

105TH CONGRESS
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H. CON. RES. 125

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

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 1997

Mr. GUTKNECHT (for himself, Mr. LAMPSON, Mr. DEAL of Georgia, Mr. WALSH, Mr. FROST, Mr. HORN, Ms. PRYCE of Ohio, Mr. LIPINSKI, Mr. DIAZ-BALART, Mr. NEY, Mr. PETERSON of Minnesota, Mr. MCINTOSH, Ms. MOLINARI, Mr. DAVIS of Virginia, Ms. STABENOW, Mr. SCHIFF, Mr. LUTHER, Mr. BALDACCI, Mr. BENTSEN, Mr. FAZIO of California, Mr. DEUTSCH, Ms. LOFGREN, Mrs. ROUKEMA, Mrs. KELLY, Ms. CARSON, Mr. CRAMER, Mr. SANDLIN, Ms. MILLENDER-MCDONALD, Mr. CASTLE, Mr. UNDERWOOD, Mr. GRAHAM, and Mr. FOX of Pennsylvania) submitted the following concurrent resolution; which was referred to the Committee on Judiciary

CONCURRENT RESOLUTION

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

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

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

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

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

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

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

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

22 (d) TERM.—The term of office of each member of
23 such Board shall be determined by the Chief Executive
24 Officer of the State in guidelines issued pursuant to this
25 section.

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

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

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

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

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

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

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

1 (A) whether the sex offender has a mental
2 abnormality;

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

7 (C) whether the sex offender served the
8 maximum term;

9 (D) whether the sex offender committed
10 the felony sex offense against a child; and

11 (E) the age of the sex offender at the time
12 of the commission of the first sex offense.

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

15 (A) the relationship between such sex of-
16 fender and the victims;

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

20 (C) the number, date, and nature of prior
21 offenses;

22 (D) conditions of release that minimize
23 risk of another offense, including whether the
24 sex offender is under supervision, receiving
25 counseling, therapy or treatment, or residing in

1 a home situation that provides guidance and su-
2 pervision;

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

6 (F) whether psychological or psychiatric
7 profiles indicate a risk of recidivism;

8 (G) the sex offender's response to treat-
9 ment;

10 (H) recent behavior, including behavior
11 while confined;

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

15 (J) review of any victim impact statement.

16 (b) INFORMATION TRANSFER.—

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

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

6 **SEC. 3. BOARD RECOMMENDATIONS.**

7 The Board shall use the guidelines established pursu-
8 ant to section 2(a) to recommend to an appropriate court
9 of the State 1 of the following 3 levels of notification:

10 (1) TIER I.—If the risk of a repeat offense is
11 low, a tier 1 designation shall be given to such sex
12 offender. In such case the designated law enforce-
13 ment agency having jurisdiction and the law enforce-
14 ment agency having had jurisdiction at the time of
15 his conviction shall be notified in accordance with
16 section 170101(b)(4) of the Violent Crime Control
17 and Law Enforcement Act of 1994.

18 (2) TIER II.—If the risk of a repeat offense is
19 moderate, a tier 2 designation shall be given to such
20 sex offender. In such case the designated law en-
21 forcement agency having jurisdiction and the law en-
22 forcement agency having had jurisdiction at the time
23 of conviction shall be notified and may notify any
24 victim of the proposed release of such offender and
25 any agency, organization, or group, serving individ-

1 uals who have similar characteristics to the previous
2 victim or victims of such offender. The notification
3 may include the approximate address (by ZIP Code),
4 background information relating to the crime, type
5 of victim targeted, conviction, including release of a
6 photograph of the offender, and any special condi-
7 tions imposed on the offender.

8 (3) TIER III.—If the risk of a repeat offense is
9 high and there exists a threat to the public safety,
10 a tier 3 designation shall be given to such offender.

11 In such case, the appropriate law enforcement agen-
12 cies shall be notified of such an offender's release
13 and may use the notification procedures described in
14 paragraph (2), except that a precise address may be
15 released and any relevant information necessary to
16 protect the public concerning a specific person re-
17 quired to register under section 170101 of the Vio-
18 lent Crime Control and Law Enforcement Act of
19 1994 shall be released.

20 **SEC. 4. JUDICIAL DETERMINATION.**

21 (a) NOTIFICATION LEVEL.—

22 (1) IN GENERAL.—An appropriate court of the
23 State also shall make a determination with respect
24 to the level of notification, after receiving a tier rec-
25 ommendation from the Board. In making the deter-

1 mination, the court shall review any statement by a
2 victim or victims and any materials submitted by the
3 sex offender. The court shall also allow the sex of-
4 fender to appear and be heard, and inform the sex
5 offender of the right to have counsel appointed if
6 necessary.

7 (2) APPEAL.—A sex offender may appeal a de-
8 termination made by the court made under para-
9 graph (1) in accordance with State law.

10 (3) NOTIFICATION AND REGISTRATION.—The
11 filing of the appeal shall not stay the designated law
12 enforcement agency’s notification actions unless the
13 court orders otherwise. Such petition, if granted,
14 shall not relieve the petitioner of the duty to register
15 pursuant to section 170101 of the Violent Crime
16 Control and Law Enforcement Act of 1994 upon
17 conviction of an offense requiring registration in the
18 future.

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

22 **SEC. 5. PENALTY FOR MISUSE OF REGISTRATION INFORMA-**
23 **TION.**

24 (a) FINE.—Any person who uses information dis-
25 closed pursuant to this Act in violation of the law shall

1 be fined under title 18, United States Code, or imprisoned
2 for not more than 5 years, or both.

3 (b) CIVIL ACTION.—The State attorney general, a
4 district attorney, or any person aggrieved by information
5 disclosed in violation of the law is authorized to bring a
6 civil action in the appropriate court requesting preventive
7 relief, including an application for a permanent or tem-
8 porary injunction, restraining order, or other order
9 against the person or group of persons responsible for
10 such action.

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

15 **SEC. 6. JUVENILE OFFENDERS.**

16 (a) IN GENERAL.—A juvenile residing in a State who
17 has been adjudicated delinquent for any sex offense or at-
18 tempted sex offense, or who has been convicted of any sex
19 offense or attempted sex offense, or who has been acquit-
20 ted by reason of insanity for any sex offense or attempted
21 sex offense shall be required to comply with the registra-
22 tion requirements established pursuant to section 170101
23 of the Violent Crime Control and Law Enforcement Act
24 of 1994.

1 (b) YOUTH FACILITY.—Any person who is discharged
2 or paroled from a facility in another State that is equiva-
3 lent to a Department of the Youth Authority to the cus-
4 tody of such a facility because of the commission or at-
5 tempted commission of specified sex offenses, is required
6 to register pursuant to section 170101 of the Violent
7 Crime Control and Law Enforcement Act of 1994.

8 **SEC. 7. OFFICIAL IMMUNITY FROM LIABILITY.**

9 (a) IMMUNITY.—No official, employee, or agency,
10 whether public or private, shall be subject to any civil or
11 criminal liability for damages for any discretionary deci-
12 sion to release relevant and necessary information pursu-
13 ant to this section, unless it is shown that such official,
14 employee, or agency acted with gross negligence or in bad
15 faith.

16 (b) INFORMATION RELEASE.—The immunity pro-
17 vided under this section applies to the release of relevant
18 information to other employees or officials or to the gen-
19 eral public.

20 (c) FAILURE TO RELEASE INFORMATION.—Nothing
21 in this section shall be deemed to impose any civil or crimi-
22 nal liability upon or to give rise to a cause of action
23 against any official, employee, or agency, whether public
24 or private, for failing to release information as authorized

1 in this Act unless it is shown that such official, employee,
2 or agency acted with gross negligence or in bad faith.

3 **SEC. 8. IDENTITY OF THE VICTIM.**

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

7 **SEC. 9. GENERAL STATE REQUIREMENTS.**

8 The Chief Executive Officer of a State or designee
9 shall establish reasonable notification requirements under
10 this Act, including notification to an offender of any proce-
11 dures for which the offender is required or is permitted
12 to participate, including the hearing process, appeal
13 rights, and submission of information to the Board.

14 **SEC. 10. ADVISORY COUNCIL FOR COMMUNITY EDUCATION.**

15 (a) IN GENERAL.—The Chief Executive Officer of a
16 State shall appoint a voluntary advisory council to design
17 a policy to assist communities in which a sex offender re-
18 sides to plan and prepare for such a resident.

19 (b) COMPOSITION.—Each such advisory council shall
20 include representation from—

- 21 (1) law enforcement;
- 22 (2) law enforcement organizations;
- 23 (3) local corrections agencies;
- 24 (4) victims groups; and
- 25 (5) other interested members of the public.

1 (c) DUTIES.—In developing a policy pursuant to sub-
2 section (a), an advisory council should make recommenda-
3 tions that include—

4 (1) the method of distributing community noti-
5 fication information;

6 (2) methods of educating community residents
7 at public meetings on how they can use such infor-
8 mation to enhance their safety and the safety of
9 their family;

10 (3) procedures for ensuring that community
11 members are educated regarding the right of the sex
12 offender not to be subjected to harassment or crimi-
13 nal acts; and

14 (4) other matters the council considers nec-
15 essary to ensure the effective and fair administration
16 of the community notification law.

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

18 In accordance with section 170101 of the Violent
19 Crime Control and Law Enforcement Act of 1994, the de-
20 partment required to coordinate the sex offender registra-
21 tion program shall compile and update information re-
22 garding the offenders. Any offender whose duty to register
23 has expired or who has been relieved of the duty to register
24 shall be removed from any public database.

1 **SEC. 12. EXCEPTIONAL CIRCUMSTANCES.**

2 Nothing in this Act shall be construed to prevent law
3 enforcement officers from notifying members of the public
4 of individuals that pose a danger under circumstances that
5 are not described in section 170101 of the Violent Crime
6 Control and Law Enforcement Act of 1994 or under this
7 Act.

8 **SEC. 13. DEFINITIONS.**

9 For purposes of this Act:

10 (1) The term “criminal offense against a victim
11 who is a minor” means any criminal offense that
12 consists of—

13 (A) kidnapping of a minor, except by a
14 parent;

15 (B) false imprisonment of a minor, except
16 by a parent;

17 (C) criminal sexual conduct toward a
18 minor;

19 (D) solicitation of a minor to engage in
20 sexual conduct;

21 (E) use of a minor in a sexual perform-
22 ance;

23 (F) solicitation of a minor to practice pros-
24 titution;

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

1 (H) an attempt to commit an offense de-
2 scribed in any of subparagraphs (A) through
3 (H) if the State—

4 (i) makes such an attempt a criminal
5 offense; or

6 (ii) chooses to include such an offense
7 in those which are criminal offenses
8 against a victim who is a minor for pur-
9 poses of this section.

10 For purposes of this paragraph, conduct which is
11 criminal only because of the age of the victim shall
12 not be considered a criminal offense if the perpetra-
13 tor is 18 years of age or younger.

14 (2) The term “sexually violent offense” means
15 any criminal offense that consists of aggravated sex-
16 ual abuse or sexual abuse (as described in sections
17 2241 and 2242 of title 18, United States Code, or
18 as described in the State criminal code) or an of-
19 fense that has as its elements engaging in physical
20 contact with another person with intent to commit
21 aggravated sexual abuse or sexual abuse (as de-
22 scribed in such sections of title 18, United States
23 Code, or as described in the State criminal code).

24 (3) The term “mental abnormality” means a
25 congenital or acquired condition of a person that af-

1 fects the emotional or volitional capacity of the per-
2 son in a manner that predisposes that person to the
3 commission of criminal sexual acts to a degree that
4 makes the person a menace to the health and safety
5 of other persons.

6 (4) The term “predatory” means an act di-
7 rected at a stranger, or a person with whom a rela-
8 tionship has been established or promoted for the
9 primary purpose of victimization.

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

14 (5) The term “juvenile” has the meaning given
15 such term under State law.

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