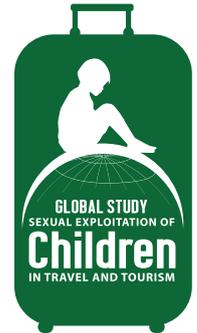


EXPERT PAPER

A GUIDE TO MEGAN'S LAWS: PREVENTION OF DOMESTIC AND INTERNATIONAL SEXUAL EXPLOITATION OF CHILDREN



THE HONORABLE CHRIS SMITH,
MEMBER OF CONGRESS, UNITED STATES OF AMERICA

INTRODUCTION

Protecting children from violence and predatory behavior, including sexual exploitation and human trafficking, are among the highest duties and responsibilities of government.

The International Labor Organization estimates that 1.8 million children are victims of commercial sexual exploitation around the world each year. Child predators thrive on secrecy that allows them to commit heinous crimes against children with impunity. A 2009 study by Mark E. Olver, Stephen C.P. Wong and Terry P. Nicholaichuk,¹ one of many available on the Justice Department's SMART Web site,² found that untreated moderate- to high-risk sex offenders were reconvicted for sex crimes at a rate of 17.7 percent after three years and 32 percent after 10 years—and these are just the sex offenders who are caught. Domestic and international Megan's laws ensure that parents and nations are able to prevent repeat sexual offenses against children by known sex offenders.

-
- 1 Olver, Wong, Nicholaichuk, "Outcome Evaluation of a High-Intensity Inpatient Sex Offender Treatment Program," *Journal of Interpersonal Violence*, Vol. 24, No. 3, 2009.
 - 2 Roger Przybylski, *Adult Sex Offender Recidivism*, Office of Justice Programs Sex Offender Management Assessment and Planning Initiative (October 2014) (http://www.smart.gov/SOMAPI/sec1/ch5_recidivism.html#recr_find).

Domestic Megan's Laws

Tragic kidnappings and child sexual assault in Minnesota in 1989 led to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, which is Title XVII of the Federal Violent Crime Control and Law Enforcement Act of 1994. This federal law required that, upon release from prison, individuals who had committed a sexually violent act against a child must register their home and work address with designated local law enforcement, creating a centralized registry in each state. While the original federal law helped police in their searches for child kidnappers, the law did not require that the information be made public.

Then, in 1994, a young girl from my hometown and congressional district (Hamilton, New Jersey) was lured into the home of a convicted pedophile who lived across the street from her home. Megan Kanka, seven years old, was raped and murdered. Neither, Megan, or Megan Kanka's parents, or their neighbors knew Megan's assailant had been convicted and jailed for child sexual assault. If they had known, they could have warned Megan not to go into the man's house. This tragedy led to the enactment of the federal and state Megan's Laws—public sex offender registries—in every state in the United States.³ Under these laws and the subsequent Adam Walsh Child Protection and Safety Act of 2006, anyone can access an internet website showing the home and work address of sex offenders living in their community.⁴

Who must register: Some states have their own systems of who must register and for how long. Other states have adopted the federal model embodied in the Adam Walsh Act of 2006. Under this system, individuals who are convicted of any type of sex offense against an adult or child must register.⁵

The registration system is divided up into three tiers, with Tier I offenses being those punishable by one year or less in prison, and Tier II and Tier III offenses punishable by more than 1 year in prison.

- Tier I offenses are any offenses that are not Tier II or Tier III offenses, and may include such things as public indecency or public urination, among other misdemeanors
- Tier II sex offenses, include completion or attempt against a minor of the following: 1) sex trafficking; 2) coercion and enticement to prostitution or criminal sexual activity (in interstate or foreign commerce or using the mail); 3) transportation with intent to engage in criminal sexual activity; 4) abusive sexual contact (coercion of person in custody, sexual contact with an incapacitated person, or child 12 years old or younger, etc.); 5) use of a minor in a sexual performance; 6) solicitation of a minor to practice prostitution; 7) production or distribution of child pornography; or sex crimes against a minor that occurs after the offender becomes a Tier I sex offender.

3 Megan's Law, P.L. 104-145 (May 17, 1995) <https://beta.congress.gov/104/bills/hr2137/BILLS-104hr2137pcs.pdf>. Megan's Law and the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Acts have since been further refined by the Adam Walsh Child Protection and Safety Act of 2006/Sex Offender Notification Act of 2006, P.L. 109-248, <http://www.gpo.gov/fdsys/pkg/PLAW-109publ248/pdf/PLAW-109publ248.pdf>.

4 New Jersey Megan's Law website: http://www.nj.gov/njsp/info/reg_sexoffend.html.

5 Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248: <https://www.govtrack.us/congress/bills/109/hr4472/text>

- Tier III sex offenses include completion, attempt, or conspiracy to commit
 - 1) aggravated sexual abuse or sexual abuse through use of fear or threats of death,
 - 2) abusive sexual contact against a minor who has not attained the age of 13 years, and the offense involves kidnapping of a minor (unless committed by a parent or guardian) or occurs after the offender becomes a Tier II sex offender.⁶

The law is not limited to, but especially includes in all Tiers (according to severity/length of imprisonment) individuals convicted of a “specified offense against a child” (under the age of 18) 1) involving kidnapping (unless committed by a parent or guardian), 2) involving false imprisonment (unless committed by a parent or guardian), 3) solicitation to engage in sexual conduct, 4) use in a sexual performance, 5) solicitation to practice prostitution, 6) video voyeurism as described in section 1801 of title 18, United States Code, 7) possession, production, or distribution of child pornography, 8) criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct, 9) any conduct that by its nature is a sex offense against a minor.⁷ Jurisdictions may wish to add attempts or conspiracies to commit such crimes, as well.

Exceptions to Registration:

- 1) In what is called the “Romeo and Juliet” exception, an offense involving consensual sexual conduct is not a sex offense for the purposes of the federal law if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.⁸

- 2) Individuals who were convicted/ adjudicated delinquent at the age of 13 or younger also do not have to register. Individuals who were convicted at the age of 14 or older at the time of the offense and whose sex crime was comparable to or more severe than aggravated sexual abuse, or attempted or conspired to commit aggravated sexual abuse should register.⁹
- 3) Foreign convictions are excluded from registration only if they were not obtained with sufficient safeguards for fundamental fairness and due process for the accused. Foreign convictions obtained with sufficient safeguards are included.

Length of Registration: Sex Offenders are required to register for 15 years, if the offender is a Tier I sex offender (prison time one year or less); 25 years, if the offender is a Tier II sex offender; and the life of the offender, if the offender is a Tier III sex offender.

The length of registration may be reduced in certain cases if the sex offender is a Tier 1 offender and for 10 years is not subsequently 1) convicted of any offense for which imprisonment for more than 1 year may be imposed, 2) convicted of any sex offense, 3) successfully completes any periods of supervised release, probation, and parole, and 4) successfully completes an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General. A Tier III offender may also have the registration period reduced if he was a minor adjudicated delinquent and has had a clean record for 25 years.

6 Adam Walsh Child Protection and Safety Act of 2006/Sex Offender Notification Act (P.L. 109-248), Title I, Subtitle A, Sec. 111 (3) and (4), <http://www.gpo.gov/fdsys/pkg/PLAW-109publ248/pdf/PLAW-109publ248.pdf>.
 7 Ibid. Sec. 111 (7).
 8 Ibid, Sec. 111 (5)(c).
 9 Ibid. Sec. 111 (8).

Information Required at Registration:

States must gather the information below and provide it to the FBI for the centralized, U.S. government registry used by law enforcement. This information is not necessarily made available to the public.

- 1) The name of the sex offender (including any alias used by the individual).
- 2) The Social Security number of the sex offender.
- 3) The address of each residence at which the sex offender resides or will reside.
- 4) The name and address of any place where the sex offender is an employee or will be an employee.
- 5) The name and address of any place where the sex offender is a student or will be a student.
- 6) The license plate number and a description of any vehicle owned or operated by the sex offender.
- 7) Any other information required by the Attorney General. Importantly, current regulation requires any sex offender who is traveling internationally to inform his local jurisdiction 21 days in advance of travel. The local jurisdiction then forwards this information to the U.S. Department of Justice.¹⁰

Enforcement: Federal, state, and local governments share responsibility to track down sex offenders who do not keep their information current and to personally verify address, photo, and other information (1) each year, if the offender is a tier I sex offender; (2) every 6 months, if the offender is a Tier II sex offender; and (3) every 3 months, if the offender is a Tier III sex offender.¹¹

The U.S. Department of Justice has established the Office of Sex Offender Monitoring, Apprehending, Registering, and Tracking to assist states and localities with implementation of the federal law, and maintains a website of useful forms, regulations on implementation, etc.¹²

Sex offenders who fail to keep their information current are subject to criminal penalties, including imprisonment.¹³

Information Available to the Public:

Federal law also requires that certain information be available to the public on the internet in searchable form (by zip code or geographic radius set by the user. The website may NOT include 1) the identity of any victim of a sex offense; 2) the Social Security number of the sex offender; 3) any reference to arrests of the sex offender that did not result in conviction; and 4) any other information exempted from disclosure by the Attorney General.¹⁴

States have the option to exclude from the website 1) certain offenses that are punishable by one year or less in prison unless it is a “specified offense against a child”, 2) the name of an employer of the sex offender, 3) the name of an educational institution where the sex offender is a student, and 4) any other information exempted from disclosure by the Attorney General.¹⁵

Protections for Sex Offender Registrants:

Federal law requires that individuals using the website be warned that if they injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address, they will face criminal penalty.¹⁶ The Megan’s Law website for New Jersey states the following:

10 Ibid. Sec. 114.
11 Ibid. Sec. 116.
12 Office of Sex Offender Monitoring, Apprehending, Registering, and Tracking, U.S. Department of Justice <http://ojp.gov/smart/guidelines.htm>
13 Ibid. Sec. 113 (e).
14 Ibid Sec. 118 (a) and (b).
15 Ibid. Sec. 118 (c).
16 Ibid Sec. 118 (d).

- Consistent with this public safety purpose of Megan's Law, the Internet registry law expressly prohibits the use of registry information for the purpose of applying for, obtaining, or denying health insurance, insurance, loans, credit, education, scholarships or fellowships, benefits privileges or services provided by any business establishment (unless for a purpose consistent with the enhancement of public safety), or housing or accommodations.
- The law also makes it a crime, punishable by a term of imprisonment between three and five years and a fine of up to \$15,000, to use registry information to commit a criminal offense, and makes it a disorderly persons offense, punishable by a fine of up to \$1,000, to use registry information to commit any disorderly persons or petty disorderly persons offense. These charges would be in addition to any charges related to the underlying criminal act committed.¹⁷

Despite concern that vigilante violence would result from making publically available the names, photos, addresses, and sex offenses of sex offenders, instances of such violence are rare.

International Megan's Law

It is imperative that we take the lessons we have learned on how to protect our children from known child sex predators within our borders and expand those protections globally. The 2014 Trafficking in Persons report noted 36 countries from which sex tourists travel abroad, and 53 destination countries for exploitation.¹⁸ Child-sex tourists may travel overseas to commit

sexual offenses against minors because of perceived anonymity; law enforcement in certain countries is perceived as being scarce, corrupt, or unsophisticated; perceived immunity from retaliation because the child sex tourist is a United States citizen; the child-sex tourist has the financial ability to impress and influence the local population; the child-sex tourist can “disappear” after a brief stay; the child-sex tourist can target children meeting their desired preference; and, there is no need to expend time and effort “grooming” the victim.

Law enforcement and media reports continue to document Americans—with known criminal backgrounds of sexual abuse against children in the United States—who are later caught sexually exploiting children in East Asia, Europe, Central and South America. For example, in 2009, U.S. Immigration and Customs Enforcement arrested three Americans for exploiting young children in Cambodia. All three were registered sex offenders who had served time in prison. News reports indicate that after their release from U.S. prisons, the men had travelled to the most destitute areas of Cambodia. One bought a 13-year old boy from his parents for \$2 and a bag of rice. Another man was caught molesting a 10-year old girl in a child brothel outside Phnom Penh. The third man was convicted previously in California of molesting as many as 500 boys during camping trips. He travelled to Southeast Asia at least eight times and lured young boys with dollar bills to his home where he sexually assaulted them.¹⁹

In June 2013, a United States registered sex offender was indicted for traveling to the Philippines for illicit sexual conduct with five children and producing and distributing child pornography.²⁰ In February 2014, another

17 New Jersey Megan's Law website: http://www.nj.gov/njsp/info/reg_sexoffend.html.

18 U.S. Department of State Trafficking in Persons Report 2014, <http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm>.

19 Deena Guzder, “A Move to Register Sex Offenders Globally,” TIME (September 7, 2009) <http://content.time.com/time/world/article/0,8599,1920911,00.html>.

20 News Releases, Immigration and Customs Enforcement, “Previously convicted US child rapist indicted in Missouri for producing, distributing child pornography while living in Philippines” (June 12, 2013), <http://www.ice.gov/news/releases/1306/130612kansascity.htm>.

United States registered sex offender received a 30-year federal prison sentence for abusing at least 8 children and producing child pornography after moving to Ecuador to teach English and work as an artist.²¹

While “long-arm jurisdiction” laws are critical tools in the fight against human trafficking and allow countries to prosecute sex trafficking crimes abroad once the perpetrator is back in the home country—by then the harm has already been done to the child.²² It is the same horror movie replayed over and over. We can and must do more to warn destination countries so that they can, in turn, protect their children from sex tourism.

The December 2013 Addendum to the OSCE Plan of Action to Combat Trafficking in Human Beings called for, “Developing and implementing policies and actions, including law enforcement cooperation between participating States, to prevent the tourism industry from being used for all forms of trafficking in human beings, in particular for sexual exploitation of children.”²³ In July 2014, the OSCE Parliamentary Assembly adopted Rep. Smith’s supplementary item further explaining what is required for an International Megan’s Law.²⁴

The basic elements of an International Megan’s Law include the following:

1) **Domestic sex offender registration system:** For an International Megan’s Law to be effective, a country must have a sex offender registration system—either public or for official use only/government-only. If the country is federated, a central registration system alone or in conjunction with state/province level registries with all names is preferable for efficiency.

2) **Advance notice to home country of intended sex offender travel:** In the United States, sex offenders are required to alert local law enforcement of intended international travel 21 days in advance of that travel. This gives the United States and the sex offender’s intended destination country sufficient notice and opportunity to respond appropriately to the sex offenders intended travel (whether that is for the destination country to deny the visa/entry, restrict the locations the sex offender may travel within the country, monitor the sex offender while in country, or other action).

Exceptions can be built into the system for sex offenders who regularly have to travel for business purposes, or who are attending a funeral, or who were otherwise unable for legitimate reason to provide 21 days advance notice. These same reasons may provide exception from advance notification to the destination country.

3) **Cross-checking of Flight Manifests with Offender Registries:** Sex offenders may choose not to report in advance of travel. Checking final flight manifests against sex offender registries provides an opportunity to warn destination countries of sex offenders who are attempting to travel under the radar.

4) **Advance notification to intended destination country:** The names of traveling sex offenders are then forwarded to appropriate law enforcement (often front-line border security) in the destination country with as much notice as possible so that the destination country may respond appropriately.

21 News Releases, Immigration and Customs Enforcement, “American expat who sexually abused children in Ecuador sentenced to 30 years in US prison”, (February 4, 2014) <http://www.ice.gov/news/releases/1402/140204portland.htm>.

22 Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003 (Public Law 108-21), Sec. 105 <http://www.gpo.gov/fdsys/pkg/PLAW-108publ21/pdf/PLAW-108publ21.pdf>.

23 III. Prevention of Trafficking in Human Beings, Para 1.11, Decision No. 1107, Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings (December 6, 2013) <http://www.mrci.ie/wp-content/uploads/2014/01/pc-dec1107c1-addendum-to-action-plan-thb-en.pdf>.

24 Baku Declaration 2014, OSCE Parliamentary Assembly, Resolution on Prevention and Prosecution of Child Sex Trafficking, p. 52, <http://www.oscepa.org/publications/declarations/2014-baku-declaration/2547-2014-baku-declaration-eng-1/file>

- 5) **Follow-up on action by destination country:** The receiving country would ideally be able to request additional information or clarifications on the traveling sex offender and report back to the home country any action taken specific to the sex offender.
- 6) **Bilateral agreements on information sharing:** International Megan's Laws will establish reciprocal notification, where law enforcement in each country have efficient information-sharing and coordination to warn the other of intended travel by sex offenders.²⁵
- 7) **Time limitation:** International notification on a sex offender only continues for the length of time the sex offender is required to register domestically. The length of domestic registration is usually coordinated to the seriousness of the sex offender's crime and/or risk of re-offense.
- 8) **Appeal/Complaint Procedure:** The law should include an appeal/complaint procedure to handle special cases differently or to correct any misidentified individuals in the system.
- 9) **Passport Marker:** For sex offenders who have committed sex crimes against children, or other particularly serious cases, a unique identifier can be included in the sex offender's passport in order to prevent the sex offender from reporting a pass-through rather than destination country, and thereby slipping through the warning system. This "unique identifier" can be removed when the sex offender is no longer required to register domestically or when the sex offender is no longer considered a threat.
- International Megan's Law, H.R. 515, became P.L. 114-119 in the United States on February 8, 2016.²⁶
- © The Honorable Chris Smith, Member of Congress, United States of America

25 "ICE, UK National Crime Agency Enhance Efforts to Fight Child Exploitation" (6/26/2015) <http://www.ice.gov/news/releases/ice-uk-national-crime-agency-enhance-joint-efforts-combat-child-exploitation>.

26 H.R. 515, International Megan's Law (P.L. 114-119) <https://www.congress.gov/114/bills/hr515/BILLS-114hr515enr.pdf>