

104TH CONGRESS
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H. CON. RES. 196

Expressing the sense of the Congress that each State should enact legislation regarding notification procedures necessary when a sexually violent offender is released.

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 1996

Mr. GUTKNECHT (for himself, Mr. ZIMMER, Mr. FAZIO of California, Mrs. MYRICK, Mr. FROST, Mr. HORN, Mr. DEUTSCH, Mr. WALSH, and Mr. WELLER) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary

CONCURRENT RESOLUTION

Expressing the sense of the Congress that each State should enact legislation regarding notification procedures necessary when a sexually violent offender is released.

Whereas States are now required to release certain relevant information to protect the public from sexually violent offenders;

Whereas sentencing courts, after receiving recommendations from a board of experts regarding the behavior and treatment of sexual offenders, must determine that a person is a sexually violent predator or that a person is no longer a sexually violent predator under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994; and

Whereas most States have not established guidelines regarding the notification and release of a sexually violent offender: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
2 *concurring)*, That it is the sense of the Congress that each
3 State should enact legislation based on the following
4 model:

5 **SECTION 1. ESTABLISHMENT OF ADVISORY BOARD FOR**
6 **RISK ASSESSMENT.**

7 (a) ESTABLISHMENT.—The State shall establish an
8 Advisory Board for Risk Assessment (referred to in this
9 Act as the “Board”) which consists of not less than 5
10 members appointed by the Chief Executive Officer of the
11 State.

12 (b) DUTIES.—The Board shall comply with the re-
13 quirements and guidelines established for a State board
14 under section 170101 of the Violent Crime Control and
15 Law Enforcement Act of 1994 and the provisions of this
16 Act.

17 (c) MEMBERSHIP.—Each member shall, by experi-
18 ence or training, have a personal interest or professional
19 expertise in law enforcement, crime prevention, victim ad-
20 vocacy, criminology, psychology, parole, public education,
21 or community relations.

22 (d) TERM.—The term of office of each member of
23 such Board shall be determined by the Chief Executive

1 Officer of the State in guidelines issued pursuant to this
2 section.

3 (e) VACANCY.—Any member chosen to fill a vacancy
4 occurring other than by expiration of a term shall be ap-
5 pointed for the remainder of the unexpired term.

6 (f) CHAIRPERSON.—The Chief Executive Officer of
7 the State shall designate 1 of the members of the Board
8 as chairperson to serve in such capacity at the pleasure
9 of the Officer or until the member's term of office expires
10 and a successor is designated in accordance with law,
11 whichever occurs first.

12 (g) TERMINATION.—Any member of the Board may
13 be removed by the Chief Executive Officer for cause after
14 an opportunity to be heard.

15 (h) QUORUM.—Except as otherwise provided by law,
16 a majority of the Board shall constitute a quorum for the
17 transaction of all business of the Board.

18 **SEC. 2. GUIDELINES FOR TIER DETERMINATION.**

19 (a) IN GENERAL.—The Chief Executive Officer of the
20 State or a designee shall develop guidelines and proce-
21 dures for use by the Board to assess the risk of a repeat
22 offense by such sex offender and the threat posed to the
23 public safety. Such guidelines shall be based upon the fol-
24 lowing:

1 (1) Criminal history factors indicative of high
2 risk of repeat offense, including—

3 (A) whether the sex offender has a mental
4 abnormality;

5 (B) whether the sex offender's conduct was
6 found to be characterized by repetitive and
7 compulsive behavior, associated with drugs or
8 alcohol;

9 (C) whether the sex offender served the
10 maximum term;

11 (D) whether the sex offender committed
12 the felony sex offense against a child; and

13 (E) the age of the sex offender at the time
14 of the commission of the first sex offense.

15 (2) Other factors to be considered in determin-
16 ing risk, including—

17 (A) the relationship between such sex of-
18 fender and the victims;

19 (B) whether the offense involved the use of
20 a weapon, violence, or infliction of serious bod-
21 ily injury;

22 (C) the number, date, and nature of prior
23 offenses;

24 (D) conditions of release that minimize
25 risk of another offense, including whether the

1 sex offender is under supervision, receiving
2 counseling, therapy or treatment, or residing in
3 a home situation that provides guidance and su-
4 pervision;

5 (E) physical conditions that minimize risk
6 of another offense, including advanced age or
7 debilitating illness;

8 (F) whether psychological or psychiatric
9 profiles indicate a risk of recidivism;

10 (G) the sex offender's response to treat-
11 ment;

12 (H) recent behavior, including behavior
13 while confined;

14 (I) recent threats or gestures against per-
15 sons or expression of intent to commit addi-
16 tional offenses; and

17 (J) review of any victim impact statement.

18 (b) INFORMATION TRANSFER.—

19 (1) IN GENERAL.—Notwithstanding any other
20 provision of law, any State or local correctional facil-
21 ity, hospital, or institution shall forward relevant in-
22 formation pertaining to a sex offender to be dis-
23 charged, paroled, or released to the Board for review
24 prior to the release or discharge for consideration by
25 the Board in its recommendations. Information shall

1 include the commitment file, medical file, and treat-
 2 ment file pertaining to such person.

3 (2) CONFIDENTIALITY.—All confidential
 4 records provided under paragraph (1) shall remain
 5 confidential, unless otherwise ordered by a court, by
 6 the lawful custodians of the records, or by another
 7 person duly authorized to release such information.

8 **SEC. 3. BOARD RECOMMENDATIONS.**

9 (a) DESIGNATION.—Applying the guidelines estab-
 10 lished pursuant to section 2(a), the Board shall, prior to
 11 the discharge, parole, or release of a sex offender, make
 12 a recommendation, which shall be confidential and shall
 13 not be available for public inspection, to the sentencing
 14 court as to whether such sex offender warrants the des-
 15 ignation of sexually violent predator.

16 (b) NOTIFICATION SYSTEM.—The Board also shall
 17 use the guidelines established pursuant to section 2(a) to
 18 recommend to the sentencing court 1 of the following 3
 19 levels of notification:

20 (1) If the risk of a repeat offense is low, a tier
 21 1 designation shall be given to such sex offender. In
 22 such case the designated law enforcement agency
 23 having jurisdiction and the law enforcement agency
 24 having had jurisdiction at the time of his conviction
 25 shall be notified in accordance with section

1 170101(b)(4) of the Violent Crime Control and Law
2 Enforcement Act of 1994.

3 (2) If the risk of a repeat offense is moderate,
4 a tier 2 designation shall be given to such sex of-
5 fender. In such case the designated law enforcement
6 agency having jurisdiction and the law enforcement
7 agency having had jurisdiction at the time of convic-
8 tion shall be notified and may notify any victim of
9 the proposed release of such offender and any agen-
10 cy, organization, or group, serving individuals who
11 have similar characteristics to the previous victim or
12 victims of such offender. The notification may in-
13 clude the approximate address (by ZIP Code), back-
14 ground information relating to the crime, type of
15 victim targeted, conviction, including release of a
16 photograph of the offender, and any special condi-
17 tions imposed on the offender.

18 (3) If the risk of a repeat offense is high and
19 there exists a threat to the public safety, such sex
20 offender shall be deemed a sexually violent predator,
21 and a tier 3 designation shall be given to such of-
22 fender. In such case, the appropriate law enforce-
23 ment agencies shall be notified of such an offender's
24 release and may use the same notification proce-
25 dures described in paragraph (2), except that a pre-

1 cise address may be released and any relevant infor-
2 mation necessary to protect the public concerning a
3 specific person required to register under section
4 170101 of the Violent Crime Control and Law En-
5 forcement Act of 1994 shall be released.

6 **SEC. 4. JUDICIAL DETERMINATION.**

7 (a) COURT DESIGNATION.—A determination that an
8 offender is a sex offender or a sexually violent predator
9 shall be made prior to the discharge, parole, or release
10 of such offender by the sentencing court after receiving
11 a recommendation from the Board.

12 (b) NOTIFICATION LEVEL.—The sentencing court
13 also shall make a determination with respect to the level
14 of notification, after receiving a tier recommendation from
15 the Board. In making the determination, the court shall
16 review any statement by a victim or victims and any mate-
17 rials submitted by the sex offender. The court shall also
18 allow the sex offender to appear and be heard, and inform
19 the sex offender of the right to have counsel appointed
20 if necessary.

21 (c) REVERSAL.—Upon the reversal of a conviction of
22 a sexual offense, the court shall order the expungement
23 of any records required to be kept pursuant to this Act.

1 **SEC. 5. PETITION FOR RELIEF.**

2 (a) IN GENERAL.—A sex offender required to register
3 pursuant to section 170101 of the Violent Crime Control
4 and Law Enforcement Act of 1994 may be relieved of any
5 further duty to register in accordance with such section
6 or upon the granting of a petition for relief by the sentenc-
7 ing court.

8 (b) PETITION.—Upon receipt of a petition for relief
9 from registration requirements under this Act, the court
10 shall notify the Board and request an updated report per-
11 taining to the sex offender. After receiving the report from
12 the Board, the court may grant or deny the relief sought.

13 (c) CONSULTATION.—The court may consult with the
14 victim prior to making a determination on the petition.

15 (d) HEARING.—The court shall schedule and hold a
16 hearing in an expedited manner.

17 (e) RIGHTS OF OFFENDER.—The offender shall be
18 entitled to present evidence and supporting witnesses and
19 to confront and cross-examine opposing witnesses.

20 (f) BURDEN OF PROOF.—The county attorney has
21 the burden of proof to show, by a preponderance of the
22 evidence, that—

23 (1) the Board's risk assessment is reasonable;

24 (2) disclosure of information about the offender
25 to the community is appropriate; and

1 (c) ADDITIONAL REMEDIES.—The foregoing rem-
2 edies shall be independent of any other remedies or proce-
3 dures that may be available to an aggrieved party under
4 other provisions of law.

5 **SEC. 7. JUVENILE OFFENDERS.**

6 (a) IN GENERAL.—Any person residing in a State
7 who has been twice adjudicated delinquent for any sex of-
8 fense or attempted sex offense, or who has been convicted
9 of any sex offense or attempted sex offense, or who has
10 been acquitted by reason of insanity for any sex offense
11 or attempted sex offense shall be required to comply with
12 the registration requirements established pursuant to sec-
13 tion 170101 of the Violent Crime Control and Law En-
14 forcement Act of 1994.

15 (b) YOUTH FACILITY.—Any person who is discharged
16 or paroled from a facility in another State that is equiva-
17 lent to a Department of the Youth Authority to the cus-
18 tody of such a facility because of the commission or at-
19 tempted commission of specified sex offenses, is required
20 to register pursuant to section 170101 of the Violent
21 Crime Control and Law Enforcement Act of 1994.

22 **SEC. 8. OFFICIAL IMMUNITY FROM LIABILITY.**

23 (a) IMMUNITY.—No official, employee, or agency,
24 whether public or private, shall be subject to any civil or
25 criminal liability for damages for any discretionary deci-

1 sion to release relevant and necessary information pursu-
2 ant to this section, unless it is shown that such official,
3 employee, or agency acted with gross negligence or in bad
4 faith.

5 (b) INFORMATION RELEASE.—The immunity pro-
6 vided under this section applies to the release of relevant
7 information to other employees or officials or to the gen-
8 eral public.

9 (c) FAILURE TO RELEASE INFORMATION.—Nothing
10 in this section shall be deemed to impose any civil or crimi-
11 nal liability upon or to give rise to a cause of action
12 against any official, employee, or agency, whether public
13 or private, for failing to release information as authorized
14 in this Act unless it is shown that such official, employee,
15 or agency acted with gross negligence or in bad faith.

16 **SEC. 9. IDENTITY OF THE VICTIM.**

17 Any information identifying the victim by name, birth
18 date, address, or relation to the registrant shall be ex-
19 cluded from public access or dissemination.

20 **SEC. 10. GENERAL STATE REQUIREMENTS.**

21 The Chief Executive Officer of a State or designee
22 shall establish reasonable notification requirements under
23 this Act, including notification to an offender of any proce-
24 dures for which the offender is required or is permitted

1 to participate, including the hearing process, appeal
2 rights, and submission of information to the Board.

3 **SEC. 11. EXPUNGEMENT OF OUTDATED INFORMATION.**

4 In accordance with section 170101 of the Violent
5 Crime Control and Law Enforcement Act of 1994, the de-
6 partment required to coordinate the sex offender registra-
7 tion program shall compile and update information re-
8 garding the offenders. Any offender whose duty to register
9 has expired or who has been relieved of the duty to register
10 shall be removed from any public database.

11 **SEC. 12. EXCEPTIONAL CIRCUMSTANCES.**

12 Nothing in this Act shall be construed to prevent law
13 enforcement officers from notifying members of the public
14 exposed to danger of individuals that pose a danger under
15 circumstances that are not described in section 170101
16 of the Violent Crime Control and Law Enforcement Act
17 of 1994 or under this Act.

18 **SEC. 13. DEFINITIONS.**

19 For purposes of this Act:

20 (1) The term “criminal offense against a victim
21 who is a minor” means any criminal offense that
22 consists of—

23 (A) kidnapping of a minor, except by a
24 parent;

1 (B) false imprisonment of a minor, except
2 by a parent;

3 (C) criminal sexual conduct toward a
4 minor;

5 (D) solicitation of a minor to engage in
6 sexual conduct;

7 (E) use of a minor in a sexual perform-
8 ance;

9 (F) solicitation of a minor to practice pros-
10 titution;

11 (G) any conduct that by its nature is a
12 sexual offense against a minor; and

13 (H) an attempt to commit an offense de-
14 scribed in any of subparagraphs (A) through
15 (H) if the State—

16 (i) makes such an attempt a criminal
17 offense; or

18 (ii) chooses to include such an offense
19 in those which are criminal offenses
20 against a victim who is a minor for pur-
21 poses of this section.

22 For purposes of this paragraph, conduct which is
23 criminal only because of the age of the victim shall
24 not be considered a criminal offense if the perpetra-
25 tor is 18 years of age or younger.

1 (2) The term “sexually violent offense” means
2 any criminal offense that consists of aggravated sex-
3 ual abuse or sexual abuse (as described in sections
4 2241 and 2242 of title 18, United States Code, or
5 as described in the State criminal code) or an of-
6 fense that has as its elements engaging in physical
7 contact with another person with intent to commit
8 aggravated sexual abuse or sexual abuse (as de-
9 scribed in such sections of title 18, United States
10 Code, or as described in the State criminal code).

11 (3) The term “sexually violent predator” means
12 a person who has been convicted of a sexually violent
13 offense and who suffers from a mental abnormality
14 or personality disorder that makes the person likely
15 to engage in predatory sexually violent offenses.

16 (4) The term “mental abnormality” means a
17 congenital or acquired condition of a person that af-
18 fects the emotional or volitional capacity of the per-
19 son in a manner that predisposes that person to the
20 commission of criminal sexual acts to a degree that
21 makes the person a menace to the health and safety
22 of other persons.

23 (5) The term “predatory” means an act di-
24 rected at a stranger, or a person with whom a rela-

1 tionship has been established or promoted for the
2 primary purpose of victimization.

3 Any offense committed in another State, which if commit-
4 ted in the State at issue would be one of the above enu-
5 merated offenses, is considered a sexual offense for the
6 purposes of this Act.

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