

JACOB WETTERLING CRIMES AGAINST CHILDREN AND  
SEXUALLY VIOLENT OFFENDERS REGISTRATION IM-  
PROVEMENTS ACT OF 1997

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SEPTEMBER 18, 1997.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1683]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1683) to clarify the standards for State sex offender registration programs under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Improvements Act of 1997”.

**SEC. 2. STANDARDS FOR SEX OFFENDER REGISTRATION PROGRAMS.**

(a) IN GENERAL.—Section 170101(a) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(a)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking “with a designated State law enforcement agency”; and

(B) in subparagraph (B), by striking “with a designated State law enforcement agency”;

(2) by striking paragraph (2) and inserting the following:

“(2) DETERMINATION OF SEXUALLY VIOLENT PREDATOR STATUS; WAIVER; ALTERNATIVE MEASURES.—

“(A) IN GENERAL.—A determination of whether a person is a sexually violent predator for purposes of this section shall be made by a court after considering the recommendation of a board composed of experts in the behavior and treatment of sex offenders, victims’ rights advocates, and representatives of law enforcement agencies.

“(B) WAIVER.—The Attorney General may waive the requirements of subparagraph (A) if the Attorney General determines that the State has established alternative procedures or legal standards for designating a person as a sexually violent predator.

“(C) ALTERNATIVE MEASURES.—The Attorney General may also approve alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in this section regarding sexually violent predators.”; and

(3) in paragraph (3)—

(A) in subparagraph (A), by striking “that consists of—” and inserting “in a range of offenses specified by State law which is comparable to or which exceeds the following range of offenses.”;

(B) in subparagraph (B), by striking “that consists of” and inserting “in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by”;

(4) by adding at the end the following:

“(F) The term ‘employed, carries on a vocation’ includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit; and

“(G) The term ‘student’ means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education.”.

(b) REQUIREMENTS UPON RELEASE, PAROLE, SUPERVISED RELEASE, OR PROBATION.—Section 170101(b) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(b)) is amended—

(1) in paragraph (1)—

(A) by striking the paragraph designation and heading and inserting the following:

“(1) DUTIES OF RESPONSIBLE OFFICIALS.—”;

(B) in subparagraph (A)—

(i) in the matter preceding clause (i), by striking “or in the case of probation, the court” and inserting “the court, or another responsible officer or official”;

(ii) in clause (ii), by striking “give” and all that follows before the semicolon and inserting “report the change of address as provided by State law”; and

(iii) in clause (iii), by striking “shall register” and all that follows before the semicolon and inserting “shall report the change of address as provided by State law and comply with any registration requirement in the new State of residence, and inform the person that the person must also register in a State where the person is employed, carries on a vocation, or is a student”; and

(C) in subparagraph (B), by striking “or the court” and inserting “, the court, or another responsible officer or official”;

(2) by striking paragraph (2) and inserting the following:

“(2) TRANSFER OF INFORMATION TO STATE AND FBI; PARTICIPATION IN NATIONAL SEX OFFENDER REGISTRY.—

“(A) STATE REPORTING.—State procedures shall ensure that the registration information is promptly made available to a law enforcement agency having jurisdiction where the person expects to reside and entered into the appropriate State records or data system. State procedures shall also ensure that conviction data and fingerprints for persons required to register are promptly transmitted to the Federal Bureau of Investigation.

“(B) NATIONAL REPORTING.—A State shall participate in the national database established under section 170102(b) in accordance with guidelines issued by the Attorney General, including transmission of current address information and other information on registrants to the extent provided by the guidelines.”;

(3) in paragraph (3)(A)—

(A) in the matter preceding clause (i), by striking “on each” and all that follows through “applies:” and inserting the following: “State procedures shall provide for verification of address at least annually.”; and

(B) by striking clauses (i) through (v);

(4) in paragraph (4), by striking “section reported” and all that follows before the period at the end and inserting the following: “section shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate State records or data system”;

(5) in paragraph (5), by striking “shall register” and all that follows before the period at the end and inserting “and who moves to another State, shall report the change of address to the responsible agency in the State the person is leaving, and shall comply with any registration requirement in the new State of residence. The procedures of the State the person is leaving shall ensure that notice is provided promptly to an agency responsible for registration in the new State, if that State requires registration”; and

(6) by adding at the end the following:

“(7) REGISTRATION OF OUT-OF-STATE OFFENDERS, FEDERAL OFFENDERS, PERSONS SENTENCED BY COURTS MARTIAL, AND OFFENDERS CROSSING STATE BORDERS.—As provided in guidelines issued by the Attorney General, each State shall ensure that procedures are in place to accept registration information from—

“(A) persons who were convicted in another State, convicted of a Federal offense, or sentenced by a court martial; and

“(B) nonresident offenders who have crossed into another State in order to work or attend school.”.

(c) REGISTRATION OF OFFENDER CROSSING STATE BORDER.—Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(c)) is amended by redesignating subsections (c) through (f) as (d) through (g), respectively, and inserting after subsection (b) the following:

“(c) REGISTRATION OF OFFENDER CROSSING STATE BORDER.—Any person who is required under this section to register in the State in which such person resides shall also register in any State in which the person is employed, carries on a vocation, or is a student.”.

(d) RELEASE OF INFORMATION.—Section 170101(e)(2) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(e)(2)), as redesignated by subsection (c) of this section, is amended by striking “The designated” and all that follows through “State agency” and inserting “The State or any agency authorized by the State”.

(e) IMMUNITY FOR GOOD FAITH CONDUCT.—Section 170101(f) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(f)), as redesignated by

subsection (c) of this section, is amended by striking “, and State officials” and inserting “and independent contractors acting at the direction of such agencies, and State officials”.

(f) FBI REGISTRATION.—(1) Section 170102(a)(2) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14072(a)(2)) is amended by striking “and ‘predatory’” and inserting the following: “‘predatory’, ‘employed, or carries on a vocation’, and ‘student’”.

(2) Section 170102(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14072(a)(3)) is amended—

(A) in subparagraph (A), by inserting “in a range of offenses specified by State law which is comparable to or exceeds that” before “described”;

(B) by amending subparagraph (B) to read as follows:

“(B) participates in the national database established under subsection (b) of this section in conformity with guidelines issued by the Attorney General;” and

(C) by amending subparagraph (C) to read as follows:

“(C) provides for verification of address at least annually;”.

(g) PAM LYCHNER SEXUAL OFFENDER TRACKING AND IDENTIFICATION ACT OF 1996.—Section 10 of the Pam Lychner Sexual Offender Tracking and Identification Act of 1996 is amended by inserting at the end the following:

“(d) EFFECTIVE DATE.—States shall be allowed the time specified in subsection (b) to establish minimally sufficient sexual offender registration programs for purposes of the amendments made by section 2. Subsections (c) and (k) of section 170102 of the Violent Crime Control and Law Enforcement Act of 1994, and any requirement to issue related regulations, shall take effect at the conclusion of the time provided under this subsection for the establishment of minimally sufficient sexual offender registration programs.”.

(h) FEDERAL OFFENDERS AND MILITARY PERSONNEL.—(1) Section 4042 of title 18, United States Code, is amended—

(A) in subsection (a)(5), by striking “subsection (b)” and inserting “subsections (b) and (c)”;

(B) in subsection (b), by striking paragraph (4);

(C) by redesignating subsection (c) as subsection (d); and

(D) by inserting after subsection (b) the following:

“(c) NOTICE OF SEX OFFENDER RELEASE.—(1) In the case of a person described in paragraph (4) who is released from prison or sentenced to probation, notice shall be provided to—

“(A) the chief law enforcement officer of the State and of the local jurisdiction in which the person will reside; and

“(B) a State or local agency responsible for the receipt or maintenance of sex offender registration information in the State or local jurisdiction in which the person will reside.

The notice requirements under this subsection do not apply in relation to a person being protected under chapter 224.

“(2) Notice provided under paragraph (1) shall include the information described in subsection (b)(2), the place where the person will reside, and the information that the person shall be subject to a registration requirement as a sex offender. For a person who is released from the custody of the Bureau of Prisons whose expected place of residence following release is known to the Bureau of Prisons, notice shall be provided at least 5 days prior to release by the Director of the Bureau of Prisons. For a person who is sentenced to probation, notice shall be provided promptly by the probation officer responsible for the supervision of the person, or in a manner specified by the Director of the Administrative Office of the United States Courts. Notice concerning a subsequent change of residence by a person described in paragraph (4) during any period of probation, supervised release, or parole shall also be provided to the agencies and officers specified in paragraph (1) by the probation officer responsible for the supervision of the person, or in a manner specified by the Director of the Administrative Office of the United States Courts.

“(3) The Director of the Bureau of Prisons shall inform a person described in paragraph (4) who is released from prison that the person shall be subject to a registration requirement as a sex offender in any State in which the person resides, is employed, carries on a vocation, or is a student (as such terms are defined for purposes of section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994), and the same information shall be provided to a person described in paragraph (4) who is sentenced to probation by the probation officer responsible for supervision of the person or in a manner specified by the Director of the Administrative Office of the United States Courts.

“(4) A person is described in this paragraph if the person was convicted of any of the following offenses (including such an offense prosecuted pursuant to section 1152 or 1153):

“(A) An offense under section 1201 involving a minor victim.

“(B) An offense under chapter 109A.

“(C) An offense under chapter 110.

“(D) An offense under chapter 117.

“(E) Any other offense designated by the Attorney General as a sexual offense for purposes of this subsection.

“(5) The United States and its agencies, officers, and employees shall be immune from liability based on good faith conduct in carrying out this subsection and subsection (b).”

(2)(A) Section 3563(a) of title 18, United States Code, is amended by striking the matter at the end of paragraph (7) beginning with “The results of a drug test” and all that follows through the end of such paragraph and inserting that matter at the end of section 3563.

(B) The matter inserted by subparagraph (A) at the end of section 3563 is amended—

(i) by striking “The results of a drug test” and inserting the following:

“(e) RESULTS OF DRUG TESTING.—The results of a drug test”; and

(ii) by striking “paragraph (4)” each place it appears and inserting “subsection (a)(5)”.

(C) Section 3563(a) of title 18, United States Code, is amended—

(i) so that paragraphs (6) and (7) appear in numerical order immediately after paragraph (5);

(ii) by striking “and” at the end of paragraph (6);

(iii) in paragraph (7), by striking “assessments.” and inserting “assessments; and”; and

(iv) by inserting immediately after paragraph (7) (as moved by clause (i)) the following new paragraph:

“(8) for a person described in section 4042(c)(4), that the person report the address where the person will reside and any subsequent change of residence to the probation officer responsible for supervision, and that the person register in any State where the person resides, is employed, carries on a vocation, or is a student (as such terms are defined under section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994).”

(D) Section 3583(d) of title 18, United States Code, is amended by inserting after the second sentence the following: “The court shall order, as an explicit condition of supervised release for a person described in section 4042(c)(4), that the person report the address where the person will reside and any subsequent change of residence to the probation officer responsible for supervision, and that the person register in any State where the person resides, is employed, carries on a vocation, or is a student (as such terms are defined under section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994).”

(E) Section 4209(a) of title 18, United States Code, insofar as such section remains in effect with respect to certain individuals, is amended by inserting after the first sentence the following: “In every case, the Commission shall impose as a condition of parole for a person described in section 4042(c)(4), that the parolee report the address where the parolee will reside and any subsequent change of residence to the probation officer responsible for supervision, and that the parolee register in any State where the parolee resides, is employed, carries on a vocation, or is a student (as such terms are defined under section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994).”

(3)(A) The Secretary of Defense shall specify categories of conduct punishable under the Uniform Code of Military Justice which encompass a range of conduct comparable to that described in section 170101(a)(3)(A) and (B) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(a)(3)(A) and (B)), and such other conduct as the Secretary deems appropriate for inclusion for purposes of this paragraph.

(B) In relation to persons sentenced by a court martial for conduct in the categories specified under subparagraph (A), the Secretary shall prescribe procedures and implement a system to—

(i) provide notice concerning the release from confinement or sentencing of such persons;

(ii) inform such persons concerning registration obligations; and

(iii) track and ensure compliance with registration requirements by such persons during any period of parole, probation, or other conditional release or supervision related to the offense.

(C) The procedures and requirements established by the Secretary under this paragraph shall, to the maximum extent practicable, be consistent with those specified for Federal offenders under the amendments made by paragraphs (1) and (2).

(D) If a person within the scope of this paragraph is confined in a facility under the control of the Bureau of Prisons at the time of release, the Bureau of Prisons shall provide notice of release and inform the person concerning registration obligations under the procedures specified in section 4042(c) of title 18, United States Code.

(i) PROTECTED WITNESS REGISTRATION.—Section 3521(b)(1) of title 18, United States Code, is amended—

- (1) by striking “and” at the end of subparagraph (G);
- (2) by redesignating subparagraph (H) as subparagraph (I); and
- (3) by inserting after subparagraph (G) the following:

“(H) protect the confidentiality of the identity and location of persons subject to registration requirements as convicted offenders under Federal or State law, including prescribing alternative procedures to those otherwise provided by Federal or State law for registration and tracking of such persons; and”.

**SEC. 3. SENSE OF CONGRESS AND REPORT RELATING TO STALKING LAWS.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that each State should have in effect a law that makes it a crime to stalk any individual, especially children, without requiring that such individual be physically harmed or abducted before a stalker is restrained or punished.

(b) REPORT.—The Attorney General shall include in an annual report under section 40610 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14039) information concerning existing or proposed State laws and penalties for stalking crimes against children.

**SEC. 4. EFFECTIVE DATE.**

This Act shall take effect on the date of the enactment of this Act, except that—

- (1) paragraphs (1), (2), and (3) of section 2(h) shall take effect 1 year after the date of the enactment of this Act; and
- (2) States shall have 3 years from such date of enactment to implement amendments made by this Act which impose new requirements under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, and the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement these amendments.

**PURPOSE AND SUMMARY**

H.R. 1683, the “Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Improvements Act of 1997,” amends a provision enacted as part of the Violent Crime Control and Law Enforcement Act of 1994. Title XVII of that Act, the “Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act” (hereafter, the “Wetterling Act”), requires States to implement a system that requires persons who commit sexual or kidnaping crimes against children or who commit sexually violent crimes against any person (adult or child) to register their address and other pertinent information with State law enforcement upon release from prison. The law also requires local law enforcement to notify communities when certain sex offenders move into their neighborhoods. A State’s failure to implement this registration system by September 1997, will result in a partial loss of federal crime-fighting funds. As of May 1996, all States and the District of Columbia had some sort of registration system in place.

Sexual offenders frequently target the most vulnerable members of our communities. Nearly two-thirds of State prisoners serving time for rape and sexual assault victimized children. Almost one-third of these victims were less than 11-years-old. Yet, not only do these violent criminals victimize the women and children upon which they prey, but they also victimize society as a whole. Ameri-

cans have a depleted sense of trust and security because of these individuals.

Part of what makes this problem so unsettling is the peculiar nature of the perpetrators. Sex offenders have a high likelihood of re-offending—in fact, they are nine times more likely to repeat their crimes than any other class of criminal. It is for this reason that so many communities feel unsafe as long as convicted sex offenders are in their midst, and why more and more communities are seeking to know of their whereabouts.

H.R. 1683 will substantially strengthen the sex offender registration programs in the States and close several loopholes which currently allow convicted sex offenders to avoid registering their whereabouts with local law enforcement. Importantly, H.R. 1683 applies registration requirements to certain offenders who currently are not required to register under the Wetterling Act. The bill requires offenders convicted in federal or military court of certain sex offenses to register in the State in which they reside. In addition, registration will become a condition of probation or parole for such offenders. This bill is not intended to establish a federal registry system, nor does it require States to enact new laws. It does require offenders convicted in military and federal court to register into already established State programs. H.R. 1683 will also apply to offenders crossing State borders: offenders are required to register in the State in which they reside and any State in which they are employed or are enrolled as a student, as defined in the Act.

H.R. 1683 also provides additional flexibility to States as they implement their registry systems. States will receive the discretion to designate appropriate agencies or entities other than “State law enforcement” to administer appropriate portions of the registry program. Moreover, States will also have more discretion as they establish the State board which is required under the Wetterling Act. This board is required to determine for the courts whether or not certain offenders should be deemed “sexually violent predators.” Such offenders would be subject to more stringent registration requirements and community notification. This bill will allow the Attorney General to grant a waiver to States which satisfactorily demonstrate that they have an alternative system in place which adequately designates offenders as “sexually violent predators.” A State would be given two extra years to comply if it doesn’t receive the waiver. Also, immunity for good faith conduct would be extended beyond law enforcement personnel to include private contractors who administer the program under the direction of law enforcement.

Finally, the bill includes a Sense of Congress that each State should have in effect laws which make it a crime to stalk children. This bill also requires the Justice Department to provide Congress with a report describing existing State laws with regard to child stalking.

#### BACKGROUND AND NEED FOR THE LEGISLATION

In the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322), Congress established the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act

(see also H. Rept. 103-392). This Act requires the Attorney General to establish guidelines for the States to implement a program that requires persons who commit sexual or kidnaping crimes against children or who commit sexually violent crimes against any person (adult or child) to register their address and other pertinent information with State law enforcement upon release from prison. The law also requires local law enforcement to notify communities when certain sex offenders move into their neighborhoods. A State's failure to implement this registration system by September 1997, will result in a partial loss of federal funds provided under the Edward Byrne Memorial Drug Law Enforcement Grant Program (hereafter, Byrne grants).

Two years after passage of the Jacob Wetterling Act, Congress passed Megan's Law (P.L. 104-145) which amended the provisions of the Wetterling Act relating to release of registration information and community notification. In 1996, Congress also passed the Pam Lychner National Sexual Offender Tracking and Identification Act (P.L. 104-236) (hereafter, the "Lychner Act"), which makes further amendments to the Wetterling Act, and also contains provisions to ensure the nationwide availability of sex offender registration to law enforcement. The collective result of these enactments is codified in 42 U.S.C. 14071-72. By May 1996, all 50 States and the District of Columbia had some sort of registration system in place, commonly known in the States as "Megan's law." At least 40 States have established some form of notification program which informs communities when sex offenders move into their neighborhoods.

To date, the Attorney General has not yet determined which States have satisfactorily complied with the 1994 Act, nor has she determined which States have made good faith efforts and should therefore be given more time to come into compliance. However, a review of State sex offender registration laws indicates that very few States are in full compliance with the Wetterling Act. While all the States have some sort of registration program in place and many have made commendable efforts to come into compliance with the Act, few States are congruent in all respects with the Wetterling Act's definitions and procedures. It is the view of the Committee that the Wetterling Act was intended to serve as a floor, not a ceiling, for States as they implement sex offender registration programs. One of the primary purposes of H.R. 1683 is to clarify portions of the original Wetterling Act and to provide the States the flexibility to implement ideas that may not have come from Congress but may be equally effective or even more effective in keeping track of sex offenders.

H.R. 1683 allows the Attorney General to approve State registration programs which effectively protect the public from exceptionally dangerous sex offenders, even if the program is not congruent in all respects with the Wetterling Act's provisions. The bill also provides States with the discretion to designate appropriate agencies or entities other than "State law enforcement" to administer appropriate portions of the registry program. For example, States will be allowed to vest record keeping authority as they see fit, with either the courts, corrections or general State records divisions.



In addition, States will be given more flexibility and more time to comply with sex offender legislation passed at the end of the 104th Congress. Under current law, States have until October 3, 1997, to comply with certain portions of the Pam Lychner National Sex Offender Tracking and Identification Act of 1996 or lose 10 percent of Byrne grant funding. The FBI has informed the Committee that States need more time. H.R. 1683 addresses an unintended consequence with the Lychner Act which requires direct registration with the FBI of released sex offenders in States that do not have "minimally sufficient" registration programs. Congress enacted the Lychner Act with the expectation that all 50 States had, or would soon have, registration programs for sex offenders that would meet the Act's definition of "minimally sufficient." The provision that requires offenders to register directly with the FBI was seen accordingly as a back-stop or fail-safe measure that would actually be used in only a very small handful of States.

However, under the Lychner Act's definition of "minimally sufficient," existing State programs generally do not qualify. For example, under current law, a State registration program does not qualify as "minimally sufficient" if there are the slightest variances in the offenses covered by the program from the list of offense categories in the Wetterling Act. The practical consequence is that, without further amendment, the FBI is likely to be responsible for direct registration of almost all sex offenders in the United States by the deadline by which States are to comply with the Lychner Act. H.R. 1683 gives States two additional years to come into compliance and also requires States to participate in the FBI's interim national registry program until the National Sex Offender Registry Program is fully operational.

Lastly, H.R. 1683 includes a Sense of Congress, proposed by Rep. Diaz-Balart, that each State should have in effect laws which make it a crime to stalk children. The Committee strongly supports the initiative taken by the State of Florida in passing the Jennifer Act (Fla. Stat. Sec. 784.048 (1997)). The Jennifer Act designates the stalking of a child under the age of 16 as a third degree felony. The Act provides that a person who willfully, maliciously, and repeatedly follows or harasses a child younger than 16 years of age commits aggravated stalking. The Jennifer Act is named after a 13-year-old Dade County, Florida girl who was stalked in 1996 by an incidental family acquaintance. Police told the girl's mother that they could not arrest the man unless he had hurt or kidnaped her daughter. Unable to obtain a judicial restraining order, Jennifer's mother worked tenaciously with her State senator and representative to enlist support for a change in the law to remove the requirement that physical harm or abduction occur before the police could intervene. The law was signed by the Governor on April 29, 1997, and will become effective on October 1, 1997.

H.R. 1683 also requires the Attorney General to provide Congress with a report describing existing State laws with regard to child stalking.

#### HEARINGS

No hearings were held on H.R. 1683.

## COMMITTEE CONSIDERATION

On June 12, 1997, the Subcommittee on Crime met in open session and ordered reported the bill H.R. 1683, without amendment, by a voice vote, a quorum being present. On September 9, 1997, the Committee met in open session and ordered reported favorably the bill H.R. 1683, with amendment, by a recorded vote of 20 to 10, a quorum being present.

## VOTE OF THE COMMITTEE

## ROLLCALL NO. 1

Mr. Nadler offered an amendment to the McCollum amendment in the nature of a substitute which would withhold 10 percent of Byrne grant funds from any State which has in place a law requiring persons convicted of consensual sodomy to register with local law enforcement. The amendment was defeated by a vote of 12–19.

AYES	NAYS
Mr. Frank	Mr. Sensenbrenner
Mr. Schumer	Mr. McCollum
Mr. Berman	Mr. Gekas
Mr. Nadler	Mr. Coble
Mr. Scott	Mr. Smith (TX)
Mr. Watt	Mr. Gallegly
Ms. Lofgren	Mr. Canady
Ms. Jackson-Lee	Mr. Inglis
Mr. Meehan	Mr. Goodlatte
Mr. Delahunt	Mr. Buyer
Mr. Wexler	Mr. Bono
Mr. Rothman	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Barr
	Mr. Jenkins
	Mr. Hutchinson
	Mr. Pease
	Mr. Cannon
	Mr. Hyde

## ROLLCALL NO. 2

Mr. McCollum offered an amendment in the nature of a substitute which would make a number of clarifying and technical changes to the bill. The amendment was adopted by a vote of 20 to 10.

AYES	NAYS
Mr. Sensenbrenner	Mr. Frank
Mr. McCollum	Mr. Schumer
Mr. Gekas	Mr. Berman
Mr. Coble	Mr. Nadler
Mr. Smith (TX)	Mr. Scott
Mr. Gallegly	Mr. Watt
Mr. Canady	Ms. Jackson-Lee
Mr. Inglis	Mr. Meehan
Mr. Goodlatte	Mr. Delahunt

Mr. Buyer	Mr. Wexler
Mr. Bono	
Mr. Bryant (TN)	
Mr. Chabot	
Mr. Barr	
Mr. Jenkins	
Mr. Hutchinson	
Mr. Pease	
Mr. Cannon	
Mr. Rothman	
Mr. Hyde	

## ROLLCALL NO. 3

Final Passage. Motion to report H.R. 1683 favorably. The motion passed by a vote of 20 to 10.

AYES	NAYS
Mr. Sensenbrenner	Mr. Frank
Mr. McCollum	Mr. Schumer
Mr. Gekas	Mr. Berman
Mr. Coble	Mr. Nadler
Mr. Smith (TX)	Mr. Scott
Mr. Gallegly	Mr. Watt
Mr. Canady	Ms. Jackson-Lee
Mr. Inglis	Mr. Meehan
Mr. Goodlatte	Mr. Delahunt
Mr. Buyer	Mr. Wexler
Mr. Bono	
Mr. Bryant (TN)	
Mr. Chabot	
Mr. Barr	
Mr. Jenkins	
Mr. Hutchinson	
Mr. Pease	
Mr. Cannon	
Mr. Rothman	
Mr. Hyde	

## COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

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

## COMMITTEE OVERSIGHT FINDINGS

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

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1683, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 18, 1997.*

Hon. HENRY J. HYDE,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1683, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Improvements Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for federal costs) and Matt Eyles (for the private-sector impact).

Sincerely,

JAMES L. BLUM  
(For June E. O'Neill, *Director*).

Enclosure.

*H.R. 1683—Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Improvements Act of 1997*

CBO estimates that enacting H.R. 1683 would not result in any significant cost to the federal government. Because enactment of H.R. 1683 would not affect direct spending or receipts, pay-as-you-go procedures would not apply to the bill.

H.R. 1683 would make various changes to the Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Act and the Pam Lychner National Sex Offender Tracking and Identification Act of 1996. These laws require states to establish a registration system for certain sexual offenders and direct the Federal Bureau of Investigation to establish a nationwide computer system for tracking such offenders.

Upon enactment of H.R. 1683, registration with state law enforcement officials would become a condition of probation or parole for persons convicted of sexual offenses under federal or military law. As a result, the Bureau of Prisons would be responsible for notifying offenders of this requirement and for providing information about each offender's address and release date to local law enforcement officials. H.R. 1683 also would make the Attorney General responsible for the tracking and oversight of individuals in the Federal Witness Protection Program who are subject to registration requirements. The bill would permit the Attorney General to approve

state registration programs that are not in complete compliance with the definitions and procedures under the Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Act, but that provide comparable protection for the public against sexual offenders. Because the federal government is already performing most of the requirements under this bill and only a small number of sexual offenders are convicted under federal or military law, CBO estimates that enacting this bill would result in no significant additional cost to the federal government.

H.R. 1683 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would impose no costs on state, local, or tribal governments. In a number of cases, the bill would relax conditions of assistance or would give states more time to register violent sexual offenders.

H.R. 1683 would impose new private-sector mandates by expanding the reporting requirements for persons who are classified under federal law as sexually violent predators, who have been convicted of a sexually violent offense, or who have committed certain criminal offenses against minors. Currently, such offenders are required to register a current address, photo, and fingerprints with a state law enforcement agency. In addition, those individuals are required each year to submit a form verifying that they still reside at their last reported address.

Under H.R. 1863, military personnel who have been convicted of certain sex offenses or offenses against minors under military or federal law would be required to register in the state in which they officially reside and, if different from their state of residence, the state in which they are permanently assigned. In addition, offenders who work or attend school in a state other than the one in which they have registered would be required to register in both states. Finally, offenders who move would be required to notify the appropriate agency in their former state of residence that they are moving. The bill would also reduce an existing federal mandate by eliminating the annual requirement for offenders to return a verification form to state law enforcement officials. Instead, offenders would be subject to state procedures for an annual verification of their residence. CBO estimates that the direct costs to the private sector, as defined in UMRA, of the new requirements in H.R. 1683 would be negligible.

The CBO staff contacts for this estimate are Susanne S. Mehlman (for federal costs) and Matt Eyles (for the private-sector impact). This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(1)(4) of the rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8 of the Constitution.

## SECTION-BY-SECTION ANALYSIS

## SECTION 1. SHORT TITLE

This section provides that the Act may be cited as the “Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Improvements Act of 1997.”

## SEC. 2. STANDARDS FOR SEX OFFENDER REGISTRATION PROGRAMS

This section amends the Wetterling Act relating to the standards for effective sex offender registration programs.

*Allowing “Local Input” of Registration Information.* Amendments to section 2(a)(1) and Section 2(b)(4)–(5) explicitly authorize state registration programs that involve submission of registration information to the State registration agency through an intermediary, rather than directly. This clarifies current law which does not preclude using intermediaries, for example, to submit changes of address information or to serve as a contact point for dissemination of information to the general public. Representatives of State law enforcement agencies have indicated that there has been some confusion as to what current law permits on this point, and it is the intent of these new modifications to explicitly provide States with the discretion to designate appropriate agencies other than “State law enforcement” to administer appropriate portions of the registry program. Paragraphs (4) and (5) provide more flexibility to the States with regard to the timing for reporting change of address information, but would maintain requirements that (1) changes of address must be reported by the registrants in the manner provided by State law; (2) the updated address information must be provided promptly to a local law enforcement agency where the resident will reside; and (3) the information must be entered into the appropriate state records or data system. These paragraphs further provide that: (1) registrants who move to another State must notify the responsible agency in the State while they are leaving and comply with registration requirements in the new State of residence; and (2) the State the person is leaving must promptly notify the responsible registration agency in the new State.

*Sexually Violent Predator Designation.* Section 2(a)(2) amends provisions of the Wetterling Act concerning the designation of certain offenders as “sexually violent predators.” Current law provides that sexually violent predators, as defined in the Act, are subject to a lifetime registration period under the Act, and quarterly address verification as opposed to the annual address verification for other registrants. The Wetterling Act (as amended by the Lychner Act) provides that the sexually violent predator determination is to be made by the sentencing court after receiving a report by a board composed of experts in the field of the behavior and treatment of sexual offenders, victims’ rights advocates, and representatives from law enforcement agencies. Paragraph (2) and subparagraphs (A), (B), and (C) preserve current law with regard to sexually violent predator designation but adopts two qualifications: First, the Attorney General is allowed to approve alternative procedures for making the sexually violent predator determination. The Committee recognizes that a program which employs a mixed board of psychological experts, victims’ representatives, and law enforcement

personnel to make recommendations to a court is not necessarily the only effective approach. Second, the amendment more broadly allows the Attorney General to approve registration programs which effectively protect the public from exceptionally dangerous sex offenders even if they are not congruent in all respects with the Wetterling Act's sexually violent predator definition and procedures. In fact, a review of State sex offender registration laws indicates that very few States are in full compliance with the Wetterling Act in this regard. Few States currently follow the sexually violent predator approach in their registration systems and many States have reported that it is particularly difficult to modify their systems to include judicial determinations of sexually violent predator status based on psychological assessments.

However, States can, and in some instances already do, incorporate other features into their systems which further the objective of protecting the public from particularly dangerous sex offenders. For example, some State programs have registration periods for broadly defined categories of sex offenders which are much longer than the basic 10-year registration period under the Wetterling Act. This may provide more protection for the public than heightened registration requirements limited to a relatively small class of offenders who would be classified as sexually violent predators. Also, the Wetterling Act, as amended by the Lychner Act, now requires lifetime registration for all recidivists in the Wetterling Act offense categories, and for registrants who have been convicted of aggravated offenses. Moreover, some States require civil commitment, lifetime supervision, or very long periods of imprisonment for sexually violent predators or broader classes of serious sex offenders. Section 2(a)(2) makes it clear that alternative approaches like these can be approved if a State's approach is equally effective or more effective in protecting the public from particularly dangerous sex offenders.

*Offense Coverage.* Section 2(a)(3) amends the Wetterling Act relating to offenses for which registration is required. The specification of offenses in the Wetterling Act was intended to ensure comprehensive registration requirements for child molestation offenses and for the most serious sexually assaultive crimes against adult victims. However, the Committee is aware that the degree of detail in the Act's offense categories makes State compliance difficult, since all States differ from the provisions of the Wetterling Act, and from each other, in the terminology and categorizations they use in defining sex offenses. Some States may inadvertently find themselves out of compliance with the Wetterling Act because the States' registration provisions are not exactly congruent with one of the Wetterling Act's offense categories, even if the offenses covered by the program are much broader in other respects than required by the Wetterling Act. Paragraph 3 of subsection (a) provides greater flexibility relating to offenses for which registration is required by providing, in effect, that a state program will be deemed in compliance if its offense coverage is "comparable to or \* \* \* exceeds" the range of offense which is described specifically in the Act.

*Definition of "Employed, Carries on a Vocation" and "Student."* Section 2(a)(4) defines "employed, carries on a vocation," to include

employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. "Student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education.

*Duties of Officials Responsible for Initial Registration.* Section 2(b)(1) amends language of the Wetterling Act concerning the officials responsible for advising offenders of their registration obligations at the time of release, and for obtaining and initially submitting the registration information. Current law requires that these functions be carried out by a state prison officer, or by the court in the case of a person released on probation. Some States have indicated that it is not a function of the court to fingerprint, photograph, or obtain much of the personal information specified in the Wetterling Act. Paragraph (1) explicitly provides that these functions may be carried out by a State prison officer, the court, or "another responsible officer or official." This change in current law is more consistent with the various State programs and provides States with more flexibility as they collect and forward initial registration information.

Section 2(b) also adds a new requirement that responsible officials are to notify offenders that, in addition to registration requirements required of them under the Wetterling Act, such offenders are also required to register in any State where the offender is employed, or carries on a vocation, or is a student, if applicable. It is the expectation of the Committee that States can establish administrative procedures which would facilitate offender notification of this new requirement without having to make changes in their State sex offender registration statutes. It is the intent of the Committee that the absence of such a State statute, in itself, should not disqualify a State from receiving full Byrne Grant funding.

*General Procedures for Initial Submission of Registration Information.* Section 2(b) also amends the provision of the Wetterling Act concerning submission and transmission of initial registration information by responsible officials. The new requirements provide more flexibility with regard to the timing for submission of the information while maintaining that information be promptly (1) made available to local law enforcement where the registrant resides, (2) entered into the appropriate state records or data system, and (3) transmitted to the FBI.

*Participation in the Interim National Sex Offender Registry.* Section 2(b)(2) requires that States participate in the interim national sex offender registry in conformity with the guidelines issued by the Attorney General. These provisions also lighten the burden of certain data submission requirements imposed on the States by the Lychner Act and make submission requirements more consistent with current computer technology.

The original version of the Wetterling Act required transmission of conviction data and fingerprints—but not address information—to the FBI. However, under the Lychner Act, which amended the Wetterling Act, registration information—including address infor-



mation—must be transmitted to the FBI for inclusion into the National Sex Offender Registry. Neither of these formulations is entirely sufficient. The FBI has indicated that physical transmission by the States of address information to the FBI is not necessary or useful at the present time. This information can be made available on a nationwide basis without physical transmission to the FBI through the interim national sex offender registry, which involves flagging registered sex offenders in the national criminal records system and computer-linkage to the State registries. It is important, however, to ensure that such registration information from all the States will become available through their participation in the interim national registry. Provision of conviction data and fingerprints alone will not achieve this objective. Moreover, in the future development of the National Registry, registration information from the States may be maintained directly in the FBI computer systems, and transmission of such information by the States to the FBI would then be necessary for operation of the system. Requiring participation in the interim national registry in conformity with the Attorney General's guidelines will ensure that the objectives of the National Registry and the Lychner Act reforms are realized, without burdening the States with unnecessary data transmission. It is the expectation of the Committee that transmission of this information to the FBI can be done by the States through administrative procedures and therefore should not require changes in State statutes. It is the intent of the Committee that the absence of such a State statute, in itself, should not disqualify a State from receiving full Byrne Grant funding.

*Periodic Address Verification.* Section 2(b)(3) amends provisions of the Wetterling Act concerning periodic address verification for registrants. Current law requires that verification be accomplished by mailing (at least annually) to the registrant at the registered address a nonforwardable verification form, which the registrant must sign and return within 10 days. The amendments in section 2(b)(3) maintain the requirement of address verification at least annually but afford states the option of adopting other verification procedures. It is the view of the Committee that the verification-form procedure is not necessarily the only acceptable approach to effectively verifying a registrant's address. A review of State sex offender registry laws indicates that some States require registrants to appear in person periodically at local law enforcement agencies to verify their address (and for such purposes as photographing and fingerprinting). Some States assign caseworkers to verify periodically that registrants still reside at the registered address. These alternative procedures effectively verify registrants' location, and impress on registrants that they are under observation by the authorities, in addition to making law enforcement agencies aware of the presence and identity of registered sex offenders in their neighborhoods.

*Registration of Out-of-State Offenders, Federal Offenders, Persons Sentenced by Courts Martial, and Offenders Crossing State Borders.* Section 2(b)(7) provides that States shall ensure that their registration programs include procedures which accept registration infor-

mation from (1) persons who were convicted in another State,<sup>1</sup> convicted of a federal offense, or sentenced by a court martial; and (2) nonresident offenders who have crossed into another State in order to work or to attend school. It is the expectation that the reception of registration information from these new categories of offenders can be accomplished through modification in administrative procedures and therefore should not require changes in State statutes. Although it would be preferable that States fully incorporate federal offenders, persons sentenced by courts martial, and offenders crossing State borders in order to work or go to school, into their registration and notification programs by statute, the Committee believes that this decision is best left up to the States. It is the intent of the Committee that the absence of such a State statute, in itself, should not disqualify a State from receiving full Byrne grant funding.

*Registration Requirement of Offenders Crossing State Borders.* Section 2(c) amends the Wetterling Act to require offenders to register in any State where the offender resides, in addition to any State where the offender works or attends school. Offenders who work or go to school in a neighboring State will be required to register in that State, in addition to the State in which the offender resides.

*Release of Information.* Section 2(d) makes conforming changes to the general deletion of references to “designated State law enforcement Agency” in the Wetterling Act allowing for “the State or any agency authorized by the State” to release relevant registration information as permitted by the Act.

*Immunity for Good Faith Conduct.* Section 2(e) extends immunity for good faith conduct to independent contractors (such as computer terminal operators or software providers) acting at the direction of law enforcement. Current law only provides immunity for law enforcement agencies and their personnel, and for other State officials, based on good faith conduct under the Act.

*FBI Registration.* Section 2(f) amends provisions of the Lychner Act redefining the concept of “minimally sufficient.” Specifically, these provisions address an unintended consequence with the Lychner Act which requires direct registration with the FBI of released sex offenders in States that do not have “minimally sufficient” registration programs. Congress enacted the Lychner Act with the expectation that all 50 States had, or would soon have, registration programs for sex offenders that would meet the Act’s definition of “minimally sufficient.” The provision that requires offenders to register directly with the FBI was seen accordingly as a back-stop or fail-safe measure that would actually be used in few, if any States.

However, under the Lychner Act’s definition of “minimally sufficient,” existing State programs generally do not qualify, despite the fact that all 50 States have established registration requirements for released sex offenders. Section 2(b) amends current law con-

<sup>1</sup> States are already required under current law, as interpreted in the Wetterling Act guidelines (62 FR 39009, 39018), to register resident offenders convicted in other States. Offenders who are convicted in one State and move to another State should be required to fully participate in the registration and notification program of that new State of residence under penalty of State or federal law. Provisions in the Wetterling Improvements Act maintain this interpretation.

cerning the definition of “minimally sufficient” to include all programs which require registration for specified categories of released sex offenders, require updating of address information on changes of residence, and provide for verification of address at least annually. Making the definition more flexible will help to realize the objectives of the Wetterling Act and the Lychner Act by encouraging strong State-based registration programs, with direct registration with the FBI serving only as a backstop or fail-safe measure. The FBI will remain responsible for making the registration information collected under State programs available on a nationwide basis through the operation of the national sex offender registry.

*Extension to Establish “Minimally Sufficient” Systems.* Section 2(g) provides, through cross reference to other effective date provisions in the Lychner Act, that States have three years (subject to a possible two-year extension) to establish minimally sufficient registration programs for purposes of the Lychner Act’s direct registration requirements. This will provide adequate time to ensure that the registration programs of the 50 States are “minimally sufficient” under the new changes incorporated by H.R. 1683, and time for D.C. and the larger territories—which are treated as “States” for Lychner, Wetterling purposes—to establish sex offender registration programs. This provides a further safeguard against the duplicative assumption by the FBI of direct registration functions.

*Federal Offenders and Military Personnel.* Section 2(h) provides for registration of federal offenders and military personnel. Current law does not require registration of released federal or military offenders. Subsection (h) adds a new subsection to 18 U.S.C. 4042 which requires the Bureau of Prisons to give notice to State and local law enforcement and sex offender registration agencies concerning the release to their areas of federal sex offenders. For federal sex offenders sentenced to probation, the probation officers responsible for supervision would be required to provide the same notice. Probation officers also would be required to provide notice concerning subsequent changes of address by released federal sex offenders during any period of probation or post-imprisonment supervised release or parole. If these functions are not carried out directly by the probation officers, the Administrative Office of the U.S. Courts would be required to specify some alternative procedure for providing the notice. Both imprisoned offenders and probationers would be informed that they are required to register in the State in which they reside. The procedures and requirements under the new subsection are largely modeled on existing provisions in 18 U.S.C. 4042(b), which generally require notice to State and local law enforcement concerning the release and subsequent movements of federal offenders and drug offenders.

Subsection (h) also deletes notice in the existing notice provisions (18 U.S.C. 4042 (b)(4)) that limits the use of release notices to “law enforcement purposes.” This implements a previous recommendation of the Attorney General to Congress to delete the “law enforcement purposes” restriction, since this restriction could impede legitimate uses of the release information (such as warning potential victims, or employers who should not be hiring violent or drug offenders considering the nature of the employment).

This subsection would also establish a new mandatory condition of probation, supervised release, and parole for federal sex offenders. The condition would require reporting of current address information to the probation officer responsible for supervision, and registering in any state where the offender resides, works, or attends school.

Subsection (h) also directs the Secretary of Defense to establish a comparable system for released military sex offenders.

*Registrants in the Federal Witness Protection Program.* Subsection (i) authorizes the Attorney General to provide appropriate oversight and tracking for protected witnesses who are subject to registration requirements, while protecting the security and confidentiality of the identities of such persons. For example, the Attorney General could provide, in relation to a protected witness, that the U.S. Marshals Service is to carry out some or all of the functions that would normally be carried out by a State registration agency.

#### SEC 3. SENSE OF CONGRESS AND REPORT RELATING TO STALKING LAWS.

Section 3(a) expresses the sense of Congress that States should have in effect laws which make it a crime to stalk any individual, but especially children. Moreover, it is the sense of Congress that these stalking laws should not require physical harm or actual abduction before the stalker can be restrained or punished.

Section 3(b) integrates a provision in the bill for reporting on laws concerning stalking of children with an existing requirement for annual reports to Congress by the Attorney General concerning State anti-stalking laws.

#### SEC. 4. EFFECTIVE DATE

This Section specifies the time for carrying out the bill's reforms. The bill would generally take effect immediately, but the provisions relating to federal and military offenders would take effect after one year, and States would have three years (subject to a possible two-year extension) to implement the bill's Wetterling Act amendments which impose new administrative requirements. The time specified for State compliance with new requirements—three years, with a possible two-year extension based on good faith efforts—is the same provided for compliance with the Wetterling Act as originally enacted (see 42 U.S.C. 14071(f)) and with the Lychner Act amendments to the Wetterling Act (see section 10 of P.L. 104-236).

#### COMMITTEE JURISDICTION

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC, September 11, 1997.*

Hon. FLOYD D. SPENCE,  
*Chairman, Committee on National Security, House of Representatives, Rayburn Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: The Committee on the Judiciary recently marked up H.R. 1683, the "Jacob Wetterling Crimes Against Chil-

dren and Sexually Violent Offenders Registration Improvements Act of 1997." Section 2 of the bill as ordered reported contains provisions concerning the requirement that service members, convicted by court-martial of certain sex offenses, register with appropriate state and local law enforcement authorities. In addition, the bill would define what constitutes a service member's state of residence for the purpose of complying with the reporting requirements established in the bill.

The Committee on the Judiciary acknowledges the jurisdictional claim of the Committee on National Security with respect to these provisions. Nevertheless, I ask that your Committee waive any request for sequential referral of the bill so that the House may consider H.R. 1683 without undue delay. I will be pleased to ensure that your Committee's correspondence with respect to this matter appears in our Committee's report on the bill and is made a part of the record when H.R. 1683 is considered in the House.

Thank you for your cooperation in this matter and I look forward to working with the Committee on National Security when this bill reaches the House floor.

Sincerely,

HENRY J. HYDE,  
*Chairman.*

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON NATIONAL SECURITY,  
*Washington, DC, September 11, 1997.*

Hon. HENRY J. HYDE,  
*Chairman, Committee on the Judiciary, House of Representatives,  
Washington, DC.*

DEAR MR. CHAIRMAN: I write with respect to H.R. 1683, the Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Improvements Act of 1997, which the Committee on the Judiciary marked up recently. Section 2 of the bill contains provisions that would require the registration with federal and state authorities of service members convicted by court-martial of certain sex offenses. Other provisions would make specific determinations about service members' state of residence for the purpose of registering with these authorities. These provisions fall within the legislative jurisdiction of the Committee on National Security pursuant to Rule X of the Rules of the House of Representatives.

In recognition of your committee's desire to bring this legislation expeditiously before the House of Representatives, the Committee on National Security will not seek to have the bill sequentially referred as a result of the inclusion of the aforementioned provisions. This action in no way alters the Committee on National Security's jurisdiction over the provisions in question, and the committee will seek the appointment of conferees in the event of a House-Senate conference on H.R. 1683.

I would appreciate your including this letter as a part of your committee's report on H.R. 1683 and as part of the record during consideration of this bill by the House. Thank you for your attention in this matter.

With warm personal regards, I am  
Sincerely,

FLOYD D. SPENCE,  
*Chairman.*

AGENCY VIEWS

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF LEGISLATIVE AFFAIRS  
*Washington, DC, June 12, 1997.*

Hon. BILL MCCOLLUM,  
*Chairman, Subcommittee on Crime, Committee on the Judiciary,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: This letter presents the preliminary views of the Department of Justice concerning H.R. 1683, the “Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Improvements Act of 1997.” The Department of Justice strongly supports strengthening sex offender registration and community notification laws. We would also recommend certain changes to strengthen some of the proposed reforms, as described below, and would like to continue to work with you and other members of the Committee to ensure the development of comprehensive sex offender registration and notification systems.

H.R. 1683 is consistent with the Wetterling Act—Megan’s Law—Lychner Act system generally, and the bill’s specific proposals are best understood in the context of the complex basic requirements and objectives of the existing law.<sup>1</sup> As you know, the Administration strongly supported enactment of these laws as an essential tool to protect children and families, and to give communities and neighborhoods peace of mind that law enforcement is keeping track of who the sex offenders are and where they live. Since passage of these laws, the Department has worked with the states to facilitate the development of a nationwide system of sex offender registration and community notification programs. Most recently, the Department published proposed revised guidelines to implement Megan’s Law and clarify other issues concerning Wetterling Act compliance (65 FR 16180).

*Sections 2 (a) and (b)—Allowing “local input” of registration information*

The amendments to the Wetterling Act proposed in section 2 (a)(1) and (b)(4) would explicitly authorize state registration programs that involve submission of registration information to the

<sup>1</sup>See, i.e. The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (hereafter, the “Wetterling Act”), Megan’s Law, and the Pam Lychner Sexual Offender Tracking and Identification Act (hereafter, the “Lychner Act”). The Wetterling Act, which was enacted by section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322, 108 Stat. 1796, 2038), encourages states to establish effective sex offender registration systems. Megan’s Law is a separate enactment (Pub. L. 104–145, 110 Stat. 1345) which amended the provisions of the Wetterling Act relating to release of registration information. The Lychner Act is also a separate enactment (Pub. L. 104–236, 110 Stat. 3093) which makes further amendments to the Wetterling Act, and also, contains provisions to ensure the nationwide availability of sex offender registration information to law enforcement. The collective result of these enactments is codified in 42 U.S.C. 14071–72. The Department of Justice issued guidelines for state compliance with the original version of the Wetterling Act (61 FR 15110), and has more recently published proposed revised guidelines to implement Megan’s Law and clarify other issues concerning Wetterling Act compliance (65 FR 16180).

state registration agency through an intermediary, rather than directly. This approach is consistent with the Department's position as articulated in the proposed revision of the Wetterling Act guidelines, as published for comment.

*Section 2(a)(2)—Sexually violent predator certification*

Section 2(a)(2) amends provisions of the Wetterling Act concerning the certification of certain offenders as “sexually violent predators.” It preserves the general Wetterling Act system for determining who meets the definition of a “sexually violent predator,” but allows the Attorney General to approve alternative procedures for making recommendations to the sentencing court concerning the “sexually violent predator” determination.

Alternative approaches may be equally effective in realizing the Act's objective of protecting the public from particularly dangerous offenders. For example, while input from the perspective of law enforcement and victims is important, this input can be provided directly by the prosecutor and the victim at the sentencing hearing, as opposed to being merged in a joint report with experts conducting a psychological assessment of the offender.

*Section 2(b)(1)—Officials responsible for initial registration*

Section 2(b)(1) amends the language of the Wetterling Act concerning the officials responsible for advising offenders of their registration obligations at the time of release, and for obtaining and initially submitting the registration information. The Act currently provides that these functions are to be carried out by “a State prison officer,” or by the court in the case of a person released on probation. The amendments provide that these functions would be carried out by “a State prison officer, a designated State agency, the court, or other responsible official.” This change is consistent with the Department's proposed Wetterling Act guidelines revision as published for comment.

*Section 2(b)(2)—General procedures for initial submission of registration information*

Section 2(b)(2) amends a provision of the Wetterling Act concerning submission and transmission of initial registration information. The changes, in part, are conforming changes to the amendments discussed above which clarify that “local input” approaches are consistent with the Act. The amended language would also be more flexible than the current language concerning the timing for submission of the information, while maintaining requirements that information be promptly (1) made available to local law enforcement where the registrant resides, (2) entered into the appropriate state records or data system, and (3) transmitted to the FBI.

We recommend a modification concerning transmission of data to the FBI. The amendments in section 2(b)(2) follow the original version of the Wetterling Act, which required transmission of conviction data and fingerprints—but not address information for registered offenders—to the FBI. Under the Lychner Act amendments to the Wetterling Act, however, registration information (i.e., primarily address information) must also be transmitted to the FBI for inclusion in the national sex offender registry.

We agree that physical transmission by the states of address information to the FBI is unnecessary, because this information can be made available to law enforcement on a nationwide basis, without physical transmission to the FBI, through the computer-linkage of state registries that the FBI has established as the interim national sex offender registry. It is important, however, to ensure that registration information from all the states will become available through the national registry, and provision of conviction data and fingerprints alone would not achieve this objective. We accordingly recommend including in the bill a provision that states, as a condition of Wetterling Act compliance, must participate in the national sex offender registry in conformity with guidelines issued by the Attorney General. This would ensure that the objectives of the national registry and the Lychner Act reforms are realized, without burdening the states with unnecessary data transmission.

*Section 2(b)(3)—Periodic address verification*

Section 2(b)(3) amends the provisions of the Wetterling Act concerning periodic address verification for registrants.<sup>2</sup> Currently, the Act requires that verification be accomplished by mailing (at least annually) to the registrant at the registered address a nonforwardable verification form, which the registrant must sign and return within 10 days. The amendments in section 2(b)(3) maintain the requirement of address verification at least annually, but afford states the option of adopting other verification procedures.

We agree that the verification-form procedure is not necessarily the only effective or acceptable approach. For example, some existing state programs require registrants to appear in person periodically at local law enforcement agencies to verify address (and for such purposes as photographing and fingerprinting), or assign caseworkers to verify periodically that registrants still reside at the registered address. These alternative procedures can be as effective as the particular approach specified in the Act in verifying registrants' location, impressing on registrants that they are under observation by the authorities, and making law enforcement agencies aware of the presence and identity of registered sex offenders in their areas.

*Section 2(b)(4)–(5)—Change of address procedures*

Section 2(b)(4)–(5) amends provisions of the Wetterling Act concerning reporting of subsequent changes of address by registrants. In part, these are conforming changes to the amendments discussed above which clarify that “local input” approaches are consistent with the Act. The amended language would also be more flexible than the current language concerning the timing for reporting change of address information, but it maintains requirements that (1) changes of address must be reported by registrants in the manner provided by state law; (2) the updated address information must be provided promptly to a local law enforcement agency

<sup>2</sup>The portion of the amendatory language in section 2(b)(3)(A) does not conform to the language being amended and requires a technical correction. In essence, the amendatory language should be a complete substitute for the current lead-in language in 42 U.S.C. 14071(b)(3)(A), rather than insert which preserves part of the current lead-in language.



where the registrant will reside; and (3) the information must be entered into the appropriate state records or data system. It further maintains requirements that: (1) registrants who move to another state must notify the responsible registration agency in the state they are leaving and comply registration requirements in the new state of residence; and (2) the state the person is leaving must promptly notify the responsible registration agency in the new state.

We would recommend some refinements to strengthen these provisions, for example, to ensure that updated address information will be promptly entered into the appropriate state records or data system, as well as being promptly to local law enforcement agencies. We would be pleased to assist in improving the formulation of this section.

*Section 2(b)(6)—Interstate provisions*

Section 2(b)(6), in part, would require released sex offenders to comply with registration laws in states where they work or go to school. Without more, these provisions would be ineffective, because state law generally do not require workers of students in the state (as opposed to residents) to register. The intent of the provision appears to be to require states to modify their registration laws so that non-resident workers and students in the state are also required to register, in order to improve both intrastate and interstate communication, and notification. We generally support this objective, and would recommend an alternative formulation.

Section 2(b)(6) also states requirements that registrants on probation, parole, or other supervised release who move to other states must register in accordance with the laws of their new states of residence. It is unclear that what this adds to the Act's provisions for registration by all covered sex offenders—not just those on probation, parole or supervised release—when they move interstate. We would be pleased to work with Congress to address this and other drafting issues presented by Section 2(b)(6).

*Section 2(c)—Release of registration information*

Section 2(c) contains amendments to the Wetterling Act's information disclosure provisions.

The amendment proposed in section 2(c)(1) is a conforming change to the general proposed deletion of references to "designated State law enforcement agency" in the Act. We support this change. The provision to which this pertains, following the Megan's Law amendments, currently appears in 42 U.S.C. 14071(d)(2).

The amendment proposed in section 2(c)(2), however, fails to take into account a substantive change in the Wetterling Act's information disclosure provisions which was enacted by Megan's Law. The amendment affects a general requirement under the original version of the Wetterling Act that would have required registration information to be treated as "private data," to be disclosed "only for criminal justice purposes." However, Megan's Law deleted the general "private data" restriction, and substituted a provision (current 42 U.S.C. 14071(d)(1)) that the information collected under a state registration program may be disclosed for any purpose permitted

under the laws of the state. This change was made on the basis of a recommendation of the Department of Justice:

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

We accordingly recommended deletion of the provisions that information collected under State registration systems is generally to be treated as private data.

H.R. Rep. No. 555, 104th Cong., 2d Sess. 6 (1996) (committee report for Megan's Law) (reproducing Department of Justice views letter).

*Section 2(d)—Extension of immunity for good faith conduct*

The Wetterling Act currently provides immunity for law enforcement agencies and their personnel, and for other state officials, based on good faith conduct, under the Act. Section 2(d) would extend this immunity to independent contractors acting at the direction of law enforcement agencies. We support this extension.

*Section 2(e)—Federal and military offenders*

Section 2(e) contains amendments which are intended to extend registration to sex offenders convicted in federal or military courts.<sup>3</sup> The amendments provide principally that such offenders must register in accordance with the laws of the states in which they reside, and that federal and military authorities must ensure that these offenders are notified of the registration obligation.

We support the objectives of these provisions. The presence in a state of a released sex offender whose whereabouts are unknown to the authorities poses the same potential danger to the public, regardless of whether the offender was convicted in that state, in another state, or in a federal or military court. While the Department's guidelines for the Wetterling Act do encourage states to require registration for such offenders, the Wetterling Act currently does not require registration of released federal or military offenders.

To correct this problem it is not adequate to state that sex offenders convicted in federal or military proceedings must register in accordance with state law. Without more, there is no assurance that states will require registration by released federal and military sex offenders under their laws—at the present time, some states do, but most do not—and there is no way for state registration authorities to know if such released offenders enter their jurisdictions but fail to register.

<sup>3</sup>In this section and possibly elsewhere, the bill refers to "release from prison" as triggering certain obligations. See, e.g., section 2(e)(3)(I). For purposes of clarity, we recommend substituting the word "custody" for "prison" throughout the bill in order to ensure coverage of correctional facilities other than actual prisons.

We should recommend the following elements for a comprehensive and adequate set of amendments to ensure registration by released federal and military sex offenders: (1) provisions directing federal and military correctional authorities to notify state registration agencies concerning the release of such offenders to their jurisdictions; (2) provisions directing federal and military correctional authorities to advise such offenders concerning registration obligations when they are released; (3) comparable provisions ensuring notice to the states and notice concerning registration obligations in relation to federal sex offenders released on probation; (4) amendments making compliance with state registration laws mandatory conditions of probation and supervised release for released federal sex offenders; and (5) an amendment to the Wetterling Act requiring states, as a condition of compliance, to mandate registration for released federal and military sex offenders who move into their jurisdictions. We would be pleased to work with you to develop a comprehensive approach to federal and military sex offender registration as outlined above.

### *Section 3—Stalking laws*

Section 3 expresses the sense of Congress that state stalking laws should not require physical harm as an element in relation to victims below the age of 16. A related provision in section 2(b)(6) would require, through an amendment to the Wetterling Act, that the states submit reports to the Attorney General setting forth existing or proposed laws regarding stalking crimes against individuals 16 years of age or younger.

We have no objection to the sense of Congress resolution in section 3, but note that State stalking laws generally do not require physical harm to the victim as an element, regardless of the age of the victim. If there is a particular state or states whose laws are inadequate in this respect, then the problem should be corrected in relation to all victims, not just those below the age of 16.

Based upon our initial review, we note that many of the provisions in H.R. 1683 would afford states greater flexibility in achieving the Wetterling Act's objectives. It should be made clear, however, that updated address information must be promptly entered into state records systems, that states must participate in the national sex offender registry as a condition of compliance, and that states must require registration for federal and military sex offenders who move into their areas as a condition of compliance. Additional amendments and provisions to ensure effective registration of federal and military sex offenders should also be incorporated. The deletion by Megan's Law of the "private data" restriction for registration information should not be undone. The special provisions in the bill relating to offenders who work or go to school in other states, and offenders released on probation or parole who move to other states, are problematic in some respects. We recommend that further consideration be given to the substantive and formulation issues they raise, as indicated above.

We would note that these are our preliminary comments on H.R. 1683. In view of the complexity of interrelated provisions, we hope to continue working with you to assure the fulfillment of our mu-

tual public safety goal—strong, efficient, and fully integrated sex offender registration and notification systems.

Finally, a number of provisions of H.R. 1683 would result in substantial new requirements for the states, but the bill does not generally provide any additional time to come into compliance with these requirements. We would note for the Committee that states may have difficulty coming into compliance with these new requirements by the current statutory deadline.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ANDREW FOIS,  
*Assistant Attorney General*

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CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

**VIOLENT CRIME CONTROL AND LAW ENFORCEMENT  
ACT OF 1994**

\* \* \* \* \*

**TITLE XVII—CRIMES AGAINST  
CHILDREN**

**Subtitle A—Jacob Wetterling Crimes  
Against Children and Sexually Violent  
Offender Registration Act**

**SEC. 170101. ESTABLISHMENT OF 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); 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).

【(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, victim rights advocates, and representatives from law enforcement agencies.】

(2) DETERMINATION OF SEXUALLY VIOLENT PREDATOR STATUS; WAIVER; ALTERNATIVE MEASURES.—

(A) IN GENERAL.—A determination of whether a person is a sexually violent predator for purposes of this section shall be made by a court after considering the recommendation of a board composed of experts in the behavior and treatment of sex offenders, victims’ rights advocates, and representatives of law enforcement agencies.

(B) WAIVER.—The Attorney General may waive the requirements of subparagraph (A) if the Attorney General determines that the State has established alternative procedures or legal standards for designating a person as a sexually violent predator.

(C) ALTERNATIVE MEASURES.—The Attorney General may also approve alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in this section regarding sexually violent predators.

(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—】 in a range of offenses specified by State law which is comparable to or which exceeds the following range of offenses:

(i) \* \* \*

\* \* \* \* \*

(B) The term “sexually violent offense” means any criminal offense 【that consists of】 in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by 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 aggravated sexual abuse or sexual abuse (as described in such sections of title 18, United States Code, or as described in the State criminal code).

\* \* \* \* \*

(F) The term “employed, carries on a vocation” includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of governmental or educational benefit; and

(G) The term “student” means a person who is enrolled on a full-time or part-time basis, in any public or private

*educational institution, including any secondary school, trade, or professional institution, or institution of higher education.*

(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.—]**

**(1) DUTIES OF RESPONSIBLE OFFICIALS.—**

(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]** *the court, or another responsible officer or official*, 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]** *report the change of address as provided by State law;*

(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]** *shall report the change of address as provided by State law and comply with any registration requirement in the new State of residence, and inform the person that the person must also register in a State where the person is employed, carries on a vocation, or is a student;*

\* \* \* \* \*

(B) In addition to the requirements of subparagraph (A), for a person required to register under subparagraph (B) of subsection (a)(1), the State prison officer **[or the court]**, *the court, or another responsible officer or official*, 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 all information described in paragraph

(1) to the Federal Bureau of Investigation for inclusion in the FBI database described in section 170102.】

(2) *TRANSFER OF INFORMATION TO STATE AND FBI; PARTICIPATION IN NATIONAL SEX OFFENDER REGISTRY.*—

(A) *STATE REPORTING.*—*State procedures shall ensure that the registration information is promptly made available to a law enforcement agency having jurisdiction where the person expects to reside and entered into the appropriate State records or data system. State procedures shall also ensure that conviction data and fingerprints for persons required to register are promptly transmitted to the Federal Bureau of Investigation.*

(B) *NATIONAL REPORTING.*—*A State shall participate in the national database established under section 170102(b) in accordance with guidelines issued by the Attorney General, including transmission of current address information and other information on registrants to the extent provided by the guidelines.*

(3) *VERIFICATION.*—

(A) For a person required to register under subparagraph (A) of subsection (a)(1), 【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. The person shall include with the verification form, fingerprints and a photograph of that person.

【(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.】 *State procedures shall provide for verification of address at least annually.*

(B) The provisions of subparagraph (A) shall be applied to a person required to register under subparagraph (B) of subsection (a)(1), 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 en-*

forcement 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] *section shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate State records or data system.*

(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] *and who moves to another State, shall report the change of address to the responsible agency in the State the person is leaving, and shall comply with any registration requirement in the new State of residence. The procedures of the State the person is leaving shall ensure that notice is provided promptly to an agency responsible for registration in the new State, if that State requires registration.*

\* \* \* \* \*

(7) REGISTRATION OF OUT-OF-STATE OFFENDERS, FEDERAL OFFENDERS, PERSONS SENTENCED BY COURTS MARTIAL, AND OFFENDERS CROSSING STATE BORDERS.—*As provided in guidelines issued by the Attorney General, each State shall ensure that procedures are in place to accept registration information from—*

(A) *persons who were convicted in another State, convicted of a Federal offense, or sentenced by a court martial; and*

(B) *nonresident offenders who have crossed into another State in order to work or attend school.*

(c) REGISTRATION OF OFFENDER CROSSING STATE BORDER.—*Any person who is required under this section to register in the State in which such person resides shall also register in any State in which the person is employed, carries on a vocation, or is a student.*

[(c)] (d) 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)] (e) RELEASE OF INFORMATION.—

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

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



[(e)] (f) IMMUNITY FOR GOOD FAITH CONDUCT.—Law enforcement agencies, employees of law enforcement agencies[, and State officials] and independent contractors acting at the direction of such agencies, and State officials shall be immune from liability for good faith conduct under this section.

[(f)] (g) COMPLIANCE.—

(1) \* \* \*

\* \* \* \* \*

[(g)] (h) FINGERPRINTS.—Each requirement to register under this section shall be deemed to also require the submission of a set of fingerprints of the person required to register, obtained in accordance with regulations prescribed by the Attorney General under section 170102(h).

**SEC. 170102. FBI DATABASE.**

(a) DEFINITIONS.—For purposes of this section—

(1) \* \* \*

(2) the terms “criminal offense against a victim who is a minor”, “sexually violent offense”, “sexually violent predator”, “mental abnormality”, [and “predatory”] “predatory”, “employed, or carries on a vocation”, and “student” have the same meanings as in section 170101(a)(3); and

(3) the term “minimally sufficient sexual offender registration program” means any State sexual offender registration program that—

(A) requires the registration of each offender who is convicted of an offense *in a range of offenses specified by State law which is comparable to or exceeds that* described in subparagraph (A) or (B) of section 170101(a)(1);

[(B) requires that all information gathered under such program be transmitted to the FBI in accordance with subsection (g) of this section;

[(C) meets the requirements for verification under section 170101(b)(3); and]

*(B) participates in the national database established under subsection (b) of this section in conformity with guidelines issued by the Attorney General;*

*(C) provides for verification of address at least annually;*

\* \* \* \* \*

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**SECTION 10 OF THE PAM LYCHNER SEXUAL OFFENDER TRACKING AND IDENTIFICATION ACT OF 1996**

**SEC. 10. EFFECTIVE DATE.**

(a) \* \* \*

\* \* \* \* \*

(d) *EFFECTIVE DATE.*—States shall be allowed the time specified in subsection (b) to establish minimally sufficient sexual offender registration programs for purposes of the amendments made by section 2. Subsections (c) and (k) of section 170102 of the Violent Crime Control and Law Enforcement Act of 1994, and any requirement to issue related regulations, shall take effect at the conclusion of the

*time provided under this subsection for the establishment of minimally sufficient sexual offender registration programs.*

**TITLE 18, UNITED STATE CODE**

\* \* \* \* \*

**PART II—CRIMINAL PROCEDURE**

\* \* \* \* \*

**CHAPTER 224—PROTECTION OF WITNESSES**

\* \* \* \* \*

**§ 3521. Witness relocation and protection**

(a) \* \* \*

(b)(1) In connection with the protection under this chapter of a witness, a potential witness, or an immediate family member or close associate of a witness or potential witness, the Attorney General shall take such action as the Attorney General determines to be necessary to protect the person involved from bodily injury and otherwise to assure the health, safety, and welfare of that person, including the psychological well-being and social adjustment of that person, for as long as, in the judgment of the Attorney General, the danger to that person exists. The Attorney General may, by regulation—

(A) \* \* \*

\* \* \* \* \*

(G) disclose or refuse to disclose the identity or location of the person relocated or protected, or any other matter concerning the person or the program after weighing the danger such a disclosure would pose to the person, the detriment it would cause to the general effectiveness of the program, and the benefit it would afford to the public or to the person seeking the disclosure, except that the Attorney General shall, upon the request of State or local law enforcement officials or pursuant to a court order, without undue delay, disclose to such officials the identity, location, criminal records, and fingerprints relating to the person relocated or protected when the Attorney General knows or the request indicates that the person is under investigation for or has been arrested for or charged with an offense that is punishable by more than one year in prison or that is a crime of violence; **[and]**

*(H) protect the confidentiality of the identity and location of persons subject to registration requirements as convicted offenders under Federal or State law, including prescribing alternative procedures to those otherwise provided by Federal or State law for registration and tracking of such persons; and*

**[(H)]** *(I) exempt procurement for services, materials, and supplies, and the renovation and construction of safe sites within existing buildings from other provisions of law as may be required to maintain the security of protective witnesses and the integrity of the Witness Security Program.*

The Attorney General shall establish an accurate, efficient, and effective system of records concerning the criminal history of persons provided protection under this chapter in order to provide the information described in subparagraph (G).

\* \* \* \* \*

**CHAPTER 227—SENTENCES**

\* \* \* \* \*

**SUBCHAPTER B—PROBATION**

\* \* \* \* \*

**§ 3563. Conditions of probation**

(a) MANDATORY CONDITIONS.—The court shall provide, as an explicit condition of a sentence of probation—

(1) \* \* \*

\* \* \* \* \*

(6) that the defendant—

(A) make restitution in accordance with sections 2248, 2259, 2264, 2327, 3663, 3663A, and 3664; and

(B) pay the assessment imposed in accordance with section 3013; **[and]**

(7) that the defendant will notify the court of any material change in the defendant’s economic circumstances that might affect the defendant’s ability to pay restitution, fines, or special assessments**].** The results of a drug test administered in accordance with paragraph (4) shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A defendant who tests positive may be detained pending verification of a positive drug test result. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual’s current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3565(b), when considering any action against a defendant who fails a drug test administered in accordance with paragraph (4).**]**; and

(8) *for a person described in section 4042(c)(4), that the person report the address where the person will reside and any subsequent change of residence to the probation officer responsible for supervision, and that the person register in any State where the person resides, is employed, carries on a vocation, or is a student (as such terms are defined under section*

*170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994).*

If the court has imposed and ordered execution of a fine and placed the defendant on probation, payment of the fine or adherence to the court-established installment schedule shall be a condition of the probation.

\* \* \* \* \*

*(e) RESULTS OF DRUG TESTING.—The results of a drug test administered in accordance with subsection (a)(5) shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A defendant who tests positive may be detained pending verification of a positive drug test result. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3565(b), when considering any action against a defendant who fails a drug test administered in accordance with subsection (a)(5).*

\* \* \* \* \*

SUBCHAPTER D—IMPRISONMENT

\* \* \* \* \*

**§ 3583. Inclusion of a term of supervised release after imprisonment**

(a) \* \* \*

\* \* \* \* \*

*(d) CONDITIONS OF SUPERVISED RELEASE.—The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision and that the defendant not unlawfully possess a controlled substance. The court shall order as an explicit condition of supervised release for a defendant convicted for the first time of a domestic violence crime as defined in section 3561(b) that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant. The court shall order, as an explicit condition of supervised release for a person described in section 4042(c)(4), that the person report the address where the person will reside and any subsequent change of residence to the probation officer responsible for supervision, and that the person register in any State where the person resides, is employed, carries on a vocation, or is a student (as such terms are de-*

*fined under section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994).* The court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of release on supervised release and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the court as provided in section 3563(a)(4). The results of a drug test administered in accordance with the preceding subsection shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3583(g) when considering any action against a defendant who fails a drug test. The court may order, as a further condition of supervised release, to the extent that such condition—

(1) \* \* \*

\* \* \* \* \*

**PART III—PRISONS AND PRISONERS**

\* \* \* \* \*

**CHAPTER 303—BUREAU OF PRISONS**

\* \* \* \* \*

**§ 4042. Duties of Bureau of Prisons**

(a) **IN GENERAL.**—The Bureau of Prisons, under the direction of the Attorney General, shall—

(1) \* \* \*

\* \* \* \* \*

(5) provide notice of release of prisoners in accordance with **subsection (b)** *subsections (b) and (c).*

(b) **NOTICE OF RELEASE OF PRISONERS.**—(1) \* \* \*

\* \* \* \* \*

**[(4) The notice provided under this section shall be used solely for law enforcement purposes.]**

(c) **NOTICE OF SEX OFFENDER RELEASE.**—(1) *In the case of a person described in paragraph (4) who is released from prison or sentenced to probation, notice shall be provided to—*

(A) *the chief law enforcement officer of the State and of the local jurisdiction in which the person will reside; and*

(B) a State or local agency responsible for the receipt or maintenance of sex offender registration information in the State or local jurisdiction in which the person will reside.

The notice requirements under this subsection do not apply in relation to a person being protected under chapter 224.

(2) Notice provided under paragraph (1) shall include the information described in subsection (b)(2), the place where the person will reside, and the information that the person shall be subject to a registration requirement as a sex offender. For a person who is released from the custody of the Bureau of Prisons whose expected place of residence following release is known to the Bureau of Prisons, notice shall be provided at least 5 days prior to release by the Director of the Bureau of Prisons. For a person who is sentenced to probation, notice shall be provided promptly by the probation officer responsible for the supervision of the person, or in a manner specified by the Director of the Administrative Office of the United States Courts. Notice concerning a subsequent change of residence by a person described in paragraph (4) during any period of probation, supervised release, or parole shall also be provided to the agencies and officers specified in paragraph (1) by the probation officer responsible for the supervision of the person, or in a manner specified by the Director of the Administrative Office of the United States Courts.

(3) The Director of the Bureau of Prisons shall inform a person described in paragraph (4) who is released from prison that the person shall be subject to a registration requirement as a sex offender in any State in which the person resides, is employed, carries on a vocation, or is a student (as such terms are defined for purposes of section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994), and the same information shall be provided to a person described in paragraph (4) who is sentenced to probation by the probation officer responsible for supervision of the person or in a manner specified by the Director of the Administrative Office of the United States Courts.

(4) A person is described in this paragraph if the person was convicted of any of the following offenses (including such an offense prosecuted pursuant to section 1152 or 1153):

- (A) An offense under section 1201 involving a minor victim.
- (B) An offense under chapter 109A.
- (C) An offense under chapter 110.
- (D) An offense under chapter 117.
- (E) Any other offense designated by the Attorney General as a sexual offense for purposes of this subsection.

(5) The United States and its agencies, officers, and employees shall be immune from liability based on good faith conduct in carrying out this subsection and subsection (b).

[(c)] (d) APPLICATION OF SECTION.—This section shall not apply to military or naval penal or correctional institutions or the persons confined therein.

\* \* \* \* \*

CHAPTER 311—REPEALED<sup>1</sup>

\* \* \* \* \*

**§ 4209. Conditions of parole**

(a) In every case, the Commission shall impose as conditions of parole that the parolee not commit another Federal, State, or local crime, that the parolee not possess illegal controlled substances, and, if a fine was imposed, that the parolee make a diligent effort to pay the fine in accordance with the judgment. *In every case, the Commission shall impose as a condition of parole for a person described in section 4042(c)(4), that the parolee report the address where the parolee will reside and any subsequent change of residence to the probation officer responsible for supervision, and that the parolee register in any State where the parolee resides, is employed, carries on a vocation, or is a student (as such terms are defined under section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994).* In every case, the Commission shall also impose as a condition of parole that the parolee pass a drug test prior to release and refrain from any unlawful use of a controlled substance and submit to at least 2 periodic drug tests (as determined by the Commission) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the Commission for any individual parolee if it determines that there is good cause for doing so. The results of a drug test administered in accordance with the provisions of the preceding sentence shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The Commission shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 4214(f) when considering any action against a defendant who fails a drug test. The Commission may impose or modify other conditions of parole to the extent that such conditions are reasonably related to—

- (1) the nature and circumstances of the offense; and
- (2) the history and characteristics of the parolee;

and may provide for such supervision and other limitations as are reasonable to protect the public welfare.

\* \* \* \* \*

<sup>1</sup>This chapter is repealed by section 218(a)(5) of the Sentencing Reform Act of 1984 (98 Stat. 2027). Section 235(b)(1)(A) of such Act (as amended by section 316 of Public Law 101-650 and section 2(a) of Public Law 104-232), provides that this chapter “shall remain in effect for fifteen years after the effective as to an individual convicted of an offense or adjudicated to be a juvenile delinquent before the effective date and as to a term of imprisonment during the period described in subsection (a)(1)(A)”.

## DISSENTING VIEWS

In 1994, Congress enacted the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (the "Act"),<sup>1</sup> which encourages states to operate sex offender registration programs. States which operate such programs will receive certain criminal justice grant funds; states which do not operate such programs are denied access to these funds. The Act specifies in considerable detail precisely what a state must do to qualify its program as an "approved state registration program."<sup>2</sup> For example: state prison officials and courts must inform convicts of certain facts and obtain fingerprints and photographs from inmates upon their release; state prison officials and courts must transfer certain information to federal authorities and to other states; states must enact legislation requiring individuals convicted of certain offenses to register with law enforcement officials; and states must impose penalties on individuals who fail to register.

Administering the Act has proved to be quite complex, and states have encountered numerous difficulties and questions in their efforts to implement registration programs. As we understand it, H.R. 1683 is intended to clarify certain matters under the Act, and to impose certain additional requirements on state registration programs that were omitted in the original Act.

Some of the undersigned support the Act; others of the undersigned oppose it. Some of the undersigned believe the modifications sought to be effected by H.R. 1683 are worthwhile; others believe they are unnecessary extensions of an unwise statute.

All of us agree, however, that H.R. 1683 is seriously deficient in that it fails to address the danger of unjust application of sex offender registration laws, a danger which has become apparent in the three years since the Act became law. Specifically, the bill does nothing to prevent states from forcing people who have been convicted of consensual adult sodomy or similar offenses to register as sex offenders. This is a glaring omission, and we believe it must be corrected.

The Act was designed to protect the community, especially young children, from violence at the hands of recidivist sex offenders. The registration requirements were aimed at those with a history of, and therefore a presumed propensity for, forcible victimization of others.

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<sup>1</sup> Violent Crime Control and Law Enforcement Act of 1994, Pub. Law 103-322, Sept., 13, 1994, at Section 170101, codified at 42 U.S.C. section 14071.

<sup>2</sup> Id. at section 170101(b).



However, at least four states—Kansas,<sup>3</sup> Louisiana,<sup>4</sup> Mississippi<sup>5</sup> and South Carolina<sup>6</sup>—have laws on the books requiring people who have been convicted of offenses designated variously as “sodomy,” “unnatural intercourse” and “buggery” to register as sex offenders. The Act was never intended to have that result. There is no reason whatever to think that individuals convicted under these so-called “offenses” (a category comprised primarily of gay men and lesbians, but which also includes some heterosexual individuals) pose any danger to the community. These so-called “crimes” involve no force or threat of force, nor do they involve adults having sex with children (that would be covered by more serious charges, and we do not object here to the inclusion of such crimes under this statute). The Act was never intended to result in people convicted of these “offenses” being required to register as sex offenders. Indeed, these “offenses” should not be in the criminal code at all.<sup>7</sup> They certainly have nothing to do with genuine predatory offenses such as rape and child molestation.

We note that some individuals who have been convicted under sodomy statutes are heterosexual individuals.<sup>8</sup> It is clear, however, that historically these statutes have been used to persecute gay men and lesbians. It is bad enough that individuals have been convicted under homophobic sodomy statutes. It is unconscionable to victimize these individuals further by forcing them to register with the police as “sex offenders” for the rest of their lives.

As a result of the Act, every state now has sex offender registration laws. We should make sure that these laws do not discriminate against gay men and lesbians. States that require people with sodomy convictions to register as sex offenders are lumping gay men and lesbians who are innocent of any genuinely wrongful activity together with rapists and child molesters.

At the Judiciary Committee meeting to mark up H.R. 1683, Rep. Schumer offered an amendment to address this problem. Under the amendment, states that require people convicted of consensual adult sodomy to register as sex offenders would be disqualified from receiving funds under the Act. This amendment was defeated. We supported the amendment, and believe that H.R. 1683 will be seriously flawed unless the amendment is added to the bill.

Committee members opposing the amendment objected to the amendment on the ground that it would inject the federal government into a decision properly made by the states. We find this argument specious.

<sup>3</sup>K.S.A. Section 22-4902(a)(4) (requiring persons convicted of sodomy to register as sex offenders); K.S.A. Section 21-3505 (defining sodomy).

<sup>4</sup>La. R.S. Section 542.E (requiring persons convicted of certain offenses to register as sex offenders); *id.* at 14:89 (defining sodomy).

<sup>5</sup>Miss. Code Ann. Section 45-33-1(4)(d) (requiring persons convicted of unnatural intercourse to register as sex offenders); *id.* at 97-29-59 (defining unnatural intercourse).

<sup>6</sup>S.C. Code Ann. Section 23-3-430(C)(10) (requiring persons convicted of buggery to register as sex offenders); *id.* at 16-15-120 (defining buggery).

<sup>7</sup>We note that state sodomy laws are archaic. Many of the states which at one time had such laws have repealed them, and in other states the laws have been declared invalid or unenforceable under state constitutions. It is our understanding that in the states which do continue to enforce such laws, prosecutions are now rare. However, in earlier decades prosecutions were much more frequent, with the result that there are a large number of individuals with decades-old convictions, who may be subject to registration requirements.

<sup>8</sup>The Louisiana, Mississippi and South Carolina statutes apply to heterosexual sodomy as well as homosexual activity. The Kansas statute is limited to same-sex acts.

The Act already imposes a multitude of requirements on states. The Act contains four full pages of dense statutory text telling states how their sex offender registration programs must operate. The Act further directs the Attorney General to issue guidelines spelling out in even greater detail exactly what the states must do to qualify for funding—these guidelines are \_\_\_ pages long. The amendment we supported would simply have added an additional requirement to these pages and pages of requirement. It is inconsistent to support the Act—as those who opposed the Schumer amendment do—yet to oppose the amendment on federalism grounds.

#### COMMITTEE ON THE JUDICIARY

(DEMOCRATIC MEMBERS)

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