

Crime -
Sex offenders



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Additional Message:

Urgent: Pre-Clearance of Jacob Wetterling
Means law related testimony 2 options
attached. Note: Also we hope to
announcement of
add new initiative to preempt this
Bramm proposal. Concept language to

Tracking Sexual Offenders

Tarrant proposes nationwide database

BY PAUL B. BAKER
AND STEPHEN G. MICHAUD
From Dallas Star-Telegram

PORT WORTH — Sen. Phil Gramm unveiled federal legislation Monday to create a nationwide offender identification and tracking system to keep a close eye on the predatory population of sexual offenders.

The legislation would require that offenders to register with the state if when they cross state lines and would impose a mandatory one-year prison sentence and a fine of up to \$100,000 for those who violate the law.

It would also create a system operated by the FBI, which would be available to any law enforcement agency in the country, to track sex offenders, Gramm said. He said the system will be helpful where states cannot have registration laws.

The legislation would provide a national database for the system, he said. "As part of the FBI data base, I will direct to track every sexual offender in America and I want them to notify local communities when somebody moves into their community, so they at least know they are there," Gramm said.

Gramm

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Gramm's proposal comes after the abduction-killing of Amber Hagerman in Arlington and the revelation that a disproportionate number of sex offenders and other Port Worth halfway houses and other Tarrant County facilities.

In September, new state laws went into effect requiring police to publish the street, city, ZIP code, age, gender and crime of sex offenders convicted after Sept. 1, 1995, in attacks on children younger than 17.

However, police officials said there is no easily accessible centralized list of sexual offenders. They also said that although offenders are required to re-register after moving, their names are not removed from the old list.

"They are going to move and it can be extremely difficult if we arrest a sex offender here to find out where he's been before and find out if he has been in trouble before," said David Montague, an assistant Tarrant County district attorney and former head of the crimes against children unit.

Ruben Rodriguez, senior analyst at the National Center for Missing & Exploited Children in Virginia, says he welcomes Gramm's initiative.

"I have always believed there

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— Sen. Phil Gramm
R-Texas

should be a national data base of convicted pedophiles, available to local and federal law enforcement officers," he said.

"Texas would like to keep track of the sexual offenders, but there isn't enough money to create or maintain a computerized list, said Paul Jordan, who analyzes the state's computer registry of known sex offenders.

"There is a lot of good that could come from a federal registration program because we are not talking about an individual who is going to stay in one place. They are a highly transient population," Jordan said.

Key Senators of Arlington, who is one of the organizers of a petition drive seeking stronger laws for sexual offenders, praised Gramm's proposal but said it should include a notification provision.

"I think it is absolutely wonderful, but the problem is notification," Scorsone said. "Not everyone reads the paper."

Staff writer Wade Miller contributed to this report.

OPTION 1: SUPPORT ZIMMER BILL MAKING COMMUNITY NOTIFICATION MANDATORY, AND SUGGEST ADDITIONAL AMENDMENT

H.R. 2137 would require the release of relevant information to protect the public from child molesters and other sexually violent offenders. The Department of Justice supports the enactment of this legislation.

The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act provides a financial incentive for states to establish effective registration systems for released child molesters and other sexually violent offenders. States that fail to establish conforming registration systems will be subject to a 10% reduction of formula Byrne Grant funding, and resulting surplus funds will be reallocated to states that are in compliance. The current provisions of the Jacob Wetterling Act permit, but do not require, states to release relevant registration information that is necessary to protect the public concerning persons required to register.

H.R. 2137 would make the disclosure of registration information necessary to protect the public mandatory rather than permissive under the Act's standards. The Department of Justice supports this reform. Where a state has information through its registration system concerning a child molester or other sexually violent criminal who poses a continuing danger to others, the state should not withhold this information from persons who need it for the security of themselves and their families. A number of states already provide for community notification or other forms of disclosure in appropriate circumstances, and the change in the Jacob Wetterling provisions proposed in H.R. 2137 would encourage additional states to adopt such measures.

In the Department's proposed guidelines for the Jacob Wetterling Act (60 Fed. Reg. 18617, April 12, 1995), we have explained that the Act accords states discretion concerning the standards and procedures to be applied in determining whether a registering offender constitutes a danger to the public, and concerning the nature and extent of disclosure necessary to protect the public from such an offender. H.R. 2137 makes the "public safety" disclosure provision of the Act mandatory -- changing "may" to "shall" -- but does not otherwise change the language of this provision.

Hence, states will need to provide for such disclosure following the enactment of H.R. 2137 to comply with the Act, but they will retain discretion concerning specific standards and procedures and the nature and extent of disclosure in implementing this requirement. For example, New Jersey's multi-tiered system for classifying offenders based on risk and making varying degrees of disclosure on the basis of that classification would be consistent with the "public safety" disclosure provision of the Jacob Wetterling Act as amended by H.R. 2137.

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In addition to endorsing the particular change proposed in H.R. 2137, we recommend an additional amendment to the provision of the Jacob Wetterling Act relating to the release of information. Section 170101(d) of the Jacob Wetterling Act provides that information collected under state registration programs "shall be treated as private data," subject to three exceptions -- disclosure to law enforcement agencies for law enforcement purposes, disclosure to government agencies conducting confidential background checks, and disclosure for public safety reasons (as discussed above).

The requirement that registration information generally be treated 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 recommend deletion of the provision that information collected under state registration systems is generally to be treated as private data. This change, together with the change proposed in H.R. 2137, could be implemented by revising subsection (d) of § 170101 of the Violent Crime Control and Law Enforcement Act of 1994 to read as follows:

"(d) 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 shall release relevant information collected under the registration program that is necessary to protect the public concerning a specific person required to register under this section, provided, that this paragraph shall not be construed to require the disclosure of the identity of a victim of an offense that requires registration under this section."

Finally, beyond the notification issue raised by H.R. 2137, discussion with the states indicates that some of the more detailed prescription in the registration provisions of the Jacob Wetterling Act may impede some state compliance, though that level of detail may be unnecessary to realize the essential objectives of the Act. We would be pleased to work with interested members of Congress to strengthen the Act by addressing legitimate concerns regarding impediments to effective state implementation.

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OPTION 2: RECOMMEND AGAINST ENACTMENT OF THE ZIMMER BILL, BUT SUGGEST ALTERNATIVE AMENDMENT

H.R. 2137 would make community notification concerning registered sex offenders mandatory under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. We strongly support the objective of promoting the establishment of community notification systems for sex offenders. However, we recommend that the sponsors consider an alternative amendment to the Jacob Wetterling Act to facilitate the creation of such systems.

The Jacob Wetterling Act provides a financial incentive for states to establish effective registration systems for released child molesters and other sexually violent offenders. States that fail to establish conforming registration systems will be subject to a 10% reduction of formula Byrne Grant funding, and resulting surplus funds will be reallocated to states that are in compliance. The current provisions of the Jacob Wetterling Act permit, but do not require, states to release relevant registration information that is necessary to protect the public concerning persons required to register.

H.R. 2137 would make the disclosure of registration information mandatory rather than permissive under the Act's standards.

As noted above, we strongly support the objective of promoting community notification concerning registered sex offenders by the states. In furtherance of this objective, we are currently involved in litigation in New Jersey and several other states in which we are helping the states to defend the validity of community notification systems they have established. The proposed guidelines we have issued for the Jacob Wetterling Act have also interpreted the Act so as to give states the broadest possible latitude to establish community notification systems and release information on registered offenders under those systems.

We have two concerns, however, about the approach suggested in H.R. 2137 to encourage further state reforms in this area.

First, the trend in the states is already in the direction of adopting community notification, but this is a relatively new trend, and different states have taken different approaches. In some states, registration information is available to the public under general "open records" laws. Other states have established

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or are considering the establishment of 900 numbers which enable interested members of the public to determine whether particular individuals are registered sex offenders. Still others have set up classification systems under which assessments are made concerning the dangerousness of particular offenders, and varying degrees of public notice are carried out on the basis of these determinations.

It is obviously desirable to allow states in a developing area like this one to try out different approaches, and to adopt notification systems that are adapted to their distinctive circumstances and needs. This consideration supports caution in extending federal mandates which might be understood as dictating a particular approach or constraining state discretion in devising such systems.

Our second concern relates to the interplay between state compliance with the basic registration requirements of the Jacob Wetterling Act -- which enable law enforcement agencies to keep track of the location of released sex offenders -- and the (now optional) community notification aspect of the Act.

While most states now have some type of registration requirement for sex offenders, many of the state systems fall short of the strong registration and tracking mechanisms contemplated by the Jacob Wetterling Act. Important features of the Act which may not currently be present in state registration systems include pro-active periodic address verification by the registration agency, procedures which ensure that registration information is entered into the system and kept up to date when registering offenders move elsewhere in the state, and procedures for continuing the tracking of registered offenders when they move to another state.

To achieve compliance with the Jacob Wetterling registration standards, states will need to make changes in their systems, and adopting these changes may entail substantial difficulty and expense. The financial incentives provided by the Act may or may not be a sufficient inducement from the perspective of particular states.

If community notification is made a mandatory part of the Jacob Wetterling system, there will be an additional requirement for state compliance. States which would be willing to make the changes necessary to comply with the Act's registration standards may not regard achieving compliance as feasible or worth the cost if it also requires adopting community notification under a federal mandate as proposed in H.R. 2137. To the extent that this occurs, the proposed change could have the unintended effect of producing improvements in the registration systems of fewer states than the current formulation of the Act.

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While we think the particular amendment proposed in H.R. 2137 would be inadvisable for these reasons, we do believe that an amendment to the Jacob Wetterling Act affecting community notification would be desirable. Section 170101(d) of the Act provides that information collected under state registration programs "shall be treated as private data," subject to three exceptions -- disclosure to law enforcement agencies for law enforcement purposes, disclosure to government agencies conducting confidential background checks, and disclosure for public safety reasons (as discussed above).

The requirement that registration information generally be treated 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.

In positive terms, deleting the "private data" language would make it clear that states are not constrained by federal law in their decisions concerning community notification and other disclosure of registration information, but rather have a free hand to make such disclosures on the basis of their own judgments concerning the public interest.

We accordingly recommend deletion of the provision that information collected under state registration systems is generally to be treated as private data. This change could be implemented by revising subsection (d) of § 170101 of the Violent Crime Control and Law Enforcement Act of 1994 to read as follows:

"(d) RELEASE OF INFORMATION. -- The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State."

Finally, beyond the notification issue raised by H.R. 2137, discussion with the states indicates that some of the more detailed prescription in the registration provisions of the Jacob Wetterling Act may impede some state compliance, though that level of detail may be unnecessary to realize the essential objectives of the Act. We would be pleased to work with interested members of Congress to strengthen the Act by addressing legitimate concerns regarding impediments to effective state implementation: