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DEPARTMENT OF JUSTICE

Office of the Attorney General

[OAG 103P; A.G. Order No. 2563-2002]

RIN 1105-AA81

Guidelines for the Campus Sex Crimes Prevention Act Amendment to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act

AGENCY: Department of Justice.

ACTION: Proposed guidelines.

SUMMARY: The United States Department of Justice is publishing Proposed Guidelines to implement an amendment to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act enacted by the Campus Sex Crimes Prevention Act.

DATES: Comments must be received by May 7, 2002.

ADDRESSES: Comments may be mailed to David J. Karp, Senior Counsel, Office of Legal Policy, Room 4503, Main Justice Building, 950 Pennsylvania Avenue, NW, Washington, DC 20530.

SUPPLEMENTARY INFORMATION: Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1796, 2038 (codified at 42 U.S.C. 14071) contains the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (the "Wetterling Act"). The Wetterling Act sets minimum national standards for state sex offender registration and community notification programs, and directs the Attorney General to issue guidelines for such programs. The current Wetterling Act guidelines were published on January 5, 1999, in the *Federal Register* (64 FR 572, with corrections at 64 FR 3590). States that fail to comply with the Wetterling Act's requirements (as implemented and explained in the Attorney General's guidelines) are subject to a mandatory 10% reduction of the formula grant funding available under the Edward Byrne Memorial State and Local Law Enforcement Assistance

Program (42 U.S.C. 3756), which is administered by the Bureau of Justice Assistance of the Department of Justice.

Subsequent to the publication of the current Wetterling Act guidelines, the Wetterling Act was amended by the Campus Sex Crimes Prevention Act (the "CSCPA"), Pub. L. 106-386, div. B, § 1601, 114 Stat. 1464, 1537 (2000). The CSCPA provides special requirements relating to registration and community notification for sex offenders who are enrolled in or work at institutions of higher education. These supplementary guidelines are necessary to take account of the CSCPA amendment to the Wetterling Act. The deadline for state compliance with the CSCPA amendment is October 27, 2002.

Proposed Guidelines

The CSCPA provisions appear in subsection (j) of the Wetterling Act (42 U.S.C. 14071(j)). As provided in subsection (j), any person required to register under a state sex offender registration program must notify the state concerning each institution of higher education (i.e., post-secondary school) in the state at which the person is a student or works, and of each change in enrollment or employment status of the person at such an institution. States can comply with the Wetterling Act's requirements concerning these registrants, in part, by: (1) Advising registrants concerning these specific obligations when they are generally advised of their registration obligations, as discussed in part II.A of the January 5, 1999, Wetterling Act guidelines (64 FR 572, 579), (2) including in the registration information obtained from each registrant information concerning any expected enrollment or employment at an institution of higher education in the state, and (3) establishing procedures for registrants to notify the state concerning any subsequent commencement or termination of enrollment or employment at such an institution. The failure of a registrant to notify the state concerning enrollment or employment at an institution of higher education or the termination of such enrollment or employment would constitute a failure to register or keep such registration current for purposes of subsection (d) of the Wetterling Act (42 U.S.C. 14071(d)), and must be subject to criminal penalties as provided in that subsection.

Under the requirements of subsection (j) of the Wetterling Act, state procedures must also ensure that information concerning a registrant enrolled or working at an institution of higher education is promptly made available to a law enforcement agency

having jurisdiction where the institution is located, and entered into the appropriate state records or data system. This requirement applies both to any information initially obtained from registrants concerning enrollment or employment at institutions of higher education in the state, and information concerning subsequent changes in such enrollment or employment status.

Subsection (j)'s requirement to promptly make the information available to a law enforcement agency having jurisdiction where the institution is located is supplementary to the requirement under subsection (b)(2)(A) and (4) of the Wetterling Act (42 U.S.C. 14071(b)(2)(A), (4)) to promptly make information concerning registrants available to a law enforcement agency having jurisdiction where the registrant resides. The legislative history of the Campus Sex Crimes Prevention Act explains subsection (j)'s requirement as follows:

Once information about an offender's enrollment at, or employment by, an institution of higher education has been provided to a state's sex offender registration program, that information should be shared with that school's law enforcement unit as soon as possible.

The reason for this is simple. An institution's law enforcement unit will have the most direct responsibility for protecting that school's community and daily contact with those that should be informed about the presence of the convicted offender.

If an institution does not have a campus police department, or other form of state recognized law enforcement agency, the sex offender information could then be shared with a local law enforcement agency having primary jurisdiction for the campus.

146 Cong. Rec. S10216 (Oct. 11, 2000) (remarks of Senator Kyl).

Thus, if an institution of higher education has a campus police department or other form of state recognized law enforcement agency, state procedures must ensure that information concerning the enrollment or employment of registrants at that institution (and subsequent changes in registrants' enrollment or employment status) is promptly made available to the campus police department or law enforcement agency. If there is no such department or agency at the institution, then state procedures must ensure that this information is promptly made available to some other law enforcement agency having jurisdiction where the institution is located. Regardless of whether an institution of higher education has its own law enforcement unit, the Wetterling Act does not limit the discretion of states to make information concerning registrants enrolled or working at the institution

available to other law enforcement agencies as well.

The language of subsection (j) refers specifically to any registrant who "is employed, carries on a vocation, or is a student" at an institution of higher education in the state. These terms have defined meanings set forth in subsection (a)(3)(F)–(G) of the Wetterling Act (42 U.S.C. 14071(a)(3)(F)–(G)). In light of these definitions, the registrants to whom the requirements of subsection (j) apply are those who: (1) Are enrolled in any institution of higher education in the state on a full-time or part-time basis, or (2) have any sort of full-time or part-time employment at an institution of higher education in the state, with or without compensation, for more than 14 days, or for an aggregate period exceeding thirty days in a calendar year.

The CSCPA provisions in subsection (j) of the Wetterling Act are supplementary to, and do not limit or supersede, the provisions in subsection (b)(7)(B) of the Wetterling Act that require states to accept registration information from offenders who reside outside a state but come into the state in order to work or attend school. Subsection (b)(7)(B) applies only to non-resident workers and students, but it is not limited in scope to those who work at or attend institutions of higher education (as opposed to other places of employment or schools). The requirements under subsection (b)(7)(B) are explained in part of V.B.2 of the January 5, 1999, Wetterling Act guidelines (64 FR 572, 585).

The CSCPA's effective date for its amendment to the Wetterling Act is two years after enactment. States accordingly have until October 27, 2002, to come into compliance with subsection (j) of the Wetterling Act. States that fail to come into compliance within the specified time period will be subject to a mandatory 10% reduction of Byrne Formula Grant funding, and funds that are not allocated to noncomplying states will be reallocated to states that are in compliance.

If a state's funding is reduced because of a failure to comply with the CSCPA amendment to the Wetterling Act or other Wetterling Act requirements by an applicable deadline, the state may regain eligibility for full funding in later program years by establishing compliance with all applicable requirements of the Wetterling Act in such later years.

States are encouraged to submit information concerning existing and proposed sex offender registration provisions relating to compliance with the CSCPA amendment with as much lead-time as possible. This will enable

the reviewing authority to assess the status of state compliance with the CSCPA provisions and to suggest any necessary changes to achieve compliance before the funding reduction goes into effect. At the latest, states should aim to submit to the Bureau of Justice Assistance by August 27, 2002, information that shows compliance with the requirements of subsection (j) of the Wetterling Act. After the reviewing authority has determined that a state is in compliance with the Wetterling Act, the state has a continuing obligation to maintain its system's consistency with the Wetterling Act's standards, and will be required as part of the Byrne Formula Grant application process in subsequent program years to certify that the state remains in compliance with the Wetterling Act.

These guidelines relate solely to the provisions of the CSCPA that amended the Wetterling Act, and hence affect state eligibility for full Byrne Grant funding. In addition to adding subsection (j) to the Wetterling Act, the CSCPA amended federal education laws to ensure the availability to the campus community of information concerning the presence of registered sex offenders. Explanation for these provisions will be provided in regulations issued by the Department of Education.

As noted above, the general guidelines for the Wetterling Act were published on January 5, 1999, and appear at 64 FR 572. The new CSCPA provisions in subsection (j), which these supplementary guidelines address, are only one part of the Wetterling Act. States must comply with all of the Wetterling Act's requirements in order to maintain eligibility for full Byrne Grant funding.

Dated: March 1, 2002.

John Ashcroft,

Attorney General.

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Die Products Consortium ("DPC")

Notice is hereby given that, on February 1, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Die Products Consortium ("DPC") has filed written notifications simultaneously

with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Agere Systems, Allentown, PA; and LSI Logic Corp., Milpitas, CA have been added as parties to this venture. Also, Cypress Semiconductor Corporation, San Jose, CA; Lucent Technologies, Inc., Murray Hill, NJ; Packard-Hughes Interconnect, Irvine, CA; and Rockwell Collins, Inc., Cedar Rapids, IA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DPC intends to file additional written notification disclosing all changes in membership.

On November 15, 1999, DPC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 26, 2000 (65 FR 39429).

The last notification was filed with the Department on February 7, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2001 (66 FR 13969).

Constance K. Robinson,

Director of Operations, Antitrust Division.

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Digital Subscribe Line Forum

Notice is hereby given that, on October 9, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Digital Subscriber Line Forum ("DSL") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 186k Ltd., Reading, Berkshire, UNITED KINGDOM; ACACIA, Saint-Peray, FRANCE; Celestix Networks, Fremont, CA; CopperCom, Boca Raton, FL;