

1999 DRAFTING REQUEST

Bill

Received: **12/21/1998**

Received By: **olsenje**

Wanted: **As time permits**

Identical to LRB:

For: **Corrections 266-2931**

By/Representing: **Bob Margolies**

This file may be shown to any legislator: NO

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Correctional System - misc**

Extra Copies: **MGD**

Pre Topic:

No specific pre topic given

Topic:

Sex offender registration; persons covered

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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Jacket "1/2"

for Assembly

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PA's:

Please tell
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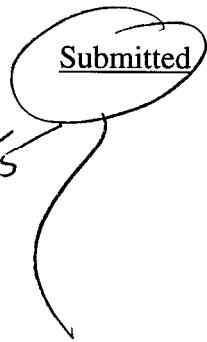
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Submit "P" Drafts

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NON-BUDGET STATUTORY LANGUAGE PROPOSAL

Division of Program Planning and Movement Bureau of Offender Programs

1407

TOPIC: Changes to Sex Offender Registry Law (effects ss. 301.45)

EXPLANATORY NOTE: Following formal implementation of the law, a number of issues/needs have been identified that either relate to federal compliance issues and/or program enhancement or language clarification needs. The following is a list of the proposed changes, followed by a brief reasoning for the proposed change.

CURRENT LANGUAGE: Addressed below.

PROPOSED CHANGE(s):

• **Requiring any sex offender convicted in a military, tribal or federal court, and those who work or reside within the Wisconsin borders, to register with the Wisconsin Sex Offender Registration Program (SORP):**

- This is a requirement of the Federal law and guidelines. Current law does not allow the Department to register these offenders.

how long?

• **Requiring any sex offender, who is required to register in another state, and who is not under any form of interstate compact supervision within Wisconsin - and who resides, is employed or attends school within the Wisconsin borders, to register with the Wisconsin SORP.**

- This is a requirement of the Federal law and guidelines. Current law does not allow the department to register a sex offender who is off any form of field supervision, and who moves into, or works within our state. Additionally, the Federal guidelines require a state registry program to register all offenders who may not live, but who work or attend school within the state (for example, a Minnesota registrant who works in Hudson, but lives in Stillwater, MN.)

how long?

• **Requiring registration for Juvenile Interstate compact cases.**

- Current law does not allow the department to register juvenile sex offenders who are under interstate compact supervision within this state.

• **Expanding the included list of crimes to include the following:**

948.12	Possession of child pornography
948.13	Child sex offender working with children
948.095	Sexual assault of a student by a school instructional staff person

- Federal guidelines require registration for "any conduct that by its nature is a sexual offense against a minor".. although not all chapter 948 crimes are included in the mandatory registration requirements, these need to be included to reflect all felony

convictions within this chapter - leaving the other convictions under the discretion of the court. There needs to be a clear distinction between felony and misdemeanor convictions - in that all felony convictions of sexual assault should be required to register, while misdemeanor convictions remain at the discretion of the court. An example is 948.11 - Exposing a child to harmful materials. Sub (2)(a) is a felony, while sub (2)(b) is a misdemeanor. Current law, as written, requires registration under both subs. This is not the case with other misdemeanor convictions. There needs to be some clarification to ensure consistent application. Recommend that all felony convictions are required, all misdemeanor convictions are at the discretion of the court.

✓ **Clarify definition of "comparable crime" to address out-of-state convictions - felony vs. misdemeanor.**

Current law allows the department to register a person, who was convicted in another state but resides in Wisconsin and is under interstate compact supervision, if that person is convicted of a sex crime that is comparable to the list of crimes requiring registration in Wisconsin. This definition of comparable crimes also affects 2-strike determinations, mandatory notification and lifetime registration. As with the above recommendation, comparable crimes should be defined by felony or misdemeanor convictions - in that a person convicted of a felony conviction would count as a strike and would be required to register with the department. Conversely, a person convicted of a misdemeanor crime in another state would not count as a strike and would not be required to register, unless.. 1) the person is under interstate compact supervision with the state of Wisconsin, or 2) the person is required to register in their state of conviction, and that state appropriately notifies the department of this requirement. By new federal regulations, a sending state is to provide notification to a receiving state that a registered sex offender has moved to, works or attends school within the state.

• **Lifetime Registration.**

✓ ~~a~~ ~~b~~

- In cases where lifetime registration is not mandatory under current law, include a provision to allow a court to order lifetime registration as part of sentencing. This does not preclude the minimum of 15 years following discharge from supervision, as in current law. Include a provision whereby when an offender is sentenced to lifetime monitoring (new statute) this also requires lifetime registration.

• **Expanding authority for DOC to manage registrants off field supervision.**

The following are a couple of proposed changes to allow the department more direct authority to deal with registrants off active field supervision. Many of these changes are being proposed to maintain compliance with Federal mandates for connection with the Permanent FBI database.

✓

- Adding authority for DOC to obtain fingerprints and photos from persons off field supervision (adults and juveniles). Having the authority to have the registrants report to law enforcement or a designated corrections office.

▪ Adding DOC authority to issue a warrant for arrest on a case that is determined to be in non-compliance with the law, and the person is not on active field supervision.

B-Note

- **Annual registration and verification of address for juvenile offenders - parent/guardian notification.**

Current law requires a minimum annual update of registration, and administrative rules allow the department to conduct activities related to verification of the reported information from the registrant. Over the course of implementation, an issue has arose where there may need to be more direction from the law regarding annual registration and periodic verification activities, as it relates to juveniles who remain under the age of 18, and the need to share some of the onus of registration with the legal parent/guardian. Issue here is to require that registration and verification communications be directed to the registrant, and the legal parent/guardian.

Add definition of "employed, carries on a vocation" and "student" consistent with the Federal law.

- Current law does not include a definition of employment or student as part of the registration requirements. In order to make this clear, particularly given the requirements to register persons residing in another state who work or attend school in this state, it is recommended that the current law include the following definitions:

"employed, carries on a vocation" includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during a calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

"student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education.

CONTACT PERSON: Anthony Streveler, Director, BOP 266-3831

DATE: December 15, 1998

**Registered
Federal**

Tuesday
January 5, 1999

Part II

**Department of
Justice**

**Megan's Law; Final Guidelines for the
Jacob Wetterling Crimes Against Children
and Sexually Violent Offender
Registration Act, as Amended; Notice;
Republication**

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DEPARTMENT OF JUSTICE

Office of the Attorney General

[A.G. Order No. 2196-98]

RIN 1105-AA56

Megan's Law; Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as Amended**Correction** and Republication

Editorial Note: Due to typesetting errors, notice document FR DOC 98-33377, originally published in the issue of Thursday, December 17, 1998, at pages 69656-69667 is being republished in its entirety.

AGENCY: Department of Justice.

ACTION: Final guidelines.

SUMMARY: The United States Department of Justice is publishing Final Guidelines to implement the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act as amended by Megan's Law, the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, and section 115 of the General Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998

EFFECTIVE DATE: December 17, 1998.

SUPPLEMENTARY INFORMATION: The Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. 104-236, 110 Stat. 3093 (the "Pam Lychner Act"), and section 115 of the General Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. 105-119, 111 Stat. 2440, 2461 (the "CJSA"), amended 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), which contains the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (the "Wetterling Act" or "the Act"). These legislative changes require conforming changes in the Final Guidelines for the Jacob Wetterling Act and Megan's Law (Pub. L. 104-145, 110 Stat. 1345) that were published by the Department of Justice on July 21, 1997, in the Federal Register (62 FR 39009).

The Wetterling Act generally sets out minimum standards for state sex offender registration programs. States that fail to comply with these standards within the applicable time frame will be subject to a mandatory 10% reduction of formula grant funding 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. Any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance. Information concerning compliance review procedures and requirements appears in part VIII of these guidelines.

The Wetterling Act's requirements for compliance may be divided into three categories, each of which carries a different compliance deadline, depending on the legislation from which it derives:

1. Original requirements. Many of the provisions of the current formulation of the Wetterling Act derive from the original version of the Act, which was enacted on September 13, 1994, or from the Megan's Law amendment to the Act. These include, for example, the basic requirements to register offenders for at least 10 years; to take registration information from offenders and to inform them of registration obligations when they are released; to require registrants to update address information when they move; to verify the registered address periodically; and to release registration information as necessary for public safety. The deadline for compliance with these features of the Act was September 12, 1997, based on the specification of 42 U.S.C. 14071 (g) that states have three years from the Act's original enactment date (i.e., September 13, 1994) to achieve compliance. However, 42 U.S.C. 14071 (g) allows a two-year extension of the deadline for states that are making good faith efforts to achieve compliance, and states that have been granted this extension have until September 12, 1999, to comply with these features of the Act.

2. Pam Lychner Act requirements. The Pam Lychner Act's amendments to the Wetterling Act created a limited number of new requirements for state registration programs, including a requirement that the perpetrators of particularly serious offenses and recidivists be subject to lifetime registration. The time frame for compliance with these new requirements is specified in section 10(b) of the Pam Lychner Act—three years from the Pam Lychner Act's enactment date of October 3, 1996, subject to a possible extension of two years for states that are making good faith efforts to come into compliance. Hence, barring an extension, states will need to comply with these features of the Act by October 2, 1999.

3. CJSA requirements. The CJSA amendments made extensive changes to the Wetterling Act, many of which afford states greater flexibility in achieving compliance. Under the effective date provisions in section 115(c) of the CJSA, states immediately have the benefit of amendments that afford them greater discretion and can rely on these amendments in determining what changes (if any) are needed in their registration programs to comply with the Act. For example, the Act as amended by CJSA affords states discretion concerning the procedures to be used in periodic verification of registrants' addresses, in contrast to the Act's original requirement that a specific verification-form procedure be used. In light of this change, effective immediately, states have discretion concerning the particular procedures that will be used in address verification.

While the CJSA's amendments to the Wetterling Act were largely in the direction of affording states greater discretion, the CJSA did add some new requirements to the Wetterling Act. For example, the CJSA added provisions to promote registration of sex offenders in states where they work or attend school (as well as states of residence) and to promote registration of federal and military sex offenders. The time frame for compliance with new requirements under the CJSA amendments, as specified in section 115(c) (2) of the CJSA, is three years from the CJSA's enactment date of November 26, 1997, subject to a possible extension of two years for states that are making good faith efforts to come into compliance. Hence, barring an extension, states will need to comply with these features of the Act by November 25, 2000.

The final guidelines in this publication identify and discuss separately all of the requirements that states will need to meet by each of the three specified deadlines, thereby making it clear when states will need to be in compliance with each element of the Wetterling Act to maintain eligibility for full Byrne Formula Grant funding.

Summary of Comments on the Proposed Guidelines

On June 19, 1998, the U.S. Department of Justice published Proposed Guidelines in the **Federal Register** (63 FR 33696) to implement the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act as amended by Megan's Law, the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, and section 115 of the General

Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998. The comment period expired on August 18, 1998.

Following the publication of the proposed guidelines, the Department received 9 comment letters, primarily from state law enforcement agencies. These letters contained numerous comments, questions and recommendations, all of which were considered carefully in developing the Final Guidelines. A summary of the comments and responses to them are provided in the following paragraphs.

A. Offense Coverage

One respondent commented that some states appear to be imposing registration requirements on individuals convicted of consensual adult sodomy. As the guidelines state, such offenses are not among the offenses for which the Act requires registration, and registration of persons convicted of such offenses would not further the Act's objectives.

B. Basic Registration Requirements

I. Initial Registration Requirement

One respondent asked about the applicability of the Act's requirements in relation to an offender who is released from custody and immediately moves to another state. In such cases, the state must: (1) inform the offender of the pertinent registration requirements and take information on the offender as prescribed in the Act; and (2) have procedures that ensure that notice is provided promptly to an agency responsible for registration in the state to which the offender moves, as with any other offender who is moving interstate (42 U.S.C. 1407 I (b)(1), (2) and (5)). The final guidelines include language that clarifies these requirements

2. Duration of Registration

Two respondents commented on the minimum registration period required by the Act. One respondent noted that its state law currently allows discontinuance of registration "upon restoration of civil rights," while another noted that its state law allows discontinuance of registration after seven years in certain circumstances. As the guidelines state, for persons convicted of offenses within the Act's offense categories, registration may be discontinued prior to 10 years *only* if the underlying conviction is reversed, vacated, or set aside, or if the registrant is pardoned. Thus, laws allowing discontinuance of registration for such

persons prior to ten years for any other reason would not be in compliance with the Act.

The requirement of registration for at least 10 years, like the other requirements of the Act, does not have to be applied retroactively to offenders who were convicted prior to the establishment of a conforming registration program. Hence, it is a matter of state discretion whether to allow termination of registration for such offenders after some shorter period of time.

C. Registration in Certain Interstate Contexts

1. Offense Coverage

One respondent inquired whether an offender's new state of residence, or a state in which an offender works or attends school, must register the offender if he or she does not fall into the categories of registration offenses specified in the state's sex offender registration laws. The Act requires states to register-or, in the case of non-resident workers and students, to accept registration information from-persons convicted of the offenses described in 42 U.S.C. 14071(a)(3)(A)-(B) or a comparable range of offenses. Thus, a state must register (or, for non-resident workers and students, accept registration information from) at least those persons to comply with the Act. The coverage of any offenses beyond those offenses is a matter of state discretion. Thus, for example, the Act does not require a state to accept registration information from a non-resident worker or student if that person's state of residence is registering the person on the basis of an offense that is outside of the Act's offense coverage requirements,

2. Notification to Other States

One respondent asked whether, to comply with the Act, a state must enact a statutory requirement providing for notification to other states when an offender moves interstate, or whether it could rely on informal practice to do so. As the guidelines state, in determining compliance, the Act does not require that its standards be implemented by statute. Thus, in assessing compliance with the Act, the totality of a state's rules governing the operation of its registration and notification system will be considered, including administrative policies and procedures as well as statutes. However, a completely informal practice, not adopted by statute and not included in an articulated administrative policy or procedure, would not be sufficient.

D. Requirements Related to Non-Resident Workers and Students

1. General Requirement

One respondent commented that the requirement that non-resident workers and students register both in the state in which they reside and the state in which they are employed places a burden on the non-resident state. The Act itself requires that states accept registration information from out-of-state workers and students (42 U.S.C. 1407 I (b) (7)). The guidelines cannot alter requirements appearing in the statute.

2. Procedures for Accepting Registration Information

One respondent asked whether states may comply with the requirement to accept registration information concerning non-resident workers and students by having local law enforcement agencies collect the information and then transfer it to the state. This approach is consistent with the Act.

One respondent asked whether registration information must be collected directly from the non-resident workers and students, or whether states may enter into agreements to exchange information on such persons. The Act requires states to "ensure that procedures are in place to accept registration information from" these categories of offenders (42 U.S.C. 1407 I (b) (7)). Thus, states must have some mechanism in place to accept registration information from non-resident workers and students. Should states also wish to enter into agreements for information exchange with other states, they are free to do so under the Act.

3. Offenders to Whom the Registration Requirements Apply

One respondent asked how the number of days of employment in the state should be calculated. More specifically, the respondent asked how to deal with employment involving travel through several states, and whether work-related travel through a state or any amount of time spent working during a day should be counted towards or as a "day" of employment in the state. As the guidelines state, the Act requires states to accept registration information from non-residents who are employed "full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year" (42 U.S.C. 14071(a)(3)(F)). The Act and guidelines do not provide more specific rules concerning such questions as

whether traveling through a state in the course of employment constitutes being employed in the state, or whether there is a lower limit on the amount of time worked during a day that will count as part-time employment. Thus, the resolution of those issues is a matter of state discretion.

One respondent inquired as to the definition of part-time student. The Act defines a "student" as a "person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education." (42 U.S.C. 14071 (a)(3)(G)). The Act and guidelines do not further define the term "part-time." Thus, it is left to the states to apply this term in a manner consistent with the Act.

E. Requirements Related to Federal and Military Offenders

One respondent expressed interest in the federal government's role in sex offender registration, including the National Sex Offender Registry (NSOR) and the registration of federal and military offenders. Another respondent noted that, in order for the state to notify federal authorities if a federal or military offender fails to register, some mechanism must be established to alert the state when such an offender moves into the state. Procedures for state participation in NSOR are described in the guidelines, and the FBI will issue formal regulations governing the operation of NSOR. As the guidelines explain, recent legislation requires federal and military authorities to give notice to state and local authorities concerning the release to their areas of federal and military sex offenders. The responsible federal agencies are in the process of establishing procedures to implement these requirements.

F. Requirements Related to Aggravated Offenders and Recidivists

1 Application of Lifetime Registration Requirement

Two respondents questioned whether the lifetime registration requirements for aggravated offenders and recidivists apply retroactively or prospectively. The final guidelines clarify that the Act requires states to register for life offenders convicted for an aggravated offense, and recidivists convicted of the current offense, where such convictions occur after the adoption by the state of the lifetime registration requirement. However, states remain free to apply the lifetime registration requirement retroactively to offenders convicted prior to their adoption of the

requirement, if they so wish. The lifetime registration requirement for aggravated offenders and recidivists was enacted by the Pam Lychner Act, and thus carries a deadline of October 3, 1999, with a possible two-year extension for states making good faith efforts to comply.

One respondent asked how far back a state must look in determining whether an offender has a prior offense that would qualify him or her as a recidivist. There is no time limit under the Act on prior qualifying convictions. As the final guidelines make clear, in determining whether a person has a qualifying prior conviction, states may rely on the methods they normally use in searching criminal records.

2. Definition of Aggravated Offenses

One respondent sought clarification on the aggravated offenses for which lifetime registration is required. As the guidelines state, "aggravated offense" refers to state offenses comparable to aggravated sexual abuse as defined in federal law (18 U.S.C. 224 1), which principally encompasses: (1) engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence; and (2) engaging in sexual acts involving penetration with victims below the age of 12. Thus, states can comply with this provision by requiring lifetime registration for persons convicted of the state offenses that cover such conduct, i.e., (1) engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence; and (2) engaging in sexual acts involving penetration with victims below the age of 12.

G. Requirements Related to Sexually Violent Predators

1. Waiver

Several respondents expressed concern over the particular requirements regarding sexually violent predators. For example, two respondents noted that their state either does not use a board of experts to designate sexually violent predators or does not include certain representatives on the board that they use. The Act requires that the determination whether a person is a sexually violent predator be made by a court after considering the recommendation of a board with a specified composition (42 U.S.C. 14071 (a) (2) (A)). However, the Act also allows the Attorney General to grant a waiver from these requirements where a state has established alternative procedures or legal standards for

designating a person as a sexually violent predator (42 U.S.C.

14071 (a)(2) (E)). As a result, as the guidelines state, the approach taken to determining whether an offender is a sexually violent predator will be treated as a matter of state discretion.

In addition, the Act allows the Attorney General to approve "alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders" in lieu of the specific measure set forth in the Act regarding sexually violent predators (42 U.S.C. 14071(a)(2)(C)). States that wish to request approval under this provision should do so during the compliance review process. States also may consider the adoption of alternative measures at any time after coming into compliance with the Act, and may seek approval from the reviewing authority for such later-developed alternatives.

2. Documentation of Treatment

Two respondents expressed concern with the requirement that the registration information collected on sexually violent predators must include documentation of treatment. The Act requires that, for registrants who have been designated as "sexually violent predators" under the Act's definition, the initial registration information must include "documentation of treatment received for any mental abnormality or personality disorder of the person" (42 U.S.C. 14071 (b) (1) (B)). As the guidelines note, however, in determining whether offenders have received treatment, the officers responsible for obtaining the initial registration information may rely on information that is readily available to them, either from existing records or the offender, and may comply with the requirement to document an offender's treatment history simply by noting that the offender received treatment. Of course, states that wish to include more detailed information about offenders' treatment histories are free to do so.

3. Termination of Sexually Violent Predator Status

One state commented that its law allows certain sexually violent predators to obtain certificates of rehabilitation that terminate sexually violent predator status. As the guidelines make clear, the Act requires lifetime registration once it has been determined that a registrant is a sexually violent predator. Thus, a state would not be in compliance with this feature of the Act if it were to allow registration to be terminated for a person who has been found to be a sexually violent predator on the basis of

a later determination that the person has been "rehabilitated" or is no longer a sexually violent predator. However, as noted in the guidelines and in (G) (1) above, the Attorney General may approve alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in the Act regarding sexually violent predators (42 U.S.C. 14071 (a) (2) (C))

H. The National Sex Offender Registry (NSOR)

One respondent had specific questions regarding the interface of its offender tracking system with NSOR. Procedures for state participation in NSOR are described in the guidelines, and the FBI will issue formal regulations governing the operation of NSOR. As the guidelines note, funding is available through the National Sex Offender Registry Assistance Program of the Bureau of Justice Statistics of the United States Department of Justice to facilitate state participation in NSOR and to upgrade state sex offender registries.

Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as Amended

1. General Purposes and Principles of Interpretation

These guidelines carry out a statutory directive to the Attorney General in subsection (a) (1) of the Wetterling Act (42 U.S.C. 14071(a)(1)) to establish guidelines for state registration programs under the Act. Before turning to the specific provisions of the Act, five general points should be noted concerning the Act's interpretation and application.

First, the general objective of the Act is to assist law enforcement and protect the public from convicted child molesters and violent sex offenders through requirements of registration and appropriate release of registration information. The Act is not intended to, and does not have the effect of, making states less free than they were under prior law to impose such requirements. Hence, the Act's standards constitute a floor for state programs, not a ceiling. States do not have to go beyond the Act's minimum requirements to maintain eligibility for full Byrne Grant funding, but they retain the discretion to do so, and state programs do often contain elements that are not required under the Act's standards. For example, a state may have a registration system

that covers broader classes of offenders than those identified in the Act, requires address verification for registered offenders at more frequent intervals than the Act prescribes, or requires offenders to register for a longer period of time than the period specified in the Act. Exercising these options creates no problem of compliance because the Act's provisions concerning duration of registration, covered offenders, and other matters do not limit state discretion to impose more extensive or stringent requirements that encompass the Act's baseline requirements.

Second, to comply with the Wetterling Act, states do not have to revise their registration systems to use technical definitions of covered sex offenses based on federal law. Rather, subject to certain constraints, they may use their own criminal law definitions and categories in defining registration requirements. This point is explained more fully below.

Third, the Act's definitions of covered offense categories are tailored to its general purpose of protecting the public from persons who molest or sexually exploit children and from other sexually violent offenders. Hence, these definitions do not include all offenses that involve a sexual element. For example, offenses consisting of consensual acts between adults are not among the offenses for which registration is required under the Act, and requiring registration for persons convicted of such offenses would not further the Act's objectives.

Fourth, the Wetterling Act contemplates the establishment of programs that will prescribe registration and notification requirements for offenders who are subsequently convicted of offenses in the pertinent categories. The Act does not require states to attempt to identify and to prescribe such requirements for offenders who were convicted prior to the establishment of a conforming program. Nevertheless, the Act does not preclude states from prescribing registration and notification requirements for offenders convicted prior to the establishment of the program.

Fifth, the Act sets minimum standards for state registration and notification programs but does not require that its standards be implemented by statute. In assessing compliance with the Act, the totality of a state's rules governing the operation of its registration and notification program will be considered, including administrative policies and procedures as well as statutes.

2. Related Litigation

Some state registration and notification systems have been challenged on constitutional grounds. The majority of courts, and all federal appeals courts, that have dealt with the issue thus far have held that systems like those contemplated by the Wetterling Act do not violate released offenders' constitutional rights. See e.g., *Roe v. Office of Adult Probation*, 125 F.3d 47 (2d Cir. 1997) (Connecticut probation office notification policy), *Russell v. Gregoire*, 124 F.3d 1079 (9th Cir. 1997) (Washington state act), *cert. denied*, 118 S.Ct. 1191 (1998). *Doev. Pataki*, 120 F.3d 1263 (2d Cir. 1997) (New York act), *cert. denied*, 118 S.Ct. 1066 (1998); *E.B v. Verniero*, 119 F.3d 1077 (3d Cir. 1997) (New Jersey notification provisions), *cert. denied*, 118 S.Ct. 1039 (1998); *Artwayv. Attorney General*, 81 F.3d 1235 (3d Cir. 1996) (New Jersey registration provision); *Doe v. Kelley*, 961 F. Supp. 1105 (W.D.Mich. 1997) (Michigan notification provisions), *Doe v. Weld*, 954 F. Supp. 425 (D Mass. 1996) (Massachusetts registration of juvenile offenders); *State v. Pickens*, 558 N.W.2d 396 (Iowa 1997); *Arizona Dep't of Public Safety v. Superior Court*, 949 P.2d 983 (Ariz. App. 1997); *Opinion of the Justices to the Senate*, 423 Mass 1201, 668 N.E. 2d 738 (Mass. 1996); *Doe v. Poritz*, 142 N.J. 1, 662 A.2d 367 (N.J. 1995); *State v. Ward*, 123 Wash 2d 488, 869 P.2d 1062 (Wash. 1994) The United States has filed "friend of the court" briefs in several of these cases, arguing that sex offender registration and community notification do not impose punishment for purposes of the Ex Post Facto and Double Jeopardy Clauses or violate privacy or liberty interests guaranteed by the federal Constitution. In a few other cases, however, courts have found that certain applications or provisions of some state systems violate the United States Constitution or provisions of a state constitution. See, e.g., *Doe v. Attorney General*, 426 Mass. 136, 686 N.E. 2d 1007 (Mass. 1997) (holding that the Massachusetts act implicates liberty and property interests protected by the Massachusetts constitution, so that the act could not be applied to Doe-who had been convicted of "indecent assault" for sexually suggestive touching of an undercover police officer in an area known for consensual sexual activity between adult males-without a prior hearing to determine if he individually presented any threat to persons for whose protection the act was passed; the court did not rule out the possibility that a categorical "dangerousness"

determination could be justified by certain other conviction offenses): *State v. Myers*, 260 Kan. 669, 923 P.2d 1024 (Kan. 1996) (holding that due to the breadth of offenses subject to Kansas registration act and the potentially unlimited scope of notification, Kansas notification provisions violate the EX Post Facto Clause), *cert. denied*, 117 S.Ct. 2508 (1997). The New Jersey Supreme Court in *Doe v. Poritz* (above) also found a state law privacy interest requiring certain procedural protections, and those procedures were further elaborated upon by the Third Circuit in *E.B. v. Verniero* (above).

In addition, when these guidelines were written, there were appeals pending in the Second Circuit, see *Doe v. Paraki*, 3 F. Supp. 2d 456 (S.D.N.Y. 1998) (finding a federally protected liberty interest sufficient to trigger due process concerns and that New York's law did not provide sufficient due process), appeal pending, 2d Cir. *No. _____*, in the Sixth Circuit, see *Cutshall v. Sundquist*, 980 F. Supp. 928 (M.D. Tenn 1997) (holding that the Tennessee notification provisions implicate federal and state law privacy and employment interests, requiring procedural protections prior to notification), *appeal pending*, 6th Cir. Nos. 97-6276 & 97-6321, and in the Third Circuit, see *Paul v Verniero*, 3d Cir. No. 97-5791 (from district court's rejection of constitutional privacy challenge to community notification). There was also ongoing litigation in federal district court in Minnesota and in state courts in Ohio and Pennsylvania

3. Summary and Text of Guidelines

The following guidelines explain the interpretation and application of the Wetterling Act's standards for registration programs and related requirements. All citations in these guidelines to the Act are to the Act's current text, reflecting the Megan's Law, Pam Lychner Act, and CJSA amendments. The detailed explanation is preceded by a table that summarizes the organization of the guidelines, the major elements of the Act, and the time for compliance with each element under the enacting legislation.

Summary and Deadlines for Wetterling Act Compliance

I. Ten-year Minimum Registration For Persons Convicted of a Criminal Offense Against a Victim Who Is a Minor or a Sexually Violent Offense [Sept. 12, 1997: Possible Two-year Extension]

- A "States" to which the Act applies
- B Duration of registration
- C Coverage of offenses

D. Coverage of offenders

II. Registration and Tracking Procedures; Penalties for Registration Violations [Sept. 12, 1997: Possible Two-year Extension]

- A. Initial registration procedures
- B. Change of address procedures
- C. Periodic address verification
- D Penalties for registration violations

III. Release of Registration Information [Sept. 12, 1997: Possible Two-year Extension]

IV. Special Registration Requirements Under the Pam Lychner Act for Recidivists and Aggravated Offenders [Oct. 2, 1999: Possible Two-year Extension]

V. Special Registration Requirements Under the Cjsa Amendments Relating to Sexually Violent Predators, Federal and Military Offenders, and Non-resident Workers and Students [Nov. 25, 2000: Possible Two-year Extension]

- A. Heightened sexually violent predator registration or alternative measures
- B. Federal and military offenders; non-resident workers and students

VI. Participation in the National Sex Offender Registry [Nov. 25, 2000: Possible Two-year Extension]

VII. Good Faith Immunity [Available to States Immediately]

VIII. Compliance Review: Consequences of Non-compliance

Text of Detailed Guidelines for Wetterling Act Compliance

I. Ten-year Minimum Registration for Persons Convicted of a Criminal Offense Against a Victim Who Is a Minor or a Sexually Violent Offense [September 12, 1997; Possible Two-year Extension]

To comply with subsections (a) (1) and (b) (6) (A) of the Wetterling Act, a state registration program must require current address registration for a period of 10 years for persons convicted of "a criminal offense against a victim who is a minor" or a "sexually violent offense."

This requirement derives from the Wetterling Act as originally enacted. The time for compliance is accordingly that provided in 42 U.S.C. 14071 (g)—Sept. 12, 1997, or Sept. 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance.

The interpretation and application of this requirement are as follows:

A. "States" to Which the Act Applies

For purposes of the Act, "state" refers to the political units identified in the provision defining "state" for purposes of eligibility for Byrne Formula Grant funding (42 U.S.C. 3791(a)(2)). Hence,

the "states" that must comply with the Act's standards for registration programs to maintain full eligibility for such funding are the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

B. Duration of Registration

Subsection (b) (6) (A) provides that the registration requirement must remain in effect for 10 years following the registrant's release from prison or placement on parole, supervised release, or probation. States may choose to establish longer registration periods, and are required to do so under the Act's standards for certain types of offenders as discussed in parts IV and V of these guidelines. Registration requirements of shorter duration than 10 years are not consistent with the Act. Hence, for example, a state program would not be in compliance with the Act if it allowed registration obligations to be waived or terminated before the end of the 10 year period on such grounds as a finding of rehabilitation or a finding that registration (or continued registration) would not serve the purposes of the state's registration provisions. However, if the underlying conviction is reversed, vacated, or set aside, or if the registrant is pardoned, registration (or continued registration) is not required under the Act.

Also, in light of a proviso in subsection (b)(6), a state need not require registration "during ensuing periods of incarceration." The reference to subsequent "incarceration" should be understood to include periods of civil commitment, as well as imprisonment for the commission of another criminal offense, since a state may conclude that it is superfluous to carry out address registration and verification procedures while the registrant is in either criminal or civil confinement. To comply with the Act, a state that does waive registration during subsequent criminal or civil confinement must require that registration resume when the registrant is released, if time remains under the registration period required by the Act.

C. Coverage of Offenses

1. "Criminal offense against a victim who is a minor". The Act requires registration of any person convicted of a "criminal offense against a victim who is a minor." Subsection (a)(3)(A) defines the relevant category of offenses. The general purpose of the definition is to ensure comprehensive registration for persons convicted of offenses involving sexual molestation or sexual

exploitation of minors. "Minor" for purposes of the Act means a person below the age of 18.

The specific clauses in the Act's definition of "criminal offense against a victim who is a minor" are as follows:

(1)-(2) Clauses (i) and (ii) cover kidnaping of a minor (except by a parent) and false imprisonment of a minor (except by a parent). All states have statutes that define offenses-going by such names as "kidnaping," "criminal restraint," or "false imprisonment"-whose gravamen is abduction or unlawful restraint of a person. States can comply with these clauses by requiring registration for persons convicted of these statutory offenses whose victims were below the age of 18. It is a matter of state discretion under these clauses whether registration should be required for such offenses in cases where the offender is a parent of the victim.

(3) Clause (iii) covers offenses consisting of "criminal sexual conduct toward a minor." States can comply with this clause by requiring registration for persons convicted of all statutory sex offenses under state law whose elements involve physical contact with a victim—such as provisions defining crimes of "rape," "sexual assault," "sexual abuse," or "incest"—in cases where the victim was a minor at the time of the offense. Coverage is not limited to cases where the victim's age is an element of the offense (such as prosecutions for specially defined child molestation offenses). It is a matter of state discretion under this clause whether registration should be required for sex offenses that do not involve physical contact, such as exhibitionism offenses.

(4) Clause (iv) covers offenses consisting of solicitation of a minor to engage in sexual conduct. The notion of "sexual conduct" should be understood in the same sense as in clause (iii). Hence, states can comply with clause (iv) by consistently requiring registration, in cases where the victim was below the age of 18, based on:

-A conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the object offense would be covered by clause (iii), and

-A conviction for an offense involving solicitation of the victim under any provision defining a particular crime whose elements include soliciting or attempting to engage in sexual activity involving physical contact.

(5) Clause (v) covers offenses consisting of using a minor in a sexual performance. This includes both live

performances and using minors in the production of pornography.

(6) Clause (vi) covers offenses consisting of solicitation of a minor to practice prostitution. The interpretation of this clause is parallel to that of clause (iv). States can comply with clause (vi) by consistently requiring registration, in cases where the victim was below the age of 18, based on:

-A conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the object offense is a prostitution offense, and

-A conviction for an offense involving solicitation of the victim under any provision defining a particular crime whose elements include soliciting or attempting to get a person to engage in prostitution.

(7) Clause (vii) covers offenses consisting of any conduct that by its nature is a sexual offense against a minor. This clause is intended to ensure coverage of convictions under statutes defining sex offenses in which the status of the victim as a minor is an element of an offense, such as specially defined child molestation offenses, and other offenses prohibiting sexual activity with underage persons. States can comply with this clause by including convictions under these statutes in the registration requirement. A proviso at the conclusion of the Act's definition of "criminal offense against a victim who is a minor" allows states to exclude from registration requirements persons convicted for conduct that is criminal only because of the age of the victim if the perpetrator is 18 years of age or younger. Whether registration should be required for such offenders is a matter of state discretion under the Act.

(8) Considered in isolation, clause (viii) gives states discretion whether to require registration for attempts to commit offenses described in clauses (i) through (vii). However, state discretion to exclude attempted sexual offenses against minors is limited by other provisions of the Act, since any verbal command or attempted persuasion of the victim to engage in sexual conduct would bring the offense within the scope of the solicitation clause (clause (iv)), and make it subject to the Act's mandatory registration requirements. Hence, the simplest approach for states is to include attempted sexual assaults on minors (as well as completed offenses) uniformly as predicates for the registration requirement.

2. "Sexually **violent offense**". The Act prescribes a 10-year registration requirement for offenders convicted of a "sexually violent offense," as well as for

those convicted of a "criminal offense against a victim **who** is a minor." Subsection (a) (3) (B) defines the term "sexually violent offense." The general purpose of the definition is to require registration of persons convicted of rape or rape-like offenses-i.e., non-consensual sexually assaultive crimes involving penetration-regardless of the age of the victim. The definition refers specifically to any criminal offense that consists of aggravated sexual abuse **or** sexual abuse (as described in sections 224 1 and 2242 of title 18 of the United States Code, or as described in the state criminal code), or an offense that has as its elements engaging in physical contact with another person with intent to commit such an offense.

In light of this definition, there are two ways in which a state can satisfy the requirement of registration for persons convicted of "sexually violent offenses".

First, a state can comply by requiring registration for offenders convicted for criminal conduct that would violate 18 U.S.C. 224 1 or 2242-the federal "aggravated sexual abuse" and "sexual abuse" offenses-if prosecuted federally. (The part of the definition relating to physical contact with intent to commit aggravated sexual abuse or sexual abuse does not enlarge the class of covered offenses under the federal law definitions, because sections 224 1 and 2242 explicitly encompass attempts as well as completed offenses.)

Second, a state can comply by requiring registration for offenders convicted of the state offenses that correspond to the federal offenses described above-i.e., the most serious sexually assaultive crime or crimes under state law, covering non-consensual sexual acts involving penetration- together with state offenses (if any) that have as their elements engaging in physical contact with another person with intent to commit such a crime.

Like the other requirements of the Act, the requirement to register persons convicted of sexually violent offenses, regardless of the age of the victim, establishes only a baseline for state registration programs. Whether registration should be required for additional offenses against adult victims is a matter of state discretion under the Act.

3. "**Comparable * * * range of offenses**" As a result of language added by the CJSA amendments, states need not comply exactly with the specific offense coverage requirements in subparagraph (A) or (B) of subsection (a)(3). Rather, a state may comply with

the Act by requiring registration for persons convicted of offenses in a "range of offenses specified by State law which is comparable to or which exceeds" the range of offenses described in the Act.

This change reflects a practical recognition by Congress that exact state compliance with the Act's offense coverage specifications may be difficult because of the degree of detail in the Act's definitions and because of the variations among different jurisdictions in the terminology and categorizations used in defining sex offenses. See H.R. Rep. No. 256, 105th Cong. 1st Sess. 15 (1997). As a result, Congress was concerned that some states "may inadvertently find themselves out of compliance with the Wetterling Act" because the state registration provisions "are not exactly congruent" with the Act's offense categories, "even if the offenses covered by the [state] program are much broader in other respects than required by the Wetterling Act." *Id.* The language concerning coverage of a "comparable" range of offenses was added to address this concern.

States should aim to have their registration offenses fully encompass the offense categories described in the Act and will be assured of compliance with the Act's offense coverage requirements if they do so. However, in light of the CJSA amendments affording a degree of flexibility concerning offense coverage, inadvertent departures from the Act's offense category specifications will not necessarily result in a finding of non-compliance. Such departures will be allowed if, in the judgment of the reviewing authority, they do not substantially undermine the objective of comprehensive registration for persons convicted of crimes involving sexual molestation or sexual exploitation of minors, and persons convicted of rape or rape-like crimes against victims of any age.

In addition, in assessing compliance, the reviewing authority may consider whether a state program imposes registration requirements that are broader in other respects than the offense coverage specifications of the Act. For example, consistently requiring registration for persons convicted of attempted offenses, and of sexual assaults against adult victims other than rape-like offenses, goes beyond the Act's mandatory standards. Such additional coverage may be considered by the reviewing authority in deciding whether the overall offense coverage under a state program "is comparable to or * * * exceeds" the Act's offense coverage specifications.

D. Coverage of Offenders

1. *Resident offenders convicted in other states.* In addition to the Act's requirement that states register their own offenders in the pertinent categories, subsection (b) (7) of the Act requires states, as provided in these guidelines, to include in their registration programs residents who were convicted in other states.

To comply with this requirement, states must apply the Act's standards to residents who were convicted in other states of a criminal offense against a victim who is a minor or a sexually violent offense (as defined in the Act). Specifically, states must require such persons to promptly provide current address information to the appropriate authorities when they establish residence in the state, and thereafter must apply to such persons all of the Act's standards relating to treatment of registered offenders following release including reporting of subsequent changes of address, periodic address verification, criminal penalties for registration violations, and release of registration information as necessary for protection of the public. States also should be aware that it is a federal offense for registered offenders to change residence to another state without notifying the new state of residence and the FBI. See 42 U.S.C. 14072(g)(3) and (i).

The durational requirements for registration of offenders convicted in other states are the same as those for in-state offenders-registration for at least 10 years or for life as provided in subsection (b) (6) of the Act. If a portion of the applicable registration period has run while the registrant was residing in another state, a new state of residence may give the registrant credit for that period. For example, if a person required to register for 10 years under the Act's standards has lived for six years following release in the state of conviction, another state to which the registrant moves at that point does not have to require registration for more than the four remaining years.

2. *Juvenile delinquents and offenders.* The Act's registration requirements depend in all circumstances on conviction for certain types of offenses. Hence, states are not required to mandate registration for juveniles who are adjudicated delinquent-as opposed to adults convicted of crimes and juveniles convicted as adults-even if the conduct on which the juvenile delinquency adjudication is based would constitute an offense giving rise to a registration requirement if engaged in by an adult. However, nothing in the

Act prohibits states from requiring registration for juvenile delinquents, and the conviction of a juvenile who is prosecuted as an adult does count as a conviction for purposes of the Act's registration requirements.

3. *Tribal offenders.* The Act does not impose any requirements relating to registration of persons convicted of sex offenses in Indian tribal courts. However, a sex offender convicted in an Indian tribal court whose presence is unknown to state authorities or Indian tribal authorities raises the same public safety concerns as an unregistered offender convicted of a similar offense in a state court. States are accordingly encouraged to require registration for sex offenders subject to their jurisdiction who were convicted in Indian tribal courts and to work with tribal authorities to ensure effective registration for such persons.

4. *Protected witnesses.* The Act requires current address registration but does not dictate under what name a person must be required to register. Hence, the Act does not preclude states from taking measures for the security of registrants who have been provided new identities and relocated under the federal witness security program (see 18 U.S.C. 3521 *et seq.*) or comparable state programs. A state may provide that the registration system records will identify such a registrant only by his or her new name and that the registration system records will not include the true pre-location address of the registrant or other information from which his or her original identity or participation in a witness security program could be inferred. States are encouraged to make provision in their laws and procedures for the security of such registrants and to honor requests from the United States Marshals Service and other agencies responsible for witness protection to ensure that the identities of these registrants are not compromised.

States should also be aware that 18 U.S.C. 3521 (b)(1)(H), enacted by section 115(a)(9) of the CJSA, specifically authorizes the Attorney General to adopt regulations to "protect the confidentiality of the identity and location" of protected witnesses who are subject to registration requirements, "including prescribing alternative procedures to those otherwise provided by Federal or State law for registration and tracking of such persons." The Attorney General's policy, to the maximum extent allowed by security considerations, is to require the registration of all federally protected witnesses who otherwise would be required to register. However, in the

Attorney General's discretion. The Attorney General will decide on a case-by-case basis whether these registrations will utilize new identities, modified listings, or other special conditions or procedures that are warranted to avoid inappropriately jeopardizing the safety of the protected witnesses.

II. Registration and Tracking Procedures; Penalties for Registration Violations [September 12, 1997; Possible Two-year Extension]

Paragraphs (1) (A) and (2) (A) of subsection (b) of the Act set out general duties for states in relation to offenders required to register who are released from prison or who are placed on any form of post-conviction supervised release ("parole, supervised release, or probation"). The duties include taking registration information, informing the offender of registration obligations, making the information available at the state level and to local law enforcement, and transmission of conviction data and fingerprints to the FBI. Paragraphs (4)-(5) of subsection (b) of the Act contain requirements that are designed to ensure that registration information will be updated when the registrant changes address and that registrants will continue to be required to register when they move from one state to another during the registration period. Subsection (b) (3) (A) states that "State procedures shall provide for verification of address at least annually."

These requirements generally derive from the Wetterling Act as originally enacted. The time for compliance is accordingly that provided in 42 U.S.C. 14071(g)-Sept. 12, 1997, or Sept. 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance. However, one aspect of subsection (b)(1)(A)-a requirement to inform offenders that they must register in states where they work or attend school, in clause (iii)—derives from the CJSA and consequently is subject to a longer deadline for compliance as discussed in part V of these guidelines.

A. Initial Registration Procedures

1 **Taking of registration information and informing offenders of registration obligations.** Subsection (b) (1) (A) provides that "a State prison officer, the court, or another responsible officer or official" must carry out specified duties in relation to persons who are required to register. The purpose of this provision is to ensure that offenders are made aware of their registration obligations and to preclude "honor systems" in which the initial

registration depends on the offender's reporting the information on his own. States have discretion under the Act concerning what types of officials or officers will be made responsible for these initial registration functions.

The specific duties set out in subparagraph (A) of paragraph (1) include: (i) informing the person of the duty to register and obtaining the information required for registration (i.e., address information), (ii) informing the person that he must report subsequent changes of address in the manner provided by state law, (iii) informing the person that if he moves to another state, he must report the change of address in the manner provided by state law and comply with any registration requirement in the new state of residence, (iv) obtaining fingerprints and a photograph if they have not already been obtained, and (v) requiring the person to read and sign a form stating that these requirements have been explained.

In addition, the CJSA amended subparagraph (A)(iii) to require that the person be informed that he also must register in states where he works or attends school. States must comply with this new requirement by November 25, 2000 (subject to a possible two-year extension), as explained in part V of these guidelines.

These informational requirements, like other requirements in the Act, only define minimum standards. Hence, states may require more extensive information from offenders. For example, the Act does not require a state to obtain information about a registrant's expected employment when it releases him, but a state may legitimately wish to know if a convicted child molester is seeking or has obtained employment that involves responsibility for the care of children.

As a second example, states are strongly encouraged to collect DNA samples, where permitted under applicable legal standards, to be typed and stored in state DNA databases. States are also urged to participate in the Federal Bureau of Investigation's (FBI's) Combined DNA Index System (CODIS). CODIS is the FBI's program of technical assistance to state and local crime laboratories that allows them to store and match DNA records from convicted offenders and crime scene evidence. The FBI provides CODIS software, in addition to user support and training, free of charge, to state and local crime laboratories for performing forensic DNA analysis. CODIS permits DNA examiners in crime laboratories to exchange forensic DNA data on an

intrastate level and will enable states to exchange DNA records among themselves through the national CODIS system. Thus, collection of DNA samples and participation in CODIS greatly enhance a state's capacity to investigate and solve crimes involving biological evidence, especially serial and stranger rapes.

2. **Transmission of registration information.** Paragraph (2)(A) of subsection (b) states, in part, that the registration information must be promptly made available to a law enforcement agency having jurisdiction where the registrant expects to reside and entered into the appropriate state records system. The purpose of this provision is to ensure that registration information will be available both to local law enforcement and at the state level.

States have discretion under the Act concerning the specific mechanisms and procedures for carrying out this requirement. For example, a state may provide that the responsible official or officer is to transmit the registration information concurrently to an appropriate local law enforcement agency and to the agency responsible for maintenance of the information at the state level, or may provide that the information is to be provided in the first instance only to the local agency or to the state agency, which then transmits it to the other. States also have discretion concerning the form of notification or transmission. For example, in meeting the requirement to make the information available to a law enforcement agency where the registrant will reside, permissible options include written notice, electronic transmission of registration information, and provision of on-line access to registration information.

While the Act generally leaves states discretion concerning specific procedures for taking and transmitting registration information, it does require that the information be "promptly" made available to the appropriate recipient agencies (both state and local). This requirement precludes procedures under which lengthy delays are allowed in the transmission or forwarding of the information. For example, in relation to registrants released from prison, state procedures must ensure (1) that the registration information taken from the offender will be transmitted prior to release or within a short time (e.g., five days) thereafter, and (2) that there is no long delay in any subsequent forwarding of the information required for compliance with the Act, such as, provision of the information to an

appropriate local law enforcement agency by a state agency if only the state agency receives the information in the first instance.

The Act leaves states discretion in determining which state record system is appropriate for storing registration information, and which agency will be responsible at the state level for the maintenance of this information. As discussed in Part VI of these guidelines, however, states will be required effective November 25, 2000, to participate in the National Sex Offender Registry (NSOR), which is administered by the FBI. States can ensure that they will be able to freely exchange registration information with the FBI's records systems and comply with the requirement of participation in NSOR by making a "criminal justice agency" as defined in 28 CFR 20.3(c) responsible for the registration information at the state level. This continues to leave states with broad discretion concerning the designation of responsibility for the state registry, since "criminal justice agency" is defined broadly in the rule and generally includes, *inter alia*, law enforcement agencies, correctional and offender supervision agencies, and agencies responsible for criminal identification activities or criminal history records.

In addition to requiring procedures that ensure the prompt availability of the initial registration information both to local law enforcement and at the state level, paragraph (2)(A) of subsection (b) requires the prompt transmission of conviction data and fingerprints of registrants to the FBI. This should not be understood as requiring duplicative transmission of conviction data and fingerprints to the FBI at the time of initial registration if the state already has sent this information to the FBI (e.g., at the time of conviction).

3. Fingerprinting. The final subsection of the Wetterling Act—which should be designated as subsection (h) but is designated as a second subsection (g) because of a technical drafting error in section 115(a)(3) of the CJSA—relates to a requirement under the Pam Lychner Act that certain offenders register directly with the FBI. In conjunction with other provisions of the Pam Lychner Act, it requires that fingerprints be obtained from such offenders by the FBI or by a local law enforcement official pursuant to regulations issued by the Attorney General. However, section 115(a)(7) of the CJSA deferred the effective date for direct FBI registration of certain offenders and issuance of related regulations. Hence, the final subsection of the Wetterling

Act does not impose any requirements on the states at the present time.

B. Change of Address Procedures

1. Intrastate moves. Subsection (b) (4) provides that registrants are to report changes of address in the manner provided by state law. It further provides that state procedures must ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and is entered into the appropriate state records or data system.

The purpose of this provision is to ensure that current address information will continue to be available both to local law enforcement and at the state level. To comply with this part of the Act, states must require registrants to report changes of address within the state in a manner that ensures that information concerning the new address will promptly be made available to local law enforcement in the new place of residence and at the state level. Thus, states must require registrants to report changes of address prior to moving, or by some short time (e.g., 10 days) after moving.

States have discretion under the Act concerning specific mechanisms and procedures for reporting the updated address information and ensuring that it reaches the appropriate recipients. For example, many states require the registrant to notify local law enforcement agencies (e.g., local sheriffs' offices) in the place he is leaving and the place to which he is going and then require one of these local agencies to notify the agency responsible for maintenance of registration information at the state level. Alternatively, a state may require the registrant to directly notify a central registration agency at the state level, which then makes the information available to an appropriate local law enforcement agency. Another possibility is to require the registrant to report the change of address to a third party, such as a probation officer responsible for his supervision, who then is responsible for notifying a law enforcement agency in the new place of residence and the state registration agency.

The choice among these alternatives or the election of other alternatives beyond those described is a matter of state discretion. States will be in compliance as long as the procedures adopted ensure the prompt availability of the updated address information to law enforcement in the relevant local jurisdiction and at the state level.

2. Interstate moves. Subsection (b) (5) states that a registrant who moves to another state must report the change of address to the responsible agency in the state he is leaving and must comply with any registration requirement in the new state of residence. It further provides that the procedures of the state the registrant is leaving must ensure that notice is provided promptly to an agency responsible for registration in the new state of residence, if that state requires registration.

The purpose of this provision is to ensure a gap-free nationwide network of state registration programs that reliably tracks all offenders throughout the applicable period of registration and ensures that offenders cannot evade registration obligations by moving from one state to another. Hence, a state's procedures must require the registrant to report his departure to a responsible agency in the state, and must provide for prompt notice of the registrant's move by an agency in the state to the responsible registration authority in the new state of residence. An "honor system" approach, under which it is left to the registrant to notify the registration authority in the new state of residence on his own, does not satisfy the Act's requirements.

As discussed in part I.D. 1 of these guidelines, the Wetterling Act's registration requirements "follow the registrant" if he moves to another state, and any state in which he establishes residence must include him in its registration program if registration is still required under the Wetterling Act's standards. This includes requiring the registrant to continue to register for at least the remainder of the Act's minimum ten-year registration period and to register for life if he is in a lifetime registration category under subsection (b) (6) (B) of the Act. Hence, the state a registrant is leaving is strongly encouraged to provide as part of its notice to the new state of residence sufficiently detailed information concerning the registrant's offenses and status to enable the new state to register him without difficulty in the appropriate category and for the appropriate amount of time.

In some instances, an offender convicted in a state may never be registered in that state as a resident, because the offender goes to live in another state immediately upon release from imprisonment or sentencing to probation. The requirement under subsection (b) (5) that the state of conviction promptly notify a responsible registration agency in the state where the offender will reside

remains applicable in such situations. In addition, a number of the Act's requirements under subsection (b)(1)-(2) remain relevant and applicable in relation to such an offender. These include: taking information concerning the offender's expected place of residence; informing the offender of the obligation to comply with any registration requirement in the state where he will reside and also to register in a state where he works or attends school; obtaining fingerprints and a photograph, if they have not already been obtained; obtaining a signed acknowledgment; and ensuring that conviction data and fingerprints are promptly transmitted to the FBI.

C. Periodic Address Verification

Subsection (b) (3) (A) requires that state procedures provide for the verification of registrants' addresses at least annually. The purpose of the requirement of periodic address verification is to ensure that the authorities will become aware if a registrant has moved away from the registered address and has failed to report the change of address. Such procedures are obviously important for effective tracking of sex offenders and enforcement of registration requirements.

As a result of changes made by the CJSIA amendments, the particular approach to address verification is a matter of state discretion under the Act. For example, some states verify addresses by having the responsible state or local agency annually send to the registered address a non-forwardable address verification form, which the registrant is required to sign and return within 10 days or some other limited period. This is one means by which states may comply with the verification requirement under subsection (b) (3) (A). The legislative history of the CJSIA amendments to the Act noted other possible approaches: "A review of State sex offender registry laws indicates that some States require registrants to appear in person periodically at local law enforcement agencies to verify their address (and for such purposes as photographing and fingerprinting). Some States assign caseworkers to verify periodically that registrants still reside at the registered address. These . . . procedures effectively verify registrants' location, and impress on registrants that they are under observation by the authorities, in addition to making law enforcement agencies aware of the presence and identity of registered sex offenders in their neighborhoods." H.R.

Rep. No. 256, 105th Cong., 1st Sess. 17 (1997).

D. Penalties for Registration Violations

Subsection (d) provides that a person required to register under a state program established pursuant to the Act who knowingly fails to register and keep such registration current shall be subject to criminal penalties. Accordingly, states that wish to comply with the Act must have criminal provisions covering this situation.

The requirement of criminal penalties for registration violations under the Act applies both to a state's own offenders who are required to register and to persons convicted in other states who are required to register because they have moved into the state to reside.

The Act neither requires states to allow a defense for offenders who were unaware of their legal registration obligations nor precludes states from doing so. As a practical matter, states can ensure that offenders are aware of their obligations through consistent compliance with the Act's provisions for advising offenders of registration requirements at the time of release and obtaining a signed acknowledgment that this information has been provided.

As discussed in part V of these guidelines, the Act as amended by the CJSIA includes provisions that are designed to promote the registration of federal and military offenders and of non-resident workers and students. The CJSIA amendments did not apply the Act's mandatory requirement of criminal penalties under state law for registration violations to federal and military offenders who reside in the state or to non-resident workers and students. However, Congress recognized the desirability of fully incorporating such offenders into state registration programs by statute, see H.R. Rep. No. 256, 105th Cong., 1st Sess. 18 (1997), and the availability of substantial sanctions for registration violations by all types of sex offenders is important to realize the Act's objective of a comprehensive, nationwide sex offender registration system. Hence, states are strongly encouraged to provide criminal penalties for registration violations by all offenders within the scope of the Act, regardless of whether the registrant is present in the state as a resident, worker, or student, and regardless of whether registration is premised on a conviction under the law of a state or under federal or military law.

III. Release of Registration Information [September 12, 1997; Possible Two-Year Extension]

Subsection (e) of the Act governs the disclosure of information collected under state registration programs.

This part of the Act derives from the federal Megan's Law amendment to the Wetterling Act (Pub. L. No. 104-145,

110 Stat. 1345), which is subject to the same deadline for compliance as the original provisions of the Act under 42 U.S.C. 14071(g). Hence, the deadline for compliance is Sept. 12, 1997, or Sept. 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance.

Paragraph (1) of subsection (e) provides that information collected under a state registration program may be disclosed for any purpose permitted under the laws of the state. Hence, there is no requirements under the Act that registration information be treated as private or confidential to any greater extent than the state may wish.

Paragraph (2) of subsection (e) provides that the state or any agency authorized by the state shall release relevant information as necessary to protect the public. To comply with this requirement, a state must establish a conforming information release program that applies to offenders required to register on the basis of convictions occurring after the establishment of the program. States do not have to apply new information release standards to offenders whose convictions predate the establishment of a conforming program, but the Act does not preclude states from applying such standards retroactively to offenders convicted earlier if they so wish.

The principal objective of the information release requirement in paragraph (2) of subsection (e) is to ensure that registration programs will include means for members of the public to obtain information concerning registered offenders that is necessary for the protection of themselves or their families. Hence, a state cannot comply with the Act by releasing registration information only to law enforcement agencies, to other governmental or non-governmental agencies or organizations, to prospective employers, or to the victims of registrants' offenses. States also cannot comply by having purely permissive or discretionary authority for officials to release registration information. Information must be released to members of the public as necessary to protect the public from registered offenders. This disclosure requirement applies both in relation to offenders required to register because of

conviction for "a criminal **offense** against a victim who is a minor" and those required to register because of conviction for a "sexually violent offense."

States do, however, retain discretion to make judgments concerning the circumstances in which, and the extent to which, the disclosure of registration information to the public is necessary for public safety purposes and to specify standards and procedures for making these determinations. Several different approaches to this issue appear in existing state laws.

One type of approach, which is consistent with the requirements of the Act, involves particularized risk assessments of registered offenders, with differing degrees of information release based on the degree of risk. For example, some states classify registered offenders in this manner into risk levels, with registration information limited to law enforcement uses for offenders in the "low-risk" level: notice to organizations with a particular safety interest (such as schools and other child care entities) for "medium risk" offenders, and notice to neighbors for "high risk" offenders.

States also are free under the Act to make judgments concerning the degree of danger posed by different types of offenders and to provide information disclosure for all offenders (or only offenders) with certain characteristics or in certain offense categories. For example, states may decide to focus particularly on child molesters, in light of the vulnerability of the potential victim class, and on recidivists, in light of the threat posed by offenders who persistently commit sexual offenses.

Another approach by which states can comply with the Act is to make information accessible to members of the public on request. This may be done, for example, by making registration lists open for inspection by the public, or by establishing procedures to provide information concerning the registration status of identified individuals in response to requests by members of the public. As with proactive **notification** systems, states that have information-on-request systems may make judgments about which registered offenders or classes of registered offenders should be covered and what information will be disclosed concerning these offenders.

States are encouraged to involve victims and victim advocates in the development of their information release programs, and in the process for particularized risk assessments of

registrants if the state program involves such assessments.

A proviso at the end of paragraph (2) of subsection (e) states that the identify of the victim of an offense that requires registration under the Act shall not be released. This proviso safeguards victim privacy by prohibiting disclosure of victim identity to the general public in the context of information release programs for registered offenders. It does not bar the dissemination of victim identity information for law enforcement or other governmental purposes (as opposed to disclosure to the public) and does not require that a state limit maintenance of or access to victim identity information in public records (such as police and court records) that exist independently of the registration system. Because the purpose of the proviso is to protect the privacy of victims, its restriction may be waived at the victim's option.

So long as the victim is not identified, the proviso in paragraph (2) does not bar including information concerning the characteristics of the victim and the nature and circumstances of the offense in information release programs for registered offenders. For example, states are not barred by the proviso from releasing such information as victim age and gender, a description of the offender's conduct, and the geographic area where the offense occurred. However, states are encouraged to avoid unnecessarily including information that may inadvertently result in the victim's identity becoming known, such as identifying a specific familial relationship between the offender and a victim who still lives in the area.

Concerns have been raised that the disclosure of registration information to the public under "community notification" programs may result in criminal acts or other reprisals against registrants. While currently available information does not indicate that this has been a significant problem under state programs, states are encouraged to consider including measures in their programs to minimize any possibility of misuse of the information released under the program. For example, some states include in their informational notices statements that the information is provided only for legitimate protective purposes, and that criminal acts against registrants will result in prosecution. As a further example, some states provide special training for officers responsible for community notification and/or hold community meetings in connection with the provision of notice to the community concerning a registrant's presence.

IV. Special Registration Requirements Under the Pam Lychner Act for Recidivists and Aggravated Offenders [October 2, 1999: Possible Two-Year Extension]

Subsection (b)(6)(B)(i)-(ii) of the Act requires lifetime registration for persons in two categories: (1) registrants who have a prior conviction for an offense for which registration is required by the Act, and (2) registrants who have been convicted of an "aggravated offense."

This requirement derives from an amendment to the Wetterling Act enacted by the Pam Lychner Act. The time for compliance is accordingly that provided in section 10(b) of the Pam Lychner Act-Ott 2, 1999, subject to a possible two-year extension for states making good faith efforts to come into compliance.

Subsection (b) (6) (B)(i) requires lifetime registration for certain recidivists. States can comply with this provision by requiring offenders to register for life where the following conditions are satisfied: (1) the current offense is one for which registrations is required by the Act-i.e., an offense in the range of offenses specified in subsection (a)(3)(A)-(B) or a comparable range of offenses, and (2) the offender has a prior conviction for an offense for which registration is required by the Act. There is no time limit under the Act on qualifying prior convictions. In determining whether a person has a qualifying prior conviction, states may rely on the methods they normally use in searching criminal records.

Subsection (b)(6)(B)(ii) requires lifetime registration for persons convicted of an "aggravated offense" even on a first conviction. "Aggravated offense" refers to state offenses comparable to aggravated sexual abuse as defined in federal law (18 U.S.C. 224 I), which principally encompasses: (1) engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence, and (2) engaging in sexual acts involving penetration with victims below the age of 12. Hence, states can comply with this provision by requiring lifetime registration for person convicted of the state offenses which cover such conduct.

A state is not in compliance with subsection (b)(6)(B) (i) or (ii) if it has a procedure or authorization for terminating the registration of convicted offenders within the scope of these provisions at any point in their lifetimes. However, if the underlying conviction is reversed, vacated, or set aside, or if the registrant is pardoned, registration (or continued registration) is

not required under the Act. Likewise, if the applicability of the lifetime registration requirement is premised on a prior conviction pursuant to subsection (b) (6) (B) (i), it becomes inapplicable if the prior conviction is reversed, vacated, or set aside, or if the registrant is pardoned for the prior conviction offense.

The proviso in subsection (b) (6) that registration need not be required "during ensuing periods of incarceration" applies to registrants subject to lifetime registration. Hence, states are not required to carry out address registration and verification procedures for such registrants during subsequent periods in which the registrant is imprisoned or civilly committed. To comply with the Act, a state that does waive registration for such registrants during subsequent criminal or civil confinement must require that registration resume when the registrant is released.

As with the other requirements of the Act, a state may impose the lifetime registration requirement for recidivists and aggravated offenders prospectively, so that it applies only to offenders required to register on the basis of convictions occurring after the state has adopted the requirement. Hence, it is sufficient for compliance with the Act if lifetime registration is imposed on: (1) all offenders convicted of an aggravated offense after the lifetime registration requirement is adopted; and (2) all recidivists convicted of an offense for which registration is required under the Act after the lifetime registration requirement is adopted (regardless of when the prior qualifying conviction occurred). Of course, states remain free to apply the lifetime registration requirement retroactively to offenders convicted prior to its adoption if they so wish.

V. Special Registration Requirements Under the CJSA Amendments Relating to Sexually Violent Predators, Federal and Military Offenders, and Non-resident Workers and Students [November 25, 2000; Possible Two-Year Extension]

Subsections (a)(Z), (a)(3)(C)-(E), (b)(1)(B), (b)(3)(B), and (b)(6)(B)(iii) of the Act prescribe heightened registration requirements for persons who are determined to be "sexually violent predators" under specified procedures. These provisions also, however, allow the approval of alternative procedures and of alternative measures of comparable or greater effectiveness in protecting the public.

Subsection (b) (7) of the Act requires states, as provided in these guidelines, to ensure that procedures are in place to accept registration information from: (1) residents convicted of a federal offense or sentenced by a court martial, and (2) nonresident offenders who have crossed into another state in order to work or attend school.

Because these requirements, in their current form, derive from the CJSA, the time for compliance is that provided in section 115(c) (2) of the CJSA-Nov., 25, 2000, subject to a possible two-year extension for states making good faith efforts to come into compliance.

A. Heightened Sexually Violent Predator Registration or Alternative Measures

1. Heightened sexually violent predator registration. Subparagraphs (B)-(E) of subsection (a)(3) contain the Act's definition of "sexually violent predator" and related definitions. Subparagraph (C) defines "sexually violent predator" to mean a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses. Subparagraph (D) essentially defines "mental abnormality" to mean a condition involving a disposition to commit criminal sexual acts of such a degree that it makes the person a menace to others. The definition of "personality disorder" is a matter of state discretion since the Act includes no specification on this point. For example, a state may choose to utilize the definition of "personality disorder" that appears in the Diagnostic and Statistical Manual of Medical Disorders: DSM-IV. American Psychiatric Association, *Diagnostic and Statistical Manual of Medical Disorders* (4th ed. 1994). Subparagraph (E) defines "predatory" to mean an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

A state that wishes to comply with the Act's provisions concerning sexually violent predator registration must adopt some approach to deciding when a determination will be sought as to whether a particular offender is a sexually violent predator. However, the specifics are a matter of state discretion. For example, a state might commit the decision whether to seek classification of an offender as a sexually violent predator to the judgment of prosecutors, or might provide that a determination of this question should be undertaken routinely when a person is convicted of

a sexually violent offense and has a prior history of committing such crimes. Similarly, the Act affords states discretion with regard to the timing of the determination whether an offender is a "sexually violent predator." A state may, but need not, provide that a determination on this issue be made at the time of sentencing or as a part of the original sentence. It could, for example, be made instead when the offender has served a term of imprisonment and is about to be released from custody.

Subparagraphs (A) and (B) of subsection (a) (2) govern the procedures for making the sexually violent predator determination. Subparagraph (A) states that the determination is to be made by a court after considering the recommendation of a board composed of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies. However, subparagraph (B) allows the Attorney General to waive these requirements where a state has established alternative procedures or legal standards for designating a person as a sexually violent predator.

The waiver authority under subparagraph (B), which was added by the CJSA amendments, recognizes that a judicial determination informed by the recommendations of a board of mixed composition is not the only approach states may validly adopt to secure appropriate input and make fair determinations. For example, at a sentencing proceeding or other hearing to determine sexually violent predator status, a state might provide for input concerning psychological assessment through expert testimony; input from the law enforcement perspective through the prosecutor's presentation; and input from the perspective of victims through allocation or testimony by the victim(s) of the underlying sexually violent offense or offenses. Moreover, judicial determinations concerning sexually violent predator status are not the only legitimate approach since, for example, a state may decide to assign responsibility for such determinations to a parole board or other administrative agency with adjudicatory functions. Because there are many valid approaches that states may devise, the particular approach taken to determine whether an offender is a sexually violent predator as defined in the Act will be treated as a matter of state discretion under the Act.

For registrants who have been determined to be "sexually violent predators" under the Act's definitions,

the Act prescribes three special registration requirements:

First, subsection (b) (1) (B) provides that the initial registration information obtained from a sexually violent predator must include "the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person." In determining whether offenders have received treatment, the officers responsible for obtaining the initial registration information may rely on information that is readily available to them, either from existing records or the offender, and may comply with the requirement to document an offender's treatment history simply by noting that the offender received treatment. If states want to require the inclusion of more detailed information about offenders' treatment history, however, they are free to do so.

Second, subsection (b) (3) (B) requires quarterly address verification for sexually violent predators, as opposed to the annual address verification required for registrants generally under subsection (b) (3) (A). Part II.C of these guidelines provides a general explanation of the Act's address verification requirement.

Third, subsection (b)(6)(B) (iii) requires lifetime registration for sexually violent predators. This requirement is unqualified. While language in subsection (a) (1) (B) of the Act alludes to possible termination of sexually violent predator status under subsection (b) (6) (B), this is a relic of earlier versions of the Act that has no referent in the Act's current text following the Pam Lychner Act and CJSA amendments.

Hence, for example, a state is not in compliance with the Act's requirements if it allows registration to be terminated for a person who has been found to be a sexually violent predator on the basis of a later determination that the person is no longer a sexually violent predator or has been rehabilitated. However, if the underlying conviction for a sexually violent offense is reversed, vacated, or set aside, or if the registrant is pardoned for that offense, registration (or continued registration) as a sexually violent predator is not required under the Act. Moreover, the proviso in subsection (b) (6) that registration need not be required "during ensuing periods of incarceration" applies to sexually violent predators. Hence, states are not required to carry out address registration and verification procedures when a sexually violent predator is

subsequently imprisoned or civilly committed. To comply with the Act, a state that does waive registration for sexually violent predators during subsequent criminal or civil confinement must require that registration resume when the registrant is released.

2. Alternative measures of comparable or greater effectiveness. Subparagraph (C) of subsection (a)(2) authorizes the Attorney General to approve "alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in this section regarding sexually violent predators." A state that wishes to have "alternative measures" approved under subparagraph (C) must make a request for such approval to the reviewing authority.

The authorization to approve alternative measures under subparagraph (C) was added by the CJSA, reflecting Congress's recognition that few states followed the Act's specific provisions concerning sexually violent predators; that it would be difficult for many states to do so; and that states can "incorporate other features into their systems which further the objective of protecting the public from particularly dangerous sex offenders." H.R. Rep. No. 256, 105th Cong., 1st Sess. 15 (1997).

The legislative history of the CJSA identified a number of factors that would be pertinent to a determination whether a state has adopted alternative measures of comparable or greater effectiveness:

For example, some State programs have registration periods for broadly defined categories of sex offenders which are much longer than the basic 10-year registration period under the Wetterling Act. This may provide more protection for the public than heightened registration requirements limited to a relatively small class of offenders who would be classified as sexually violent predators * * • . Moreover, some States require civil commitment, lifetime supervision, or very long periods of imprisonment for sexually violent predators or broader classes of serious sex offenders, [Subsection (a)(2)] makes it clear that alternative approaches like these can be approved if a State's approach is equally effective or more effective in protecting the public from particularly dangerous sex offenders

H.R. Rep. No. 256, 105th Cong., 1st Sess. 15 (1997).

Hence, for example, the reviewing authority will approve a state system as providing alternative measures "of comparable or greater effectiveness" if

the state applies the principal heightened registration requirements under the Act's sexually violent predator provisions-i.e., lifetime registration and quarterly address verification-to a class of offenders that is generally broader than "sexually violent predators." Since "sexually violent predators" are, by definition, a subclass of persons convicted of a "sexually violent offense," a state has obviously adopted an alternative measure of comparable or greater effectiveness if it requires lifetime registration and quarterly address verification uniformly for persons in the broader class of those convicted of a "sexually violent offense".

For states that follow other approaches, the determination whether "alternative measures of comparable or greater effectiveness" have been adopted will be made on a case-by-case basis.

B. Federal and Military Offenders: Non-resident Workers and Students

Subsection (b)(7) of the Act requires states, as provided in these guidelines, to ensure that procedures are in place to accept registration information from: (1) residents convicted of federal offenses or sentenced by courts martial, and (2) nonresident offenders who cross into other states in order to work or attend school.

This requirement was added to close two gaps in the Wetterling Act standards for registration programs. First, Congress was concerned about the lack of any provision for registration of persons convicted of federal sex offenses-such as those defined in chapters 109A, 110, and 117 of title 18, United States Code-and the lack of any provision for registration of persons convicted of sexual offenses under the Uniform Code of Military Justice while in the armed forces. Second, Congress was concerned about the commission of offenses by registered offenders at or near their places of work or study, where the local authorities are unaware of the offenders' presence in those areas because they reside in a different state. The new provisions relating to registration of federal and military offenders, and non-resident workers and students, were added to address these concerns.

1. **Federal and military offenders.** In relation to federal and military offenders, states can comply with the new requirement under subsection (b) (7) by accepting in their registration programs address information from such offenders who reside in the state, where the federal conviction or court martial

sentence was for a criminal offense against a victim who is a minor or a sexually violent offense (as defined in the Act).

Congress did not otherwise make the Act's mandatory standards for state registration programs applicable to federal and military offenders. Congress, however, did note that "it would be preferable that States fully incorporate federal offenders [and] persons sentenced by courts martial * * * into their registration and notification programs by statute." H.R. Rep. No. 256, 105th Cong., 1st Sess. 18 (1997). As a practical matter, the presence in a state of a sex offender whose whereabouts are unknown to the authorities poses the same potential danger to the public, regardless of whether the offender was convicted in a state court for a state offense or for a comparable offense under federal or military law.

Hence, as a matter of sound policy, states are strongly encouraged to subject federal and military offenders to the full panoply of registration requirements and procedures established for state offenders, including reporting of subsequent changes of address following the initial registration, periodic address verification, criminal penalties for registration violations, and release of registration information as necessary for protection of the public. Some states currently put sex offenders convicted in federal or military courts on the same footing as state offenders under their registration programs: all states are encouraged to adopt this approach.

States should be aware that the CJSA enacted provisions that impose complementary obligations on federal authorities to facilitate state registration of federal and military offenders. Specifically, provisions in section 115(a) (8) of the CJSA require federal and military authorities to notify state and local law enforcement and registration agencies concerning the release or subsequent movement to their areas of federal and military sex offenders. In addition, under amendments in section 115(a) (8) of the CJSA, federal sex offenders are required to register in states where they reside, work, or attend school as mandatory conditions of probation, parole, and post-imprisonment supervised release. State and local officers accordingly are encouraged to notify federal authorities of any failure by such offenders to register, so that appropriate action can be taken with respect to their federal release status. States also should be aware that section 115 of the CJSA amended the federal failure-to-register

offense (42 U.S.C. 14072(i)) in order to bring within its scope federal and military sex offenders who fail to register.

2. Non-resident workers and students. Subsection (b) (7) (B) of the Act requires states to accept registration information from non-residents who have come into the state to work or attend school. Related provisions appear in subsections (a) (3) (F)-(G) and (c) . As specified in these provisions, the workers from whom registration information must be accepted include those who have any sort of full-time or part-time employment in the state, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year. The students from whom registration information must be accepted include those who are enrolled in any type of school in the state on a full-time or part-time basis.

The Act's provisions regarding non-resident workers and students sometimes refer to persons who cross into another state "in order to work or attend school" and sometimes refer to persons who are or may be in another state where the person "is employed," "carries on a vocation," or "is a student." These are merely terminological variations: the Act's various references to non-resident workers and students all refer to the same classes of persons, as defined above.

States can comply with the Act's requirement to accept registration information from non-resident workers and students by accepting registration information from such persons, where the person would be required to register in his state of residence under the Act's standards. The "registration information" the state must accept from such a registrant to comply with the Act is, at a minimum, information concerning the registrant's place of employment or the school attended in the state and his address in his state of residence. States are free to accept or require more extensive information if they wish, such as information concerning any place of lodging the registrant may have in the state for purposes of work or school attendance.

Congress did not otherwise make the Act's mandatory standards for state registration programs applicable to non-resident workers and students, but did note that "it would be preferable that States fully incorporate * * * offenders crossing State borders to work or go to school * * * into their registration and notification programs by statute." H.R. Rep. No. 256, 105th Cong., 1st Sess. 18

(1997). States are encouraged to include measures in their registration systems that will ensure effective registration of non-resident workers and students, including provision of criminal penalties under state law for such offenders who fail to register and release of registration information concerning such offenders as necessary for public safety. States also should be aware that section 115 of the CJSA amended the federal failure-to-register offense (42 U.S.C. 14072(i)) in order to bring within its scope non-resident workers and students who fail to register.

In addition to requiring states to accept registration information from non-resident workers and students, the CJSA amendments added, as part of subsection (b) (1) (A) (iii), a requirement to inform a registrant in the initial registration process that he must register in a state where he is employed, carries on a vocation, or is a student. As discussed in Part II.A of these guidelines, subsection (b) (1) (A) of the Act has always required that offenders be informed of the general duty to register, of the duty to report subsequent changes of address, and of the duty to register in any state of residence. States can readily supplement their procedures for informing offenders of registration obligations to include the information that the offender also must register in any state where he is employed, carries on a vocation, or is a student.

VI. Participation in the National Sex Offender Registry [November 25, 2000; Possible Two-Year Extension]

Subsequent (b) (2) (B) of the Act requires states to "participate in the national database established under section 14072(b)"—i.e., the National Sex Offender Registry (NSOR)—"in accordance with guidelines issued by the Attorney General, including transmission of current address information and other information on registrants to the extent provided by the guidelines."

This requirement derives from the amendment of the Wetterling Act by section 115(a)(2)(B) of CJSA. The time for compliance is accordingly that provided in section 115(c) (2) of CJSA—Nov. 25, 2000, subject to a possible two-year extension for states making good faith efforts to come into compliance. At the present time, many states are already participating in NSOR, and the remainder are strongly encouraged to do so as promptly as possible.

States should be aware that participation in NSOR is a condition for determining that a state has a "minimally sufficient" sex offender

registration program as defined in 42 U.S.C. 14072(a)(3). Pursuant to section 115(a) (7) of the CJSA, states have until October 2, 1999, to establish "minimally sufficient" programs (subject to a possible two-year extension for states making good faith efforts). In states that have not established "minimally sufficient" programs by that time, the FBI will be required to directly register sex offenders convicted in the state, and there will be correlative responsibilities on such states to facilitate FBI registration of their sex offenders as provided in 42 U.S.C. 14072(h)(l) and (k). Hence, the failure of a state to participate in NSOR by October 2, 1999, may result in otherwise avoidable federal intervention in sex offender registration in the state.

States should also be aware that under the National Sex Offender Registry Assistance Program (NSOR-AP), funding is available from the Bureau of Justice Statistics of the United States Department of Justice to facilitate state participation in NSOR and upgrade state sex offender registries. States desiring additional information concerning this funding program should contact the Bureau of Justice Statistics.

In accordance with 42 U.S.C. 14072(b), the FBI has established an interim version of NSOR (the "Interim Registry") to track the whereabouts and movement of persons required to register under sex offender registration programs. The Interim Registry functions as a "pointer" system, indicating on an individual's FBI Identification Record the fact that the individual is a registered sex offender and the name and location of the state agency that maintains the offender's registration information.

The FBI will be issuing regulations concerning state participation in NSOR. To participate in NSOR under current procedures, states must submit the following information on registrants to the FBI: the name under which the person is registered; the registering agency's name and location; the date of registration; and the date registration expires. Upon the submission of this information, a notice indicating that an individual is a registered sex offender and listing the information will be included on the individual's FBI Identification Record.

The FBI is in the process of modifying the National Crime Information Center (NCIC) to establish a new crime information system that will be known as "NCIC 2000." NCIC 2000, which is expected to go on-line in mid-1999, will include a Convicted Sexual Offender Registry File that will serve as the

permanent National Sex Offender Registry (the "Permanent Registry"). In the Permanent Registry, sex offender registration information will be entered directly into the NCIC Convicted Sexual Offender Registry File, via the NCIC communication circuit, and will include such information as the offender's name and address and details regarding the conviction resulting in registration. States will receive further guidance concerning participation in the Permanent Registry through future modifications of regulations and guidelines.

VII. Good Faith Immunity [Available to States Immediately]

Subsection (f) states that law enforcement agencies, employees of law enforcement agencies, independent contractors acting in the direction of such agencies, and state officials shall be immune from liability for good faith conduct under the Act. Inclusion of this provision in the Act was necessary to protect state actors and contractors involved in registration and notification programs from unwarranted exposure to liability, since the states cannot legislate immunities to liability under federal causes of action. This part of the Act does not impose any requirement on states and the character of state law provisions regarding the scope of immunity or liability will not be considered in the compliance review under the Act.

VIII. Compliance Review: Consequences of Non-Compliance

The time states have to comply with the Act's requirements depends on the legislation from which the requirements derive, as specified in these guidelines. Thus, the initial deadline for complying with requirements derived from the Wetterling Act as originally enacted or from Megan's Law was September 12, 1997, and the deadline is now September 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance. Requirements deriving from the Pam Lychner Act must be complied with by October 2, 1999, subject to a possible two-year extension for states making good faith efforts to comply. Requirements deriving from the CJSA must be complied with by November 25, 2000, subject to a possible two-year extension for states making good faith efforts to comply.

These deadlines set outer limits for state compliance to avoid a reduction of Byrne Formula Grant funding. States are strongly encouraged to attempt to achieve compliance with all parts of the

Act as quickly as possible to maximize the benefits of the Act's reforms.

States that fail to come into compliance within the specified time periods will be subject to a mandatory 10% reduction of Byrne Formula Grant funding, and any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance. If a state's funding has been reduced because it has failed to comply with the Act's 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 Act in such later years.

States are encouraged to submit information concerning existing and proposed sex offender registration provisions to the Bureau of Justice Assistance with as much lead-time as possible. This will enable the reviewing authority to assess the status of state compliance with the Act and to suggest any necessary changes to achieve compliance before the funding reduction goes into effect. At the latest, state submissions must be provided on the following timetable:

To maintain eligibility for full Byrne Formula Grant funding following September 12, 1999—the end of the implementation period for the Act's original requirements and Megan's Law, for states that have received the two-year "good faith" extension—such states must submit to the Bureau of Justice Assistance by July 12, 1999, information that shows compliance, in the reviewing authority's judgment, with the requirements described in parts I, II, and III of these guidelines.

To maintain eligibility for full Byrne Formula Grant funding following October 2, 1999—the end of the implementation period for the Pam Lychner Act requirements, absent an extension—states must submit to the Bureau of Justice Assistance by July 12, 1999, information that shows compliance, in the reviewing authority's judgment, with the requirements described in part IV of these guidelines, or a written explanation of why compliance cannot be achieved within that period and a description of the good faith efforts that justify an extension of time (but not more than two years) for achieving compliance.

To maintain eligibility for full Byrne Formula Grant funding following November 25, 2000—the end of the implementation period for the CJSA requirements, absent an extension—states must submit to the Bureau of Justice Assistance by September 25, 2000, information that

shows compliance, in the reviewing authority's judgment, with the requirements described *in* parts V and VI of these guidelines, or a written explanation of why compliance cannot be achieved within that period and a description of the good faith efforts that justify an extension of time (but not more than two years) for achieving compliance.

After the reviewing authority **has** determined that a state is in compliance with the **Act**, the state 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 Act.

Dated: December 10, 1998

Janet Reno.

Attorney General.

Editorial Note: Due to typesetting errors, notice document FR Doc 98-33377, originally published in the issue of Thursday, December 17, 1998, at pages 69652-69667 is being republished in its entirety [FR Doc. 98-33377 Filed 12-16-98, 8:45 am]

BILLING CODE 1505-01-D



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D. Note

PRELIMINARY **DRAFT - NOT READY FOR** INTRODUCTION

1

<sup>Gen
Cot.</sup>
AN ACT ...; relating to: sex offender registration.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version of the draft.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2

SECTION 1. 48.396 (2) (f) of the statutes is amended to read:

3

48.396 (2) (f) Upon request of the department of corrections to review court

4

records for the purpose of obtaining information concerning a child required to

5

register under s. 301.45, the court shall open for inspection by authorized

6

representatives of the department of corrections the records of the court relating to

7

any child who has been found in need of protection or services for an offense specified

1 in s. 301.45 (1) [✓](1g) (a). The department of corrections may disclose information that
 2 it obtains under this paragraph as provided under s. 301.46.

History: 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449; Stats. 1977 s. 48,396; 1979 c. 300; 1979 c. 333 s. 5; 1983 a. 74 s. 32; 1983 a. 487,538; 1985 a. 311,332; 1987 a. 27, 180,403; 1989 a. 31, 107,145; 1991 a. 39,263; 1993 a. 98, 195, 228, 334, 479, 491; 1995 a. 27 ss. 2479 to 2480m, 9126 (19); 1995 a. 77, 173, 275, 352, 440, 448; 1997 a. 35, 80, 191, 205,252, 292.

3 SECTION 2. 51.20 (13) (ct) 2m. of the statutes is amended to read:

4 51.20 (13) (ct) 2m. If the subject individual is before the court on a petition filed
 5 under a court order under s. 938.30 (5) (c) 1. and is found to have committed a
 6 violation, or to have solicited, conspired or attempted to commit a violation, of s.
 7 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06,
 8 948.07, 948.08, 948.095, [✓]948.11 (2) (a) [✓]or (am) [✓], 948.12, [✓]948.13 or 948.30, or of s. 940.30
 9 or 940.31 if the victim was a minor and the subject individual was not the victim's
 10 parent, the court shall require the individual to comply with the reporting
 11 requirements under s. 301.45 unless the court determines, after a hearing on a
 12 motion made by the individual, that the individual is not required to comply under
 13 s. 301.45 (1m).

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42,43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447,449; Sup. Ct. Order. 83 W (2d) xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20,367; 1981 c. 390 s. 252; 1983 a. 27,219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071,3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order. 141 W (2d) xiii (1987); 19887 a. 366, 394,403; 1989 a. 31,334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96-08, 207 W (2d) xv (1997); 1997 a. 35, 130, 237, 283.

***NOTE: Should this list include a reference to s. 940.22 (2)?

14 SECTION 3. 51.20 (13) (ct) [✓]4. of the statutes is created to read:
 15 51.20 (13) (ct) 4. If the court orders a subject individual to comply with the
 16 reporting requirements under s. 301.45, the court may order the subject individual
 17 to continue to comply with the reporting requirements until his or her death.

18 SECTION 4. 51.375 (1) (d) [✓]of the statutes is amended to read:

19 51.375 (1) (d) "Sex offender" means a person committed to the department who
 20 meets any of the criteria specified in s. 301.45 [✓](1) [✓](1g).

History: 1995 a. 440.

21 SECTION 5. 301.132 (1) (c) of the statutes is amended to read:

1 301.132 (1) (c) "Sex offender" means a person in the custody of the department
2 who meets any of the criteria specified in s. 301.45 ~~(1)~~ [✓] (1g).

History: 1995 a. 440; 1997 a. 283.

3 **SECTION 6.** 301.45 (1) of the statutes is renumbered 301.45 (1g) and 301.45 (1g)
4 (a), (b), (bm), (c), (d), (dd) and (dh), as renumbered, are amended to read:

5 301.45 **(1g)** (a) Is convicted, adjudicated delinquent or found in need of
6 protection or services on or after December 25, 1993, for ~~any violation, or for the~~
7 ~~solicitation, conspiracy or attempt to commit any violation, of s. 940.22 (2), 940.225~~
8 ~~(1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07,~~
9 ~~948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was a minor and the~~
10 ~~person was not the victim's parent~~ a sex offense.

11 (b) Is in prison, a secured correctional facility, as defined in s. 938.02 (15m), or
12 a secured child caring institution, as defined in s. 938.02 (15g), or on probation,
13 extended supervision, parole, supervision or aftercare supervision on or after
14 December 25, 1993, for ~~any violation, or for the solicitation, conspiracy or attempt~~
15 ~~to commit any violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or~~
16 ~~(2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 or 948.30, or of s. 940.30~~
17 ~~or 940.31 if the victim was a minor and the person was not the victim's parent~~ a sex
18 offense.

19 (bm) Is in prison, a secured correctional facility, as defined in s. 938.02 (15m),
20 or a secured child caring institution, as defined in s. 938.02 (15g), or on probation,
21 extended supervision, parole, supervision or aftercare supervision on or after
22 December 25, 1993, for a violation, or for the solicitation, conspiracy or attempt to
23 commit a violation, of a law of this state that is comparable to ~~s. 940.22 (2), 940.225~~
24 ~~1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 9~~ . , . , . 8

1 ~~948.08, 948.11 or 948.30 or that is comparable to a violation of s. 940.30 or 940.31 if~~
2 ~~the victim was a minor and the person was not the victim's parent a sex offense.~~

3 (c) Is found not guilty or not responsible by reason of mental disease or defect
4 on or after December 25, 1993, and committed under s. 51.20 or 971.17 for any
5 violation, or for the solicitation, conspiracy or attempt to commit any violation, of s.
6 ~~940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055,~~
7 ~~948.06, 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was~~
8 ~~a minor and the person was not the victim's parent a sex offense.~~

9 (d) Is in institutional care or on conditional transfer under s. 51.35 (1) or
10 conditional release under s. 971.17 on or after December 25, 1993, for ~~any violation,~~
11 ~~or for the solicitation, conspiracy or attempt to commit any violation, of s. 940.22 (2),~~
12 ~~940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06,~~
13 ~~948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was a minor~~
14 ~~and the person was not the victim's parent a sex offense.~~

15 (dd) Is in institutional care or on conditional transfer under s. 51.35 (1) or
16 conditional release under s. 971.17 on or after December 25, 1993, for a violation, or
17 for the solicitation, conspiracy or attempt to commit a violation, of a law of this state
18 that is comparable to ~~s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2),~~
19 ~~948.025, 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 or 948.30 or that is~~
20 ~~comparable to a violation of s. 940.30 or 940.31 if the victim was a minor and the~~
21 ~~person was not the victim's parent a sex offense.~~

22 (dh) Is on parole, extended supervision or probation in this state from another
23 state under s. 304.13 or 304.135 on or after December 25, 1993, for a violation, or for
24 the solicitation, conspiracy or attempt to commit a violation, of the law of another
25 state that is comparable to a violation of s. ~~940.22 (2), 949.225 (1), (2) or (3), 944.06,~~

1 ~~948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 or 948.30~~
 2 ~~or that is comparable to a violation of s. 940.30 or 940.31 if the victim was a minor~~
 3 ~~and the person was not the victim's parent~~ sex offense.

4 History: 1995 a. 440 ss. 26 to 49. 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3. 3.5, 130, 191, 237, 283.

4 **SECTION 7.** 301.45 (ld) of the statutes is created to read:

5 301.45 (1d) DEFINITIONS. In this section:

6 (a) "Employed or carrying on a vocation" means employment or vocational
 7 activity that is full-time or part-time for a continuous period of time exceeding 14
 8 days or for an aggregate period of time exceeding 30 days during any calendar year,
 9 whether financially compensated, volunteered or for the purpose of government or
 10 educational benefit.

11 (b) "Sex offense" means a violation, or the solicitation, conspiracy or attempt
 12 to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.0: 948.02 (1) or (2),
 13 948.025, 948.05, 948.055, 948.06, 948.07, 948.08, 948.095, 948.11 (2) (a) or (am),
 14 948.12, 948.13 or 948.30, or of s. 940.30 or 940.31 if the victim was a minor and the
 15 person was not the victim's parent.

16 (c) "Student" means a person who is enrolled on a full-time or part-time basis
 17 in any public or private educational institution, including a secondary school, a
 18 business, trade, technical or vocational school or an institution of higher education.

19 **SECTION 8.** 301.45 (lg) (dj) of the statutes is created to read:

20 301.45 (lg) (dj) Is a juvenile on supervision in this state from another state
 21 pursuant to the interstate compact on the placement of children under s. 48.988 for
 22 a violation of a law of another state that is comparable to a sex offense.

****NOTE: Unless the draft adds language to s. 301.45 (5), a person subject to
 proposed s. 301.45 (1g) (dj) will be required to register until 15 years after the conviction
 or disposition (see s. 301.45 (5) (a) 4.). Okay?

23 **SECTION 9.** 301.45 (dL) of the statutes is created to read:

1 301.45 (lg) (dL) Is placed on lifetime supervision under s. 939.615 on or after
2 June 26, 1998. ✓

3 **SECTION 10.** 301.45 (lg) (f) of the statutes is created to read:

4 301.45 (lg) (f) Is a resident of this state and has been convicted of a violation
5 of federal law that is comparable to a sex offense, has been convicted in the tribal
6 court of a federally recognized American Indian tribe or band of a violation that is
7 comparable to a sex offense or has been sentenced by a general court martial for a
8 violation that is comparable to a sex offense.

****NOTE: Unless the draft adds language to s. 301.45 (5), a person subject to proposed s. 301.45 (lg) (f) will be required to register until 15 years after the conviction or disposition (see s. 301.45 (5) (a) 4.). Okay? Also, does the language need to include initial applicability date? *an*

9 **SECTION 11.** 301.45 (lg) (g) of the statutes is created to read:

10 301.45 (lg) (g) Is registered as a sex offender in another state and is a resident
11 of this state, a student in this state or employed or carrying on a vocation in this state.

****NOTE: Is this broad enough, or should it say something like "any person convicted in another state of a violation that is comparable to a sex offense"? If the latter, how long should they be required to register? Unless the draft adds language to s. 301.45 (5), a person covered under the latter language would be required to register until 15 years after the conviction or disposition (see s. 301.45 (5) (a) 4.). If this language is broad enough, should they have to register in Wisconsin only if they also have to register in the other state? Also, do we have to amend s. 301.45 (5) to give a person credit for time *he* or she was registered in the other state? (The federal regulations contemplate giving a person credit for time registered in another state.) Finally, does the language need to include initial applicability date? *that*

12 **SECTION 12.** 301.45 (1m) (a) 1. of the statutes is amended to read:

13 301.45 (1m) (a) 1. The person meets the criteria under sub. ~~(1)~~ ^(1g) (a) to ~~(d)~~
14 ~~(dj)~~ ^(f) or ~~(g)~~ based on any violation, or on the solicitation, conspiracy or attempt
15 to commit any violation, of s. 948.02 (1) or (2) or 948.025 or of a federal law, tribal law
16 or law of another state that is comparable to s. 948.02 (1) or (2) or 948.025.

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1991 a. 3.35, 130, 191, 237, 283.

****NOTE: Is it your intent to allow exemptions for persons covered under proposed s. 301.45 (1g) (f) and (g)?

1 **SECTION 13.** 301.45 (1m) (b) of the statutes is amended to read:

2 301.45 (1m) (b) If a person believes that he or she is not required under par.

3 (a) to comply with the reporting requirements under this section and the person is

4 not before the court under s. 51.20 (13) (ct), 938.34 (15m), 971.17 (1m) (b) or 973.048,

5 the person may move a court to make a determination of whether the person satisfies

6 the criteria specified in par. (a). A motion made under this paragraph shall be filed

7 with the circuit court for the county in which the person was convicted, adjudicated

8 delinquent, found in need of protection or services or found not guilty or not

9 responsible by reason of mental disease or defect, except that if the person meets the

10 criteria of sub. ~~(1)~~ [✓](1g) (dh), ~~(dj)~~ [✓] or ~~(f)~~ [✓] the person shall file the motion in the circuit

11 court for the county in which he or she resides and if the person meets the criteria

12 of sub. ~~(1)~~ ^(1g) (g) the person shall file the motion in the circuit court in which he or she

13 resides, is a student or is carrying on a vocation, whichever is applicable.

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283.

14 **SECTION 14.** 301.45 (2) (a) (intro.) of the statutes is amended ~~to read:~~

15 301.45 (2) (a) (intro.) The department shall maintain a registry of all persons

16 subject to sub. ~~(1)~~ [✓](1a). The registry shall contain all of the following with respect to

17 each person:

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283.

18 **SECTION 15.** 301.45 (2) (b) of the statutes is amended to read:

19 301.45 (2) (b) If the department has supervision over a person subject to sub.

20 ~~(1)~~ [✓](1g), the department shall enter into the registry under this section the

21 information specified in par. (a) concerning the person.

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283.

22 **SECTION 16.** 301.45 (2) (c) of the statutes is amended to read:

23 301.45 (2) (c) If the department of health and family services has supervision

24 over a person subject to sub. ~~(1)~~ [✓](1g), that department, with the assistance of the

for the county

1 person, shall provide the information specified in par. (a) to the department of
2 corrections in accordance with the rules under sub. (8).

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283.

3 **SECTION 17.** 301.45 (2) (d) of the statutes is amended to read:

4 301.45 (2) (d) A person subject to sub. ~~(1)~~ (1g)[✓] who is not under the supervision
5 of the department of corrections or the department of health and family services shall
6 provide the information specified in par. (a) to the department of corrections in
7 accordance with the rules under sub. (8). If the person is unable to provide an item
8 of information specified in par. (a), the department of corrections may request
9 assistance from a circuit court or the department of health and family services in
10 obtaining that item of information. A circuit court and the department of health and
11 family services shall assist the department of corrections when requested to do so
12 under this paragraph.

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283.

13 **SECTION 18.** 301.45 (2) (e) (intro.) of the statutes is amended to read:

14 301.45 (2) (e) (intro.) The department of health and family services shall
15 provide the information required under par. (c) or the person subject to sub. ~~(1)~~ (1g)[✓]
16 shall provide the information required under par. (d) in accordance with whichever
17 of the following is applicable:

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283.

18 **SECTION 19.** 301.45 (2) (f) of the statutes is created to read:

19 301.45 (2) (f) The department may require a person covered under sub. (1g) to
20 provide the department with his or her fingerprints and a recent photograph of the
21 person and may require the person to report to a place designated by the department,
22 including an office or station of a law enforcement agency, for the purpose of
23 obtaining the person's fingerprints and the photograph.

24 **SECTION 20.** 301.45 (3) (a) (intro.) of the statutes is amended to read:

1 301.45 (3) (a) (intro.) A person covered under sub. ~~(1)~~ [✓] (1g) is subject to the
 2 annual registration requirements under par. (b) as follows:

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283.

3 SECTION 21. 301.45 (3) (b) 1. of the statutes is amended to read:

4 301.45 (3) (b) 1. Except as provided in subd. 1m., a person who is subject to par.
 5 (a) shall notify the department once each calendar year, as directed by the
 6 department, of his or her current information specified in sub. (2) (a). The
 7 department shall annually notify registrants of their need to comply with this
 8 requirement. If the registrant is a person under the age of 18. the denartment shall
 9 also annually notify the registrant's parent, guardian or legal custodian of the
 10 registrant's need to comnlv with this reauirement.

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283.

11 SECTION 22. 301.45 (3) (b) 1m. of the statutes is amended to read:

12 301.45 (3) (b) 1m. A person who is subject to par. (a) because he or she is covered
 13 under sub. ~~(1)~~ [✓] (1g) (dt) shall notify the department once each 90 days, as directed by
 14 the department, of his or her current information specified in sub. (2) (a). Every 90
 15 days, the department shall notify registrants subject to this subdivision of their need
 16 to comply with this requirement. If the registrant covered under sub. ~~(1)~~ (dt) is a ^(1g)
 17 person under the age of 18. the denartment shall also notify the registrant's parent,
 18 guardian or legal custodian every 90 days of the registrant's need to comply with this
 19 reauirement.

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283.

20 SECTION 23. 301.45 (3) (b) 2. of the statutes is amended to read:

21 301.45 (3) (b) 2. The department shall notify a person who is being released
 22 from prison because he or she has reached the expiration date of his or her sentence
 23 and who is covered under sub. ~~(1)~~ [✓] (1g) of the need to comply with this section. Also,
 24 probation, extended supervision and parole agents, aftercare agents and agencies

1 providing supervision shall notify any client who is covered under sub. ~~(1)~~ (1g) of the
2 need to comply with this section at the time the client is placed on probation,
3 extended supervision, parole, supervision or aftercare supervision or, if the client is
4 on probation, extended supervision or parole from another state under s. 304.13 or
5 304.135, when the client enters this state.

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283.

6 **SECTION 24.** 301.45 (3) (b) 3. of the statutes is amended to read:

7 301.45 (3) (b) 3. The department of health and family services shall notify a
8 person who is being placed on conditional release, conditional transfer or parole, or
9 is being terminated or discharged from a commitment, under s. 51.20, 51.35 or
10 971.17 or ch. 975 or 980 and who is covered under sub. ~~(1)~~ (1g) of the need to comply
11 with this section.

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283.

12 **SECTION 25.** 301.45 (3) (b) 3m. of the statutes is amended to read:

13 301.45 (3) (b) 3m. After notifying a person under subd. 2. or 3. of the need to
14 comply with this section, the person who is providing the notification shall require
15 the person who is covered under sub. ~~(1)~~ (1g) to read and sign a form stating that he
16 or she has been informed of the requirements of this section.

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283.

17 **SECTION 26.** 301.45 (4m) of the statutes is amended to read:

18 **301.45 (4m) INFORMATION CONCERNING A MOVE TO ANOTHER STATE.** In addition to
19 the requirements under subs. (3) and (4), a person who is covered under sub. ~~(1)~~ (1g)
20 and who is changing his or her residence from this state to another state shall, no
21 later than 10 days before he or she moves out of this state, notify the department that
22 he or she is changing his or her residence from this state and inform the department
23 of the state to which he or she is moving his or her residence. Upon receiving
24 notification from a person under this subsection, the department shall inform the

1 person whether the state to which the person is moving has sex offender registration
 2 requirements to which the person may be subject and, if so, the name of the agency
 3 to contact in that state for information concerning those requirements.

History: 1995 8.440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283.

***NOTE: Do you want to require DOC to notify the state to which the registrant is moving, or do you do that by rule? Compare 42 USC 14071 (b) (2) (A) and (5).

4 **SECTION 27.** 301.45 (5) (a) (intro.) of the statutes is amended to read:

5 301.45 (5) (a) (intro.) ~~Except~~ as provided in pars. (am) and (b), a person who
 6 is covered under sub. ~~(1)~~ (1g) no longer has to comply with this section when the
 7 following applicable criterion is met:

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283.

8 **SECTION 28.** 301.45 (5) (am) of the statutes is created to read:

9 301.45 (5) (am) 1. Except as provided in subd. 2., a person who is covered under
 10 sub. (1g) (dL) shall continue to comply with the requirements of this section as long
 11 as he or she is on lifetime supervision under s. 939.615:

12 2. A person who is covered under sub. (1g) (dL) shall continue to comply with
 13 the requirements of this section until his or her death if the court orders continued
 14 registration under s. 939.615 (6) (i).

***NOTE: Because it is possible for lifetime supervision to be terminated (see s. 939.615 (6)), this provision requires someone placed on lifetime supervision to register under s. 301.45 only as long as he or she is on lifetime supervision unless the court that terminates lifetime supervision orders continued registration. Is that okay, or do you want to make lifetime registration automatic for all persons placed on lifetime supervision?

15 **SECTION 29.** 301.45 (5) (b) (intro.) of the statutes is amended to read:

16 301.45 (5) (b) (intro.) A person who is covered under sub. ~~(1)~~ (1g) shall continue
 17 to comply with the requirements of this section until his or her death if any of the
 18 following apply:

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283.

19 **SECTION 30.** 301.45 (5) (b) 1. of the statutes is amended to read:

1 301.45 (5) (b) 1. The person has, on 2 or more separate occasions, been convicted
2 or found not guilty or not responsible by reason of mental disease or defect for ~~any~~^{will}
3 ~~violation, or for the solicitation, conspiracy or attempt to commit any violation, of s.~~
4 ~~940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055,~~
5 ~~948.06, 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was~~
6 ~~a minor and the person was not the victim's parent, or a sex offense, for any a~~
7 violation, or ~~for~~^{will} the solicitation, conspiracy or attempt to commit ~~any a~~ violation, of
8 a law of this state or ~~any other state~~ that is comparable to a violation of s. 940.22 (2),
9 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06,
10 948.07, 948.08, 948.11 or 948.30 or that is comparable to a violation of s. 940.30 or
11 940.31 if the victim was a minor and the person was not the victim's parent ~~sex~~
12 ~~offense. or for a violation. or the solicitation. consniracy or attemnt to commit a~~
13 ~~violation. of a law of another state that is a felony and that is comparable to a sex~~
14 ~~offense.~~ A conviction that has been reversed, set aside or vacated is not a conviction
15 for purposes of determining under this subdivision whether a person has been
16 convicted on 2 or more separate occasions.

History: 1995 a. 440 ss. 26 to 49.53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283.

17 **SECTION 31.** 301.45 (5) (b) 3. of the statutes is created to read:

18 301.45 (5) (b) 3. The court that ordered the person to comply with the reporting
19 requirements of this section under s. 51.20 (13) (ct), 938.34 (15m), 971.17 (lm) (b) or
20 973,048 also ordered the person to comply with the requirements until his or her
21 death.

22 **SECTION 32.** 301.46 (1) of the statutes is renumbered 301.46 (1) (intro.) and
23 amended to read:

24 301.46 (1) (intro.) In this section "agency:

CS
DEFINITIONS.

1 (a) "Agency with jurisdiction" means the state agency with the authority or
 2 duty to confine or supervise a person or release or discharge a person from
 3 confinement.

4 History: 1995 a. 440; 1997 a. 6.27, 130, 181, 237, 283.

4 **SECTION 33.** 301.46 (1) (b) of the statutes is created to read:

5 301.46 (1) (b) "Sex offense" has the meaning given in s. 301.45 (Id) (b). ✓

6 **SECTION 34.** 301.46 (2m) (a) of the statutes is amended to read:

7 301.46 (2m) (a) If an agency with jurisdiction confines a person under s.
 8 301.046, provides a person entering the intensive sanctions program under s.
 9 301.048 with a sanction other than a placement in a Type 1 prison or a jail, or releases
 10 a person from confinement or institutional care, and the person has, on one occasion
 11 only, been convicted or found not guilty or not responsible by reason of mental disease
 12 or defect for ~~any violation, or for the solicitation, conspiracy or attempt to commit any~~
 13 ~~violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025,~~
 14 ~~948.05, 948.055, 948.06, 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if~~
 15 ~~the victim was a minor and the person was not the victim's parent, a sex offense or~~
 16 for a violation of a law of this state that is comparable to s. 940.22 (2), 940.225 (1),
 17 ~~(2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.06, 948.055, 948.06, 948.07, 948.08,~~
 18 ~~948.11 or 948.30, or that is comparable to s. 940.30 or 940.31 if the victim was a minor~~
 19 ~~and the person was not the victim's parent~~ a sex offense, the agency with jurisdiction
 20 may notify the police chief of any community and the sheriff of any county in which
 21 the person will be residing, employed or attending school if the agency with
 22 jurisdiction determines that such notification is necessary to protect the public.
 23 Notification under this paragraph may be in addition to providing access to

1 information under sub. (2) or to any other notification that an agency with
2 jurisdiction is authorized to provide.

History: 1995 a. 440; 1997 a. 6, 27, 130, 181, 237, 283.

3 **SECTION 35. 301.46 (2m) (am)** of the statutes is amended to read:

4 301.46 **(2m)** (am) If an agency with jurisdiction confines a person under s.
5 301.046, provides a person entering the intensive sanctions program under s.
6 301.048 with a sanction other than a placement in a **Type 1** prison or a jail, or releases
7 a person from confinement or institutional care, and the person has been found to be
8 a sexually violent person under ch. 980 or has, on 2 or more separate occasions, been
9 convicted or found not guilty or not responsible by reason of mental disease or defect
10 for ~~any violation, or for the solicitation, conspiracy or attempt to commit any~~
11 ~~violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025,~~
12 ~~948.05, 948.055, 948.06, 948.07, 948.08 or 948.11)~~ ^{or} a sex offense ^{or} for a violation of
13 a law of this state that is comparable to ~~s. 940.22 (2), 940.225 (1), (2) or (3), 944.06,~~
14 ~~948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.08 or 948.11~~ ~~ex~~
15 offense, the agency with jurisdiction shall notify the police chief of any community
16 and the sheriff of any county in which the person will be residing, employed or
17 attending school. Notification under this paragraph shall be in addition to providing
18 access to information under sub. (2) and to any other notification that an agency with
19 jurisdiction is authorized to provide.

History: 1995 a. 440; 1997 a. 6, 27, 130, 181, 237, 283.

****NOTE: The list of offenses in s. 301.46 (2m)(am) is narrower than most lists in
s. 301.45, stats.; thus, inserting the defined term "sex offense" in the provision has the
effect of covering the same offenses covered under s. 301.45, stats. Is that your intent?

as are

20 **SECTION 36. 938.34 (15m) (bm)** of the statutes is amended to read:

21 938.34 **(15m)** (bm) If the juvenile is adjudicated delinquent on the basis of a
22 violation, or the solicitation, conspiracy or attempt to commit a violation, of s.

1 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06,
2 948.07, 948.08, ~~948.095~~, 948.11 (2)(a) or (am), ~~948.12~~ ~~948.13~~ or 948.30, or ofs. 940.30
3 or 940.31 if the victim was a minor and the juvenile was not the victim's parent, the
4 court shall require the juvenile to comply with the reporting requirements under s.
5 301.45 unless the court determines, after a hearing on a motion made by the juvenile,
6 that the juvenile is not required to comply under s. 301.45 (1m).

History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, ~~205~~ s. 13.93 (2) (c).

7 **SECTION 37. 938.34 (15m) (d)** of the statutes is created to read:

8 938.34 (15m) (d) If the court orders a juvenile to comply with the reporting
9 requirements under s. 301.45, the court may order the juvenile to continue to comply
10 with the reporting requirements until his or her death.

11 **SECTION 38. 938.396 (2) (em)** of the statutes is amended to read:

12 938.396 (2) (em) Upon request of the department to review court records for the
13 purpose' of obtaining information concerning a child required to register under s.
14 301.45, the court shall open for inspection by authorized representatives of the
15 department the records of the court relating to any child who has been adjudicated
16 delinquent or found not responsible by reason of mental disease or defect for an
17 offense specified in s. 301.45 ~~(1)~~ ~~(1g)~~ (a). The department may disclose information
18 that it obtains under this paragraph as provided under s. 301.46.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; s. 13.93 (1) (b), (2) (c).

19 **SECTION 39. 939.615 (6) (i)** of the statutes is created to read:

20 939.615 (6) (i) If the court grants a petition requesting termination of lifetime
21 supervision and the person is registered with the department under s. 301.45, the
22 court may order the person to continue to comply with the reporting requirements
23 under s. 301.45 until his or her death.

24 **SECTION 40. 971.17 (1m) (b) 2m.** of the statutes is amended to read:

1 971.17 **(1m)** (b) 2m. If the defendant under sub. (1) is found not guilty by reason
 2 of mental disease or defect for a violation, or for the solicitation, conspiracy or
 3 attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02
 4 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.08, 948.095, 948.11 (2) (a) [✓] or
 5 (am. 948.12, 948.13) [✓] or 948.30, or of s. 940.30 or 940.31 if the victim was a minor and
 6 the defendant was not the victim's parent, the court shall require the defendant to
 7 comply with the reporting requirements under s. 301.45 unless the court determines,
 8 after a hearing on a motion made by the defendant, that the defendant is not required
 9 to comply under s. 301.45 (1m).

History: 1975 c. 430; 1977 c. 353; 1977 c. 428 s. 115; 1983 a. 359; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 394; 1989 a. 31, 142, 334, 359; Sup. Ct. Order, 158 W (2d) xvii (1990); 1991 a. 39, 189, 269; 1993 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 417, 425, 440, 448; 1997 a. 35, 130, 181, 252, 275.

10 **SECTION 41.** 971.17 (1m) (b) 4. of the statutes is created to read:

11 971.17 **(1m)** (b) 4. If the court orders a defendant to comply with the reporting
 12 requirements under s. 301.45, the court may order the defendant to continue to
 13 comply with the reporting requirements until his or her death.

14 **SECTION 42.** 973.048 (2m) of the statutes is amended to read:

15 973.048 **(2m)** If a court imposes a sentence or places a person on probation for
 16 a violation, or for the solicitation, conspiracy or attempt to commit a violation, of s.
 17 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055,
 18 948.06, 948.07, 948.08, 948.095, 948.11 (2) (a) & (am), 948.12, 948.13 or 948.30, or
 19 of s. 940.30 or 940.31 if the victim was a minor and the person was not the victim's
 20 parent, the court shall require the person to comply with the reporting requirements
 21 under s. 301.45 unless the court determines, after a hearing on a motion made by the
 22 person, that the person is not required to comply under s. 301.45 (1m).

History: 1995 a. 440; 1997 a. 130.

23 **SECTION 43.** 973.048 (4) of the statutes is created to read:

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1407/P1dn

JEO:K...
mg

Tony Streveler:

I put a few 4-star notes (***NOTE:) in the draft to ask questions or raise issues about specific provisions of the draft.

Also, note that this draft does *not* include language authorizing DOC to issue an arrest warrant for persons not on field supervision who have not complied with the registration requirements. While I haven't yet had time to finish my research on the issue, I think that there may be a potential constitutional problem with allowing DOC to issue an arrest warrant for persons not complying with s. 301.45, stats. Specifically, the constitution requires that an arrest warrant be issued based on a finding of probable cause made by "a neutral and detached magistrate". *Shadwick v. City of Tampa*, 407 U.S. 345,350 (1972); *Coolidge v. New Hampshire*, 403 U.S. 443,450 (1971); see also *State v. Koch*, 175 Wis. 2d 684, 698 (1993). Given DOC's role in prosecuting a person who fails to comply with s. 301.45, stats., I am not sure that it would be considered "neutral and detached" for purposes of the constitutional requirement.

While DOC does currently issue "apprehension warrants" for parolees and probationers who have absconded, the rationale for allowing such warrants is that parolees and probationers are in the legal custody of DOC and thus have only a conditional liberty and diminished expectations of privacy that justify departure from the formal warrant requirements under the constitution. *State v. Pittman*, 159 Wis. 2d 764, 770-72 (Ct. App. 1990). Someone who is no longer on field supervision is also no longer subject to a merely conditional liberty and has a higher expectation of privacy (at least relative to persons on supervision; it may be that a court would find ^{that} a person who is required to register under s. 301.45, stats., has diminished expectations of ~~privacy~~ ^{privacy} relative to the general population of law-abiding citizens).

In any event, let me know whether you want the draft to include the authority of DOC to issue warrants. I will then finish looking at the issue, after which I can give you a more definitive answer on the constitutional implications and, if necessary, draft the language in a way that minimizes constitutional problems.

Let me know if you have any questions or changes.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1407/P1dn
JEO:kmg:km

April 15, 1999

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Also, note that this draft does *not* include language authorizing DOC to issue an arrest warrant for persons not on field supervision who have not complied with the registration requirements. While I haven't yet had time to finish my research on the issue, I think that there may be a potential constitutional problem with allowing DOC to issue an arrest warrant for persons not complying with s. 301.45, stats. Specifically, the constitution requires that an arrest warrant be issued based on a finding of probable cause made by "a neutral and detached magistrate". *Shadwick v. City of Tampa*, 407 U.S. 345,350 (1972); *Coolidge v. New Hampshire*, 403 U.S. 443,450 (1971); see also *State v. Koch*, 175 Wis. 2d 684,698 (1993). Given DOC's role in prosecuting a person who fails to comply with s. 301.45, stats., I am not sure that it would be considered "neutral and detached" for purposes of the constitutional requirement.

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Let me know if you have any questions or changes.

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Draft 1 Analysis - LRB-1407/P1 dn

The following is a line review and response to your comments to LRB-I 407/P1:

*15: issue
crime
is
to be lethal
of
offense
consistency*

1. **Line 19, Page 1:** Probably Not.. . since the 940.20(2) relates to Sexual Exploitation by a Therapist - it is highly unlikely that a juvenile would be considered a therapist. If there is a possibility, then, I guess, we should include it. Otherwise, it could look silly.

2. **Line 3, Page 6:** This issue comes up for all registrants who are not under the direct supervision of the DOC, or who were never under DOC custody or supervision or convicted in this state. As a possible general rule for interstate compact cases, we should require them to register with this state (as well as their original conviction state) while they are under interstate compact supervision with this state, and as long as they reside, go to school or are employed within Wisconsin - up to 15 years following conviction or disposition. Registrants under interstate compact who meet the definition of 2-strike offenders would then be required to register with the WI SORP for any length of time they reside, work or are going to school within Wisconsin,

Some additional thoughts on this.. . .

✓ Anyone received in this state under interstate compact would be subject to the 15 year registration term.

✓ Anyone convicted in this state, whether they reside here or not, would be subject to the 15 years registration term (or life, if they meet the criteria).

✓ Anyone who is required to register in this state because they have moved here from another state (not interstate or convicted here), whether because of residence, employment, school attendance, convicted in a military court, tribal court or Federal court, are required to register with this state for the term in which they actually reside, go to school or are employed in this state or for 15 years from the date of their conviction requiring registration. Perhaps there is a better way of wording this, but the issue is that there will be, and are, cases where a person, for example, lives on the Illinois border and decides to go to school for a semester in Wisconsin. In this case they are required to register in Ill and Wisconsin, however it does not make sense that they, by virtue of going to school for 6 months, are required to register with

Wisconsin for 15 years. Each state has a registration law. The state of conviction should be the entity that registers the person for the minimum federal standard of 10 years - not necessarily the state where the registrant gets temporary work for three months.

*even if they
by 15 yrs is
mb?
ST?*

*I don't
think
right*

Another example illustrating this potential problem -just received a call from Texas. They have a registrant who will be coming to Wisconsin for a 6 week training course for his job and he will be returning to TX after the course - glad they called - but, problem is, under the proposed changes in the law this person would then have to register with us for 15 years from their date of conviction. This does not seem right. *→ What does Fed. law require?*

- ✓ Recommend that the applicability date for this **section** - that is for federal, tribal or military court convictions -to include persons on active field supervision, incarcerated or convicted on or after the effective date of this legislation. We will then "pick up" those cases who are living in WI and who are on active custody or supervision, but will not have to retrospectively go back and register a person convicted of an eligible sex crime, who has discharged off from any form of supervision, and who now lives in Sheboygan (cases that are almost impossible to register and enforce - know this from experience).

✓ **3. Line 15, Page 6:** Some of the above comments may address your question here. In addition.. . ,

- ✓ One of the principles I think we need to work under is that the Feds have made some requirements related to who should/must be required to register. Then, each state has set up their own definition as to who they require to register. With the implementation of the National Sex Offender Registry Program, I believe we need to be consistent with those persons who are required to register, and who will be in the NSOR - in other words..

? For persons who are under any form of supervision in our state from another state or jurisdiction, e.g., interstate compact, federal probation, etc..., we should have flexibility in determining a "comparable" crime and then requiring them to register with WI SORP (term determined by length of time on supervision, residing, employed or attending school in this state or 15 years/life from conviction or disposition - which ever is lesser. We register them as long as they are in our state.

- ✓ For persons who are required to register in another state, and who are not on any form of supervision or custody, and who come to WI

to live, work or attend school, the WI SORP should not be in a position to determine if their conviction is comparable to our state, It should be keyed to the fact that they are required to register in another state. If you think about this... since there is no formal supervision for these cases, how are we going to know who that

*ok
381.45
(1g) (g)*

are and when they move to Wisconsin? --unless they are required to register in another state. The key here is that we will have access to the NSOR data and will be able to query this information to search for persons who have reported a residence, employment or attendance at school - plus, if the other state follows the guidelines, we will receive notice from the other state SORP. When the person leaves this state, we then provide notice to the receiving state (and the originating state, if different) and close out our interest in the case. Otherwise, we are going to have a significant number of cases that will be determined to be non-compliant when, in fact, they really are not "our" registrant. So...

Regarding your first comment, I would keep the language you have that indicates, "...is registered as a sex offender in another state.." -this, then, keys it to a person who has been required to register, and keeps WI SORP clear from having to make a determination as to whether the case is comparable.

- √ Regarding your question about credit for time required to register.. comment #2 above may address this, in terms of what should be the term of registration for out-state cases. If a person is registered in CO, and they have registered there for 5 years of their mandatory 10 years. They are now off field supervision and move to WI for one year and then return to CO. They would be required to register with the WI SORP for the year they lived/worked in this state. If, during this time, we determine the person is in non-compliance, our responsibility - I believe - would involve notifying the CO SORP that this registrant is determined to be in non-compliance. It is then up to the CO SORP to pursue whatever they need to related to the person's non-compliance status - not necessarily WI SORP. It is up to the CO SORP and their laws/rules to determine if the time residing/working/attending school in WI counts towards the 10 years registration imposed by CO. So.. basically, the registration term, and any calculations related to the term is keyed to the originating state of registration.

Why register w/ WI?
→ Falls don't require?
→ Is that intent?

- √ For cases that are ⁷originating WI registrants - the term of registration is driven by our state law (15 years post discharge or life). Time residing in other states or countries should be counted toward the 15 year period. If they reside in another state, they are responsible for continuing to register with WI SORP for their entire term. I continue to send annual or 90 registration letters and periodic

verification letters. If we determine the person to be in non-compliance, will will notify the current state SORP, as well as pursue certification in the state (although highly unlikely anyone will extradite for this) - but the issue here is that WI will have this information in NSOR, will notify the other state SORP and will take the necessary

steps to have a warrant issued, if indicated. This should not be the case for other state registrants who happen to be living, working or attending school in WI.

- Since I am on the topic of "credit" and "term" of registration. There needs to be some clarification in the law regarding the 15 year registration period, following discharge from their sentence.
- ✓ First there needs to be some clarification related to "discharge from probation or parole" or has reached the expiration date of his/her sentence." Problem here is that there are cases where the current incarceration or supervision episode is the not one that requires them to register...e.g., they have been convicted of an included crime. But some, following discharge, get re-convicted of another crime (theft) and either return to probation supervision or are incarcerated for a period of time. Confusion here is whether the 15 years starts again following discharge from the new crime, or is the perm carry through the new crime and the 15 years is only keyed to the discharge from the episode that originally required them to register?

As I read it now, the person is required to register for 15 years from the date of their originating conviction discharge episode. There is no "time tolled" for re-incarceration or for a period where they are determined to be in "non-compliance" with the registry. Trying to keep track of any "tolled time" or "credit time" for Wisconsin or out-state registrant cases would be an administrative nightmare. So, what I guess I am saying is that the current law needs to be clear that the term of registration is 15 years following discharge from the original offense that required registration. Any subsequent offense that is "registerable" would result in automatic-life registration. Registration terms for persons required to register in another state, but live, work or attend school in this state, will be calculated from their out-state conviction discharge date, plus 15 years, or until they no longer reside, work or attend school in this state.



NB: conseq. sentences, one for sex crime, one not calculated (as continuous sentence).

- ✓ Regarding your question of applicability for this section, I would recommend that persons who are required to register in another state, and who either reside, are employed or attend school in this state = on or after the effective date of this legislation.
- ✓ Additionally, with cases where the person is required to register by another state, and he/she resides, is employed or attends school in Wisconsin, there needs to be clarification regarding the Department's role in certifying materials to the district attorney, if the department determines there is probable cause that the person is in non-compliance with the law [301.45(6)(a)]. Problem here is that we have no jurisdiction over this person - apart from the fact that our law says they are required to register with the SORP while they are in this State. I believe we still have a responsibility to provide information to the DA's office and to pursue issuing a warrant for arrest (venue issue I will address later in this document). However, I also believe that the State of registration origin is the primary entity of responsibility related to the persons' compliance - or enforcing compliance. For these cases, we need to include something that directs the Department to inform the other state that we have determined the person is in non-compliance so that they can pursue possible prosecution under their law. One assumption here is that when one of these cases become non-compliant, we believe they continue to reside within Wisconsin. When, in fact, they may have moved to another state without notifying WI SORP. As described in one of the sections above, (while in Wisconsin = register, when they move = other state, case pivots on the State where the registration originates), WI SORP should no longer have jurisdiction over registering the person, nor attempting to track them down and get them registered - the jurisdiction transfers back to the State of origin. By certifying materials to a County DA, and with them possibly issuing a warrant for arrest, the warrant will become active in the law enforcement system. If the person is picked up in Wisconsin, we can prosecute under our law. However, if the person has moved out-state, Wisconsin should no longer have interest or responsibility over the case. Somehow, this needs to be articulated/clarified in this section.

that is jurisdiction

Does WI law require registration in other states where going to school etc?

?

The above should also apply to all interstate compact cases (adult and juvenile) that are convicted in another State, but

are supervised here for a period of time. They register as long as they reside, are employed or attend school in WI - or 15 years from date of conviction or disposition for a crime requiring registration - which ever is least. Non-compliance with these cases are the primary responsibility of the registration State of origin - however, the Department will communicate this to the other state and will certify materials to issue a warrant for arrest, in the event that the person continues to be in Wisconsin.

- ✓ also, I believe there are specific crimes articulated in the Federal law that requires registration of persons convicted in a Federal, tribal or Military Court. This section addresses the “comparable to a sex offense’ as defined under our law. Should this section state something to the effect.. “..has been convicted of a violation of a federal law that requires registration *or is comparable to a sex offense*,. . .).
- ✓ also, the beginning of line 8 keys this whole section to “Is a resident of this state.. .” - I believe in order to be consistent, we need to include “Is a resident of this state, *a student in this state or employed or carrying on a vocation in this state.*” This would make it consistent with the other State registrants residing, employed or attending school in this state.

4. **Page 7, Line 4:** Perhaps recapping the above may help answer your question here:

- ✓ persons convicted, adjudicated, etc.. in Wisconsin we register for the term and enforce compliance - no matter where they may reside. The exemption to registration applies to these cases.
- ✓ persons convicted in another state, who are in or state under interstate compact, we register them under our law (allowing for comparable), whether or not they are required to register in the sending state. We register for the time in which they are under supervision in this State, or for as long as they reside, are employed or attend school, or for 15 years from the date of their conviction requiring registration – which ever is the lesser. Wisconsin enforces compliance as long as they are in this State – if they become non-compliant, we provide certified information to the County DAs’ office to issue a warrant and inform the State of registration origin of the persons’ non-compliance. If the person is required to register in another State, the exemption to registration should not apply. If WI SORP determines they are required to register, based on a comparable crime, and he/she is not required to register in the sending State, the exemption to registration should be made available.

Compact
Cases

- ✓ persons convicted in a Federal, Tribal or Military Court will be handled like interstate compact cases - unless the case was disposed in a Wisconsin jurisdiction court - then the WI SORP will be responsible for registration for the complete term. Problem here is that I do not know what jurisdiction the County DA's office would have over a case like this; for example, convicted out of a Military Court where the offender is no longer on any form of custody or supervision and they are determined to be in non-compliance. Not even sure they are able to issue a warrant. However, non-compliance while on any form of federal, military or tribal custody or supervision would require the WI SORP to notify the supervising entity of the person's non-compliance (like notifying the original State of registration). If the person is required to register by Federal law, the exemption to registration should not apply, If WI SORP determines they are required to register, based on a comparable crime, the exemption to registration should be made available.
- ✓ Persons required to register in another state, who reside, are employed or attend school in this state (no comparable - registration in other state = registration in WI), would be handled like interstate compact cases, and the exemption to registration would not apply. A person who is required to register in another State should not have the option of being exempt in this State.

aren't all of these people reg'd by federal law?

5. **Page 9, Lines 1-5:** As I read this section, I believe it provides the Department the authority to obtain photos and fingerprints of persons' who are off any form of custody or supervision. Couple things - does this also apply to those convicted in a Military, Federal or tribal Court? Would add at the end... ". . .for the purpose of obtaining the person's fingerprints, photograph, *or other information required for registration.*" This provides some flexibility to obtain other missing information required for the registry (like driver' license #) when requiring them to report.

Covered elsewhere?
39(1.45 (w) CD)

6. **Page 9, line 14 and 23:** This section requires the department to notify the juvenile's parent or guardian, in addition to the juvenile, for annual registration. Would like the "shall" changed to "may" so that we do not add another level of notice that may or may not be necessary.

7. **Page 1 0/1 1, Section 26:** This may be the section to make some clarification regarding move to another state - differentiating those cases convicted in WI vs. those not. Your note asks whether we should notify the other state -Yes. In all cases that register with the WI DOC and there is notice to us that the registrant is reporting a move to another state, WI SORP should provide notice to the receiving State agency responsible for the registry - and, if different, to the originating or last registration state (in a case where the offender has been convicted in more than one state).

is this
true? Does
CO believe
this?

Senario - person convicted of a crime in CO and required to register there. Sent to WI under interstate compact supervision. Person then registers with both CO and WI, Person discharges off supervision and then reports a move to MN. WI SORP should notify both the MN SORP and CO SORP of this change - AND, the WI SORP interest in the case should be closed. Problem could easily arise where the registrant can provide a bogus address in MN and actually move to CA. The key to the tracking responsibility is the CO SORP.

- ✓ WI SORP tracks and maintains responsibility for all cases that originate in our State. Many states are providing notice to us regarding our registrants, and we continue to send annual registration and letters and periodic verification letters. However, with cases that are required to register in another state, and who happen to reside in Wisconsin for a period of time - registering with WI SORP during that period - and who report a change of address to another state, the WI SORP interest in the case should end at notice to the receiving state - and, if different, the originating state of registration.
- ✓ I would like to define this notice in a matter that includes written or through the transmission of information the National Sex Offender registry database. This allows some flexibility to the notice, as well as reinforces the primary intent of the NSOR -that is transmission and access to registry information nation-wide.

8. **Page 11, line 18:** For consistency reasons, if a court takes a person off lifetime supervision, and overtly decides to waive registration at the same time, I think the court should have this authority - by definition, the person has been registering for at least 15 years when this takes place. However, when a person is placed on lifetime supervision, they should also be automatically placed on lifetime registration - otherwise this is inconsistent. I did not see your question as an either-or.. but to make the parallel process consistent.

TE
Switch
prob. et. seq.
in draft

9. **Page 12, Section 30:** I see the changes in this section added to the definition of **2-strike** to include felony out-state convictions. Good. However, I think we should now also include in the definition: anyone convicted in a military, tribal or federal court, as stated in Section 10 (with proposed revisions). If we are going to require them to register, their convictions in these different venues should also count as a "strike."

Not
sub-
stantive
change

10. **Page 13, lines 4-6:** In changing this to.. "agency" with jurisdiction, does this effect a change in having to do a Special Bulletin on cases that are, for example, .. 2-strike offenders, mandatory SBNs; detained in a county jail and subsequently released following investigation? There are cases where the

offender has received his/her second strike and received jail time and a probation term. ~~Our goal to not require Special Bulletin Notifications from the DOC on jail releases.~~ Not sure this language change accomplishes this completely.

✓ **11. Page 14, line 20:** Yes to your question. The intent here is that the list of crime that equal registration should be the same list of crimes that can be counted for two-strike mandatory bulletins. As stated previously, convictions in military, tribal and federal courts of crimes requiring registration should also be counted as a strike.

Jefren

This is a basic checklist of items the original request. I have went through this to ensure your draft addresses all areas. I have included any comments following a →

PROPOSED CHANGE(s):

- **Requiring any sex offender convicted in a military, tribal or federal court, and those who work or reside within the Wisconsin borders, to register with the Wisconsin Sex Offender Registration Program (SORP):**

This is a requirement of the Federal law and guidelines. Current law does not allow the Department to register these offenders.

→ addressed in draft. Have identified several other changes/issues in the analysis.

- **Requiring any sex offender, who is required to register in another state, and who is not under any form of interstate compact supervision within Wisconsin - and who resides, is employed or attends school within the Wisconsin borders, to register with the Wisconsin SORP.**

This is a requirement of the Federal law and guidelines. Current law does not allow the department to register a sex offender who is off any form of field supervision, and who moves into, or works within our state. Additionally, the Federal guidelines require a state registry program to register all offenders who may not live, but who work or attend school within the state (for example, a Minnesota registrant who works in Hudson, but lives in Stillwater, MN.)

→ addressed in draft. Have identified some other changes/issues in the analysis.

- **Requiring registration for Juvenile Interstate compact cases.**

Current law does not allow the department to register juvenile sex offenders who are under interstate compact supervision within this state.

→ addressed in draft.

- **Expanding the included list of crimes to include the following:**

948.12	Possession of child pornography
948.13	Child sex offender working with children

948.95 Sexual assault of a student by a school instructional staff person

Federal guidelines require registration for “any conduct that by its nature is a sexual offense against a minor”.. although not all chapter 948 crimes are included in the mandatory registration requirements, these need to be included to reflect all felony convictions within this chapter - leaving the other convictions under the discretion of the court. There needs to be a clear distinction between felony and misdemeanor convictions - in that all felony convictions of sexual assault should be required to register, while misdemeanor convictions remain at the discretion of the court. An example is 948.11 - Exposing a child to harmful materials. Sub (2)(a) is a felony, while sub (2)(b) is a misdemeanor. Current law, as written, requires registration under both subs. This is not the case with other misdemeanor convictions. There needs to be some clarification to ensure consistent application. Recommend that all felony convictions are required, all misdemeanor convictions are at the discretion of the court.

→ addressed in draft.

• **Clarify definition of “comparable crime” to address out-of-state convictions - felony vs. misdemeanor.**

Current law allows the department to register a person, who was convicted in another state but resides in Wisconsin and is under interstate compact supervision, if that person is convicted of a sex crime that is comparable to the list of crimes requiring registration in Wisconsin. This definition of comparable crimes also affects 2-strike determinations, mandatory notification and lifetime registration. As with the above recommendation, comparable crimes should be defined by felony or misdemeanor convictions - in that a person convicted of a felony conviction would count as a strike and would be required to register with the department. Conversely, a person convicted of a misdemeanor crime in another state would not count as a strike and would not be required to register, unless.. 1) the person is under interstate compact supervision with the state of Wisconsin, or 2) the person is required to register in their state of conviction, and that state appropriately notifies the department of this requirement. By new federal regulations, a sending state is to provide notification to a receiving state that a registered sex offender has moved to, works or attends school within the state.

→ addressed in draft with some additional comments in the analysis.

- **Lifetime Registration.**

- In cases where lifetime registration is not mandatory under current law, include a provision to allow a court to order lifetime registration as part of sentencing. This does not preclude the minimum of 15 years following discharge from supervision, as in current law. Include a provision whereby when an offender is sentenced to lifetime monitoring (new statute) this also requires lifetime registration.

→ **addressed in draft. Issue here that may need to be addressed includes... if we are going to allow the court discretion to impose lifetime registration on any registrant convicted of a sex offense, we should also provide that authority for those the court finds to require to register as a sexually motivated offense (ss. 973.048[2]).**

Done

- **Expanding authority for DOC to manage registrants off field supervision.**

The following are a couple of proposed changes to allow the department more direct authority to deal with registrants off active field supervision. Many of these changes are being proposed to maintain compliance with Federal mandates for connection with the Permanent FBI database.

Adding authority for DOC to obtain fingerprints and photos from persons off field supervision (adults and juveniles). Having the authority to have the registrants report to law enforcement or a designated corrections office.

→ **Addressed in draft.. ?? does this authority apply to those convicted in a military, tribal or federal court?? If not, need to include.**

yes - all covered under (19)

Adding DOC authority to issue a warrant for arrest on a case that is determined to be in non-compliance with the law, and the person is not on active field supervision.

can't

→ **Not addressed in draft - notes indicate that this might not be possible - however drafter doing further research on this.**

- **Annual registration and verification of address for juvenile offenders - parent/guardian notification.**

Current law requires a minimum annual update of registration, and administrative rules allow the department to conduct activities related to

verification of the reported information from the registrant. Over the course of implementation, an issue has arose where there may need to be more direction from the law regarding annual registration and periodic verification activities, as it relates to juveniles who remain under the age of 18, and the need to share some of the onus of registration with the legal parent/guardian. Issue here is to require that registration and verification communications be directed to the registrant, and the legal parent/guardian.

→ Addressed in draft with some comments in analysis.

- **Add definition of “employed, carries on a vocation” and “student” consistent with the Federal law.**

Current law does not include a definition of employment or student as part of the registration requirements. In order to make this clear, particularly given the requirements to register persons residing in another state who work or attend school in this state, it is recommended that the current law include the following definitions:

“employed, carries on a vocation” includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during a calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

→ **Addressed in draft - ? does this applies to person convicted in a military, tribal or federal court? If not, needs to.**

“student” means a person who is enrolled on a ~~full-time~~ or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education.

→ **Addressed in draft - ? whether this applies to person convicted in a military, tribal or federal court? If not, needs to.**

TOPIC: Sex Offender Community Notification (effects ss. 301.46 (2m)).

CURRENT LANGUAGE: Current law requires the Department to disseminate a Special Bulletin Notification (SBN) to law enforcement in the area of the person’s planned residence, employment and school enrollment. An SBN is mandatory

for all 2-strike and Chapter 980 commitment cases. Current law also requires the Department to provide the make, model and license number of the vehicle(s) the registrant owns or is that is registered to the person to law enforcement, victim, neighborhood watch and general public.

PROPOSED CHANGE and EXPLANATION:

- Need clarifying language regarding “release from confinement” (301.46(2m)(a) and (am)). This language suggests that the department may/shall disseminate a SBN when a person is being released from a jail setting. Current practice/interpretation does not include disseminating Bulletins on persons being released from jail. It is assumed that it was not the legislators’ intent to target this population for mandatory Bulletins. Need to have the language clarified.

→ **Addressed in draft - see comments in #10 of analysis - not sure the change in language meets the intent to eliminate the need to disseminate bulletins for jail release cases.**

- Recommend striking or changing language related to vehicle information and required access to law enforcement, victims, neighborhood watch groups and the general public. At this point in the implementation of the program, this information has not been made available to these entities. Law enforcement has direct access to this information through DOT. The department does not have the capability to accurately collect and/or verify this information in the registry. Without proper verification, it would be quite easy to have a registrant provide false vehicle information, potentially identifying another person’s car. ~~Either this language should be struck from the law - or, explicit language be included that directs the DOT to provide this information to the DOC for the registry.~~

stricken ok ?

→ **Not sure this is addressed in the draft.**

Lastly: The following is a list of proposed changes that were not included in the/original proposal. Many of the changes have come about from either problems experienced with implementation or through a more thorough review of the Federal Laws and Guidelines.

1. Lifetime Registration for “aggravated sexual offenses”

- The Pam Lychner Act, which amended the Jacob Wetterling Act, specifically requires “.. lifetime registration for persons convicted of an aggravated offense”. . . even for the first conviction.” An “aggravated

offense” principally encompasses: “engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence, and engaging in sexual acts involving penetration with victims below the age of 12.” This roughly translates to 1st/2nd Degree sexual assault (adult and child), repeated acts of sexual assault of a child, and possibly others. Will need your assistance in determining how this definition may apply to current state criminal codes. At a minimum, we need to include a section where there is mandatory lifetime registration for certain 1 -strike offenses, like 948.02, 948.025, **940,225(1)** and **940.225(2)** - I realize we have a 13 year-old cut off for some convictions, however, the intent is clear and the Federal guidelines/law only set the baseline. Application for this determination should be retroactive to the original effective date of the registry (93’).

2. Venue for certifying materials for non-compliance

- In very few cases will the county of residence be known for persons who are non-compliant with the registry. Exceptions would be in cases where the person required to register has a known residence but refuses to adhere to the registration requirements under 301.45. Most prosecutions for failure to comply with the registry under **301.45(6)** are situations where the address or residence of the person required to register is unknown. The county where the conviction was obtained subjecting the person to the requirements of s. 301.45 is a known jurisdiction and can be proven with a copy of the judgment of conviction.

Possible language change: **971.19(9)** Be changed to read:

In an action under s. 301.45(6) the defendant may be tried in the defendant’s county of residence at the time that the complaint is filed. If the defendant does not have a county of residence in this state or the defendant’s county of residence is unknown at the time that the complaint is filed, the defendant may be tried in the county in which the conviction requiring registration under s. 301.45 was obtained.

- Also related to venue, as presented somewhere in the analysis of the draft, cases where the offender is not an “original” Wisconsin registrant (sans interstate compact cases) and we have determined they are not in compliance with the registry, the “venue” of responsibility is with the original or last state of registration (this addresses those cases who are off supervision, required to register in another state, and then either live, work or attend school in this state). Similar issue with cases convicted in another non-Wisconsin jurisdiction military, tribal or federal court.

What about ch. 938 venue?

✓ 3. **Special Bulletin Notifications and Release from prison for conviction from a military, tribal or federal court.**

Not sure if the current draft addresses this issue. The Department is currently held accountable for ensuring that a SBN is disseminated to law enforcement for cases being released from our custody (sans, hopefully, county jail). We have no information linkage nor control over when a two strike case is being released from a federal prison. Would recommend language that makes it clear that an SBN is not required with these cases.

OK or ?
's

✓ 4. **Strike mandatory registration requirements for "need of protective services".**

Current law requires the Department to register children who are found in need of protective services for one of the underlying criminal codes. These are county supervision cases through the County Human Services. Apart from this provision being unenforceable, and primarily resulting in registering the parent or guardian (youngest to date is 10 years old), I do not believe it was the intent of the legislature to label a 10 year old child as a sex offender. I would ask for a change here where it is not mandatory nor presumptive to impose registration, but to allow discretion to the court to require registration, if it deems it is in the best interest of public protection. Application of this should go back to the effective date of Act 440 - allowing all these cases to be taken off the registry, and not put back on unless the court provides and order to do so.

new ch.
93B Law

Does that
need to
take kids
off

5. **Proving "intent" for non-compliance**

Current language under 301.45(6) indicates "whoever intentionally fails to comply..." provides a significant burden on the state to prove that the person is in non-compliance with the registry. Through discussion with several DAs and ADAs, and a review of the Federal guidelines/law, apparently "knowingly fails to comply..." is a more reasonable burden to prove. If this is the case, would like to have this language changed (I have sent you a summary of court case history on this subject for your reference).

Additionally, under 301.45(3)(3m) & (4), where the registrant is required to read and sign a form, and then in sub (4) we are attempting to say that not receiving notice is not a defense. Well, in practice is has been a significant defense -to the point where several DAs refused to process the certification materials **unless** there is written verification that the person was informed of his/her requirements to

Does
this
matter? ?

register. This basically covers all the "historical" or retroactive cases where the person was **not** required to register with the DOJ with the old law, but are now required to register with the DOC in the new law. Plus, there are a significant number of DOJ cases where there is no formal documentation of notice to the registrant. When after having tracked a person down who meets this criteria, if they refuse to sign the form, we have no documentation indicating they have been fully notified (become our word against theirs').

"reasonable effort"

Need to add/edit language in this section that can either emphasize or beef-up the concept of "not receiving notice is not a defense for liability" and/or soften the "shall read and sign" language to address persons who refuse to sign or acknowledge that they know or have been informed of their requirements to register. Basically, as it stands now, all a person has to do is not put anything in writing to us or not sign anything and they will never be held accountable because we cannot even get a warrant issued for arrest - let alone convicted for non-compliance.

6. Compliance with verification process

Current law only requires annual or every 90 registration. As required under federal guidelines, and our state administrative rules, we have implemented a residence verification process to ensure the reported address is the address where the registrant resides. We have now had several cases where the registrant has claimed that they are only required to respond to the SORP annually or every 90 days (dependant upon the case). Even though they are technically required to notify the SORP and update their registration information whenever there is a change - the up shot is that if they do not notify us, we do not know if they have provided a valid address unless/until we are able to verify this through means such as sending a verification letter to the reported address, If they claim they are not required to respond to the SORP, but on an annual basis, we will have them compliant in the system for 364 days - during which time they could have moved multiple times. This is particularly problematic for cases off field supervision. I have attached a file in the e-mail text that describes the current automated address verification process.

Need to have language included in the draft that requires all registrants to respond to the departments communications, letters, etc..., that are intended to verify information contained in the registry. Or something to this effect. Our legal counsel has indicated that the administrative rule provides sufficient authority for cases within our custody, but does not provide us the necessary authority for cases off supervision.

7. Authority to Inspect Department of Revenue records

When the Department of justice ran the registry they had explicit authority to have access to DOR records as an investigative resource to track non-compliant cases and verify reported address information. The Attorney General has specific authority by statutes to have access to this information (sec. 71.78 and 301.03, Stats.).

Need change related to the above stats. references to include the DOC , related to SORP, to have access to these records.

8. Authority to obtain photos collected by the Department of Transportation

- Federal regulations require the registry to obtain photographs on all registrants. Although the actual application of this requirement is not completely understood - it is clear tat the intent is to have a photograph on file for all registrants. One method to obtain these photographs would be to have access through the Department of Transportation, Division of Motor Vehicles. I believe there was a law passed in 1998 that allowed DOJ access to this information (ss. 343.237). Request, if possible, for the DOC SORP to have access to this information for all persons required to register.

9. Certification of Juvenile Registrants'

Refer to point #3 in the following section

10. Registration Specialists with Limited Law Enforcement Authority

- This issue was presented in the original proposal. Your draft notes indicate that you were not confident that we could have this authority, but further research was indicated. As a reference to you, I received this as a possible resource/reference.

ON THE SECTION ABOUT EXPANDING AUTHORITY FOR DOC TO MANAGE REGISTRANTS OFF SUPERVISION..... I still think a change must be made to 165.83(1)(b) & 175.46(a)(f) to include the Specialists as "Law Enforcement"

There is a provision, as in the authority for DOJ Special Agents (DCI), and District Attorney's Investigators, to have limited law enforcement authority -pertaining to crimes they are specifically charged to enforce. I think the same thing needs to be done for the Specialists (and I would assume the Specialist's supervisor) for the follo wing reasons:

1. Allows us to view documents under chapter 19, 48, 948, 938 and others as most of these statutes of confidentiality give exceptions to "law enforcement:".
2. Makes the exchange of information between Law Enforcement Agencies and DOC a lot smoother. There is tons of case law pertaining to information obtained/exchanged between law enforcement agencies as to probable cause, believability, etc.
3. Juvenilesexchange/obtaining information and no juvenile can be "certified" or prosecuted in this state without a referral to the county juvenile intake office which can only be done by a 'Law Enforcement " agency.

Just auth.
to delegate police
power to SRS