement agency.

**(iv)** If the person fails to mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form, the person shall be in violation of this section unless the person proves that the person has not changed the residence address.

**(B)** The provisions of subparagraph (A) shall be applied to a person required to register under subparagraph (B) of subsection (a)(1) of this section, except that such person must verify the registration every 90 days after the date of the initial release or commencement of parole.

**(4) Notification of local law enforcement agencies of changes in address**

A change of address by a person required to register under this section reported to the designated State law enforcement agency shall be immediately reported to the appropriate law enforcement agency having jurisdiction where the person is residing. The designated law enforcement agency shall, if the person changes residence to another State, notify the law enforcement agency with which the person must register in the new State, if the new State has a registration requirement.

**(5) Registration for change of address to another State**

A person who has been convicted of an offense which requires registration under this section shall register the new address with a designated law enforcement agency in another State to which the person moves not later than 10 days after such person establishes residence in the new State, if the new State has a registration requirement.

**(6) Length of registration**

**(A)** A person required to register under subparagraph (A) of subsection (a)(1) of this section shall continue to comply with this section until 10 years have elapsed since the person was released from prison, placed on parole, supervised release, or probation.

**(B)** The requirement of a person to register under subparagraph (B) of subsection (a)(1) of this section shall terminate upon a determination, made in accordance with paragraph (2) of subsection (a) of this section, that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.

**(c) Penalty**

A person required to register under a State program established pursuant to this section who knowingly fails to so register and keep such registration current shall be subject to criminal penalties in any State in which the person has so failed.

**(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.

**(e) Immunity for good faith conduct**

Law enforcement agencies, employees of law enforcement agencies, and State officials shall be immune from liability for good faith conduct under this section.

**(f) Compliance**

**(1) Compliance date**

Each State shall have not more than 3 years from September 13, 1994, in which to implement this section, except that the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement this section.

**(2) Ineligibility for funds**

(A) A State that fails to implement the program as described in this section shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 3756 of this title.

**(B) Reallocation of funds**

Any funds that are not allocated for failure to comply with this section shall be reallocated to States that comply with this section.

(Pub.L. 103-322, Title XVII, § 170101, Sept. 13, 1994, 108 Stat. 2038.)

## HISTORICAL AND STATUTORY NOTES

**Revision Notes and Legislative Reports 1994 Acts.** House Report Nos. 103-324 and 103-489, and House Conference Report No. 103-711, see 1994 U.S. Code Cong. and Adm. News, p. 1801.

## LIBRARY REFERENCES

**American Digest System**

Criminal prosecutions under laws for protection of children, see Infants ⇐20.
Discharge of prisoner by prison authorities in general, see Prisons ⇐14.
Parole conditions; status, rights, and supervision of parolee, see Pardon and Parole ⇐64 et seq., 66, 68.
Prevention and investigation of crime generally; criminal records, see Criminal Law ⇐1222 et seq., 1226(1 to 5).

**Encyclopedias**

Criminal prosecutions under laws for protection of children, see C.J.S. Infants §§ 92 et seq., 100 et seq.

Discharge of prisoner by prison authorities in general, see C.J.S. Prisons and Rights of Prisoners §§ 154, 155.
Parole conditions; status, rights, and supervision of parolee, see C.J.S. Pardon and Parole §§ 55 et seq., 58.
Prevention and investigation of crime generally; criminal records, see C.J.S. Criminal Law § 1724 et seq.

### WESTLAW ELECTRONIC RESEARCH

Criminal law cases: 110k[add key number].
Infants cases: 211k[add key number].
Pardon and parole cases: 284k[add key number].
Prisons cases: 310k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

## SUBCHAPTER VII—RURAL CRIME

## § 14081. Rural Crime and Drug Enforcement Task Forces

### (a) Establishment

The Attorney General, in consultation with the Governors, mayors, and chief executive officers of State and local law enforcement agencies, may establish a Rural Crime and Drug Enforcement Task Force in judicial districts that encompass significant rural lands. Assets seized as a result of investigations initiated by a Rural Crime and Drug Enforcement Task Force and forfeited under Federal law shall be used, consistent with the guidelines on equitable sharing established by the Attorney General and of the Secretary of the Treasury, primarily to enhance the operations of the task force and its participating State and local law enforcement agencies.

### (b) Task Force membership

The Task Forces established under subsection (a) of this section shall be carried out under policies and procedures established by the Attorney General. The Attorney General may deputize State and local law enforcement officers and may cross-designate up to 100 Federal law enforcement officers, when necessary to undertake investigations pursuant to section 873(a) of Title 21 or offenses punishable by a term of imprisonment of 10 years or more under Title 18. The task forces—

(1) shall include representatives from—

(A) State and local law enforcement agencies;

(B) the office of the United States Attorney for the judicial district; and

(C) the Federal Bureau of Investigation, the Drug Enforcement Administration, the Immigration and Naturalization Service, and the United States Marshals Service; and