IN HONOR OF JOHN T. DAUGHERTY

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, December 15, 2000

Mr. HOYER. Mr. Speaker, I rise today in honor of John T. Daugherty, a distinguished and extraordinary member of the Southern Maryland community and a personal friend for many years. His contributions to his community of Lexington Park and the Southern Maryland area will continue to pay dividends and be fondly remembered for decades to come. Mr. John T. Daugherty was best known as Jack throughout Southern Maryland. He was born January 18, 1919 in Bath County, Kentucky. He went on to attend school at the University of North Carolina, Chapel Hill; Center College in Danville, Kentucky; and Morehead State Teachers College. He later was trained to fly Navy airplanes in Pensacola, Florida. He joined the Marine Corps and saw service in the South Pacific during World War II, where his courageous prowess earned him the Distinguished Flying Cross for a bombing raid on Rabaul Harbor. He went on to become a pioneer and product of the Patuxent River Naval Air Station Test Pilot School even before the first official graduating class was formed. After leaving active duty, he continued to proudly serve his country as a Lieutenant Colonel in the Marine Corps Reserves. Jack Daugherty remained in St. Mary's County to began life as a civilian and his entrepreneurial instincts led him to create many small businesses in Southern Maryland. His early business pursuits were not based on personal gain, rather, he created many new ventures to meet the needs of a fledgling and fast growing upstart Navy town. He is perhaps best known for founding Citizen's Bank, later known as Maryland Bank and Trust. His efforts to bring desperately needed capital resources to the Lexington Park community were critical in building a town to support the growing Navy base at Patuxent. Jack Daugherty became president of this bank and continued to run the local community bank for 35 years. He used the bank to literally help build a town that today is home to one of America's largest and most technologically advanced military bases. His unconventional loan practices enabled hundreds of entrepreneurs to go into business. Today, many small business owners, including a large number of women and minority owned businesses, will tell you how Mr. Daugherty helped them get started in business. Typically, they will tell you, their loans were approved without using any collateral and written on the back of an envelope.

Indicative of Mr. Daugherty's great sense of community spirit and among his greatest contributions to the community, was an early venture to create a local radio station for St. Mary's County. Recognizing the need to create a sense of community, he began and operated the WPTX AM Radio station in Lexington Park, where he and other local business owners took turns announcing local news events, weather, and other items of local interest. Mr. Daugherty himself was an announcer on the station, covering local news and political events. That station has continually served the local community and today is operated as 97.7 WMDM–FM under the ownership of Mr. Ron Walton. Jack Daugherty was also a founder of the St. Mary's County Chamber of Commerce, a member of the Historic St. Mary's City Commission and the founder of the Lexington Park Little League. He was on the Board of Trustees at St. Mary's College of Maryland and is fondly remembered for providing scholarships to many disadvantaged area students.

Mr. Speaker, Jack Daugherty was a unique individual who made contributions to his community that will last for generations to come. He was a giant among his peers whose leadership provided countless opportunities for thousands of individuals, reaching far beyond his local community. His rugged independence and fierce commitment to his community should distinguish him forever for the important role he has had in attracting the very significant U.S. Navy investment at Patuxent River Naval Air Station we have today. Repeatedly, he was a critical force in mobilizing the necessary resources to retain and attract federal investments at Pax River. Whenever a threat appeared on the horizon to either Pax River or St. Inigoes, it was Jack Daugherty who mobilized the local community to fight it.

Mr. Speaker, Jack Daugherty's presence will be sorely missed. Right up until his death on August 10, 2000, he played an active role in the Southern Maryland Navy Alliance, providing the same firm and steady leadership to that organization as he continued to support and protect the interests of Southern Maryland and the U.S. Navy. I ask my colleagues to join with me in honoring a great American whose success and love of life will long be remembered in Southern Maryland. Every community in America needs a Jack Daugherty. He knew the importance of community spirit and set the bar high for others to give back to community in which he lived. I ask my colleagues to join with me in paying tribute to John T. Daugherty, a veteran, a business and community leader and great family man, for his lifetime of service to his family, his neighbors and to his country.

My best wishes go out to his wife Kay, son Tom and daughter Katie who best knew him as an upstanding and decent husband, father, and community leader. I ask that you join me in honoring John T. Daugherty's strength and devotion to a community that will continue to reap the benefits of his work and dedication. His legacy will never be forgotten.

THE OPERATION OF AIMEE'S LAW

HON. MATT SALMON

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Friday, December 15, 2000

Mr. SALMON. Mr. Speaker, after years of work, and several Congressional Hearings, Aimee's Law passed both the House and Senate overwhelmingly, and was signed into law by President Bill Clinton on October 28, 2000. The bill will take effect on January 1, 2002, giving us more than a year to be sure it is implemented properly. It is essential that we do so, because too many lives are shattered each year at the hands of dangerous predators.

Using a mechanism that is workable, constitutional and respectful of states' rights, Aimee's Law will help to reduce repeat attacks perpetrated by released murderers, rapists, and child molesters that account for over 14,000 crimes of this nature each year.

These crimes share one characteristic: they are all preventable. If we simply keep murderers, rapists, and child molesters behind bars or, at a minimum, properly monitor them upon release, thousands of serious crimes would be prevented. Aimee Willard, the young woman for whom this legislation is named, died with every pint of blood drained from her body because Nevada recklessly released a murderer who reoffended in Pennsylvania. Aimee was a most extraordinary young woman; loved by her family and friends, an All American Athlete, an individual some of her peers believed could one day serve in the United States Congress, or as a teacher to our children. If this law is diminished in any respect it will be an assault on her memory.

I acknowledge that the mechanism used in Aimee's Law is novel—and is now, in some respects, more complex than originally drafted, due to revisions we made at the request of the States—but it is certainly workable. Of course, if those who had opposed Aimee's Law had instead joined us in working for the most straight-forward solution to the crisis we face with dangerous recidivists, application of the legislation would be even easier. If opponents now point to the provisions that were added to address their concerns, and argue that those provisions now make the law unworkable, then Congress should remove the safe-harbor provisions and hold states fully accountable for their errors in releasing murderers and sexual predators, the way the bill was originally introduced.

Let's address the concerns of the bill's critics in further detail. The small band of congressional opponents to the bill, and the state advocacy groups that opposed it, lodge three main arguments against the legislation: (1) the bill is unworkable; (2) the bill runs afoul of the Constitution; and (3) the bill would pressure states to rachet up penalties on murder, rape and child molestation offenses.

I will address the last charge first. Shouldn't we celebrate a law that incentivizes states to increase penalties for violent crimes? We have in the past. The truth in sentencing reforms of the 1980s and early 1990s are at least partially responsible for the dip in violent crime we have seen over the past several years. Keeping violent criminals behind bars reduces crime.

The trend of reduced crime is welcome, but more, much more, needs to be done. According to the FBI's Uniform Crime Report released last month, one violent crime occurs every 22 seconds. A forcible rape occurs every 6 minutes and a murder every 34 minutes. The success enjoyed in reducing crime over the past several years does make further reductions challenging. Targeting recidivist crime among the most dangerous criminals—murderers and rapists—as well as pedophiles, who are most likely to reoffend if given the opportunity, is smart public policy. The time served for these crimes is outrageously low. The average time served by a rapist released from state prison is just 5½ years. For molesting a child it is about 4 years. And for homicide it is 8 years. My constituents and I consider those figures to be shockingly low, and I have no doubt most Americans would agree.

Reasonable people can quibble about the technical operation of the law, but to argue that one of Aimee's Law defects is that it will

encourage states to increase these murderously low sentences misses the point—this is one of the central purposes of the legislation. The following comments were offered by opponents of Aimee's Law, and while I do not agree with everything contained within them, they deserve repetition here because they point to the value of the law. It will rachet up sentences.

Senator JOE BIDEN: ''As a practical matter, this bill can only promote a 'race to the top' as States feel compelled to rachet up their sentences. . . .''

Senator RUSS FEINGOLD: ''Here, of course, we are not preparing to pass a new federal murder, rape, or sexual offense statute. But we might as well do that because in Aimee's Law we are forcing the states through the use of federal law enforcement assistance funds to increase their penalties for these offenses. . . . Basically, this policy could force states to either enact the death penalty or never release a person convicted of murder on parole.''

Senator FRED THOMPSON: ''If you remember what I said a while ago, the name of the game is for the States to keep ratcheting up their incarceration time so they are within the national average. . . . The safest thing for it to do would be to give life sentences without parole. . . . For some people, I think that is a good idea anyway.''

Representative JERROLD NADLER: ''Here we are telling them, you had better keep ratcheting up your terms of imprisonment, no matter what you think is right, to match everybody else's, lest we charge you.''

It's not as if murderers, rapists and child molesters become Boy Scouts after their release from prison. The recidivism rates for sex offenders are especially high. As the best experts who have studied this issue will tell you, ''Once a molester, always a molester.'' The Department of Justice found in 1997 that, within just three years of release from prison, an estimated 52 percent of discharged rapists and 48 percent of other sexual offenders were rearrested for a new crime, often another sex offense.

Of course, states have the right to release convicted murderers, rapists and child molesters into their cities and neighborhoods. However, the question is, who should pay when one of these violent predators commits another murder, rape or sex offense in a different state? Should Pennsylvania, which has already paid a huge human cost with the loss of Aimee Willard, have to pay for the prosecution and incarceration of her killer, Arthur Bomar? Or should Nevada, which knew that Bomar was a vicious killer but decided to release him anyway, pay for the costs wrongfully inflicted on the state of Pennsylvania? The answer is obvious.

And it is not merely a question of fairness. Aimee's Law will also lead to more sensible decisions by states on which criminals to release, and which to keep behind bars. Previously, when a state released a murderer or sexual predator, it actually received at least a perceived economic benefit in the form of reduced incarceration costs. Moreover, since these criminals sometimes left the state, the state was rid of its problem. By reducing this perverse financial incentive, it may focus the decision purely where it should be, on the community safety issue: will release of this prisoner pose a danger to the community?

As to the concern that the bill is unworkable, I ask the critics this: what effort did you make to smooth out the edges you claim are rough? If half the effort spent trying to derail this legislation had been spent on perfecting the bill, I have no doubt a cleaner product would have emerged. But, the perfect should never be the enemy of the good. The bodies continue to pile up and some of the states' groups—the National Governors Association, the National Conference of State Legislatures, and the Council of State Governments—aggressively tried to kill a bill that will protect their citizens. But they failed, in part, because it is clear to the Congress that the states need to do more to protect the public from second attacks committed by convicted murderers, rapists and child molesters.

I will now address the operational and constitutional concerns raised about the bill. I will first begin with the premise behind Aimee's Law.

Aimee's Law targets an extremely narrow category of crimes: murder, rape, and child molestation. We're not targeting jaywalkers, shoplifters, or even drug dealers. We're targeting the worst of the worst. Any opponent of this bill must answer the following: ''Should a pedophile have a second chance to live in your neighborhood?'' Or, as so often is the case, a third or fourth chance, to live in your constituent's neighborhood? How about a rapist? Should they be given another chance to violate women? Do you believe that a murderer living next door would enhance the quality of your life or improve the safety of your community?

The definitions attached to murder, rape and dangerous sexual offenses could not be clearer. For murder and rape we use the definition of these crimes found in the FBI's Uniform Crime Report. All 50 states are familiar and comfortable with these definitions. Out of recognition that states have varying laws when it comes to child molestation offenses, Aimee's Law adopts the definition for dangerous sexual offense found in chapter 109A of title 18. Given that the U.S. Department of Justice is tasked with administrating the law, using federal definitions for the crimes covered is sensible.

The next issue is when Aimee's Law applies. It was my intent, and is my interpretation, that the law applies to all second convictions that occur after the law takes effect on January 1, 2002. If this is judged not the case I would support the broadest possible reach that respects constitutional boundaries. Applying the law to all second convictions has at least four salutary effects: (1) From this day forward, states will begin the process of reforming their systems to end the revolving door for these most heinous crimes; (2) States will be encouraged to adopt Stephanie's Law, which has been constitutionally upheld as a way for states to keep dangerous sexual predators off of the streets after their prison sentences have expired; (3) States will find it useful to tighten dangerous loopholes in the Interstate Compact for Parole and Probation; for example, including changes consistent with the proposal submitted by the National Institute of Corrections; and (4) States will have a powerful incentive to work with the Department of Justice to better account for and monitor the thousands of murderers and sex predators already roaming the streets. America has been lax for far too long. Delay in implementing the law fully will cost additional lives.

This is how Senate Judiciary Chairman ORRIN HATCH explained the operation of Aimee's Law during Floor debate:

> Aimee's Law operates as follows: In cases in which a State convicts a person of murder, rape, or a dangerous sexual offense, and that person has a prior conviction for any one of those offenses in a designated State, the designated State must pay, from Federal law enforcement assistance funds, the incarceration and prosecution cost of the other State. In such cases, the Attorney General would transfer the Federal law enforcement funds from the designated State to the subsequent State.
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> A State is a designated State and is subject to penalty under Aimee's Law if (1) the average term of imprisonment imposed by the State on persons convicted of the offense for which that person was convicted is less than the average term of imprisonment imposed for that offense in all States; or (2) that person had served less than 85 percent of the prison term to which he was sentenced for the prior offense.

Senator HATCH also offered this observation: ''The purpose of Aimee's Law is to encourage States to keep murderers, rapists, and child molesters incarcerated for long prison terms. * * * This legislation withholds Federal funds from certain States that fail to incarcerate criminals convicted of murder, rape, and dangerous sexual offenses for adequate prison terms * * *. In this respect, Aimee's law is similar to the Violent-Offender-and-Truth-in-Sentencing Programs and the Sentencing Reform Act of 1984.'' Senator HATCH adds that the effect of truth-in-sentencing and sentencing reform is a more than 12 percent increase in the average time served by violent criminals in state prisons. That, I submit, is a positive development.

All that is needed in determining the expenses involved in a fund transfer is a handheld calculator. The calculations required to determine if a state is exempt from the fund transfer in Aimee's Law is more complicated, but certainly within the grasp of the professionals at the Department of Justice.

The state organizations' claim that the safe harbor provision makes Aimee's Law unworkable rings hollow given their intense lobbying for such protection. The FBI already collects detailed statistics on rape and murder, which make a national average easy to identify. As for dangerous sex offenses against children, this will take additional work, but it's worth it to protect kids from the lifetime devastation caused by molestation. I suspect that nearly all Americans would desire annual reporting of statistics that measure where their state ranks in comparison with other states for the specific crimes covered in Aimee's Law.

I expect that DOJ will annually compile a national average for the crimes of murder, rape and child molestation. DOJ will also compile the average term of imprisonment for those crimes in each state. If a state is above the national average for a particular crime it will be exempt in cases in which the released offender served 85 percent of his sentence. The numbers that DOJ produces for any given year will be the number used for all convictions that occur during that year. Remember, this section was added at the insistence of the states to protect states that are doing at least an average job of protecting their citizens and neighboring citizens. The original bill contained no such language. There is no need or desire on the part of the author of Aimee's Law to

make this section any more complicated than necessary.

As an example, let's say Offender 1 commits a covered offense in state A in 1999 and then is released in 2003 and commits a covered offense in state B in 2005 and is convicted in that same year. DOJ should authorize a fund transfer if State A's term of imprisonment for the covered offense was less than the national average, using the latest sentencing data (probably from 2004). I do not expect DOJ to search back to 1999 to determine whether state A was behind the national average. Again, the national average is simply a benchmark to provide some relief to states, that do at least an average job of keeping certain violent offenders behind bars. Even if this state is average or better on sentences imposed, Aimee's Law would apply in this case if the criminal had failed to serve 85 percent of his sentence for his prior offense in 1999.

I'm more interested in murderers, rapists and child molesters serving appropriately long sentences than serving any particular percentage of their term. Most can agree, however, that a murderer, rapist, or child molester released before 85 percent of the expiration of a (minimum) sentence has been prematurely released. Most probably would agree that this would be the case for those released after 85 percent of their maximum.

As to payment schedule, the Attorney General and the state affected have great latitude in arranging the transfer. Any federal crime funds (excluding funds designated to victims) can be used so long as the funds have not already been distributed. There is also flexibility as to the term of the payment.

As has been the case for administering the truth-in-sentencing grant program and other DOJ programs, the agency will presumably need to issue guidelines. I am confident that the U.S. Department of Justice can implement the law in a manner consistent with congressional intent that is both workable and fair.

Unable to defeat Aimee's Law in the court of public opinion or in Congress, some critics are girding for a constitutional challenge. Again, I would implore them not to spend their time on an effort, that if successful, would be welcomed by the child molester community. In any event, a careful review of Supreme Court decisions suggest that a challenge would be futile.

Some critics contend that Aimee's Law could run afoul of the spending clause because it coerces states, is not unambiguous and could induce the states to take action that is unconstitutional. The suggestion has also been raised that there could be a violation of the ex post facto clause.

In upholding the spending power of Congress in South Dakota v. Dole, the Supreme Court did, indeed, place limits on this power: (1) the requirement must be related to the purpose of the funding; (2) the condition can pressure but not coerce; (3) the condition cannot induce unconstitutional behavior; and (4) the condition must be unambiguous. A careful review exonerates Aimee's Law of all raised constitutional issues.

Aimee's Law is clearly related to the source of funding, dollars to fight crime. No one even contests this point.

While Aimee's Law certainly provides encouragement to states to increase sentences and improve post-incarceration policies, it does not rise to the level of coercion. Some opponents of the measure suggest that Aimee's Law does not create a large enough penalty to encourage states to take this action, since roughly seven out of eight repeat offenses occur in the same state as the first offense. I do believe that the transfer mechanism will result in increased public safety efforts on the part of the states, but the bill does so in a fair and reasonable manner.

Aimee's Law does not pressure states to adopt unconditional means to protect public safety, only reasonable ones. There are several constitutional steps states can take to reduce their potential liability under Aimee's Law. The law will provide a powerful incentive for states to better communicate with each other concerning each other's convicts. It should also provide increased incentive for the states to amend the Interstate Compact to give states the right to reject dangerous out-of-state offenders. States can also do a better job of monitoring their own released prisoners. They may also civilly commit certain offenders. I have never suggested nor would I condone a state that took action that exceeded constitutional boundaries.

Finally, Aimee's Law unambiguously imposes a condition on Federal money that passes constitutional muster. The language only affects federal money not yet distributed. The expectations are clear: A state will lose future federal crime dollars if it fails to protect other states from certain released criminals. The mechanism Aimee's Law uses may be novel. But, it is not constitutionally prohibited. The leading Supreme Court case on this matter, *Pennhurst State School and Hospital* v. *Halderman,* 451 U.S. 1 (1981) states: ''[L]egislation enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions. The legitimacy of Congress' power to legislate under the spending power thus rests on whether the State voluntarily and knowingly accepts the terms of the 'contract.'" Again, Aimee's Law only involves federal crime funds not yet distributed.

Ex post facto concerns are similarly misplaced, since the clause applies to laws criminalizing behavior after that behavior has already taken place. The Supreme Court recently ruled in *Johnson* v. *United States,* 120 S. Ct. 1795 (2000) that for a law to have problems with this clause it must apply to conduct completed before its enactment and raise the penalty from whatever the law provided when he acted. Aimee's Law will have no effect on any particular criminal sentence already meted out. Aimee's Law does create an incentive for states to properly monitor those out of prison still under its jurisdiction. The bill should also spur states to develop laws similar to Stephanie's Law that provide for the post-incarceration civil confinement of certain dangerous sexual predators. Additionally, Aimee's Law should encourage states to increase penalties for crimes not yet committed, which is proper, constitutional, and necessary given the outrageously low sentences currently served by the average murderer, rapist, and child molester.

In conclusion, Aimee's Law will make America safer. While the safe harbor provision—added at the insistence of the states—has added complexity to the legislation, Aimee's Law is still a workable, constitutional effort to protect innocent citizens from a completely preventable type of interstate crime. The safe harbor was added as a way to offer relief to states with an above average criminal sanctioning system. If their is concern about its applicability, it could easily be removed. But perhaps we should watch this law in action before we begin tinkering with it. And for those who would seek to undermine, weaken, or repeal it, be warned that victims from around the country, the National Fraternal Order of Police, and the supermajorities in the House and Senate who support the bill stand ready to expose and block any effort to undo the benefits of Aimee's Law.

ENVIRONMENTAL COMPLIANCE

HON. GREG WALDEN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Friday, December 15, 2000

Mr. WALDEN of Oregon. Mr. Speaker, I would like to share with my colleagues some information about a new approach being explored to transition environmental compliance from what is widely perceived as an adversarial process to a cooperative, results-oriented effort between companies and state regulators.

So far, fourteen states have formed a Multi-State Working Group (MSWG), whose focus is to develop regulatory incentives that get companies to take a more proactive, systematic approach in managing their environmental impacts.

Oregon was one of the first states to implement an incentive-based environmental regulation program, which is uniquely tied to its permitting process. Through its Green Permits Program, Oregon Department of Environmental Quality will be awarding one of its first incentive based permits to a Louisiana Pacific (LP) building products plant in Hines, Oregon.

A key component of the Green Permits program is the adoption of an environmental management system that has enabled LP's facility in Hines to go the extra mile in exceeding the operating standards set by the state of Oregon. The Hines' plant has kept their air emissions to only 10 percent of the total annual levels allowed by its Oregon Department of Environmental Quality air permit and proactively works with a Community Advisory Council in addressing community concerns. In addition, more than $90,000 is generated each year through the plant's planer shavings recycling effort. These improvements have led to better cooperation with Oregon Department of Environmental Quality and the U.S. Environmental Protection Agency.

The Green Permits Program has several benefits including addressing a wider range of potential environmental impacts on a regular basis and increasing communication and involvement between environmental agencies, communities and companies. Also, companies can improve credibility with stakeholders in addition to potential cost saving and operational improvements.