

CRBII

Tracking of sex offenders pushed

ASSOCIATED PRESS

Attorney General Janet Reno yesterday pressured states to require child molesters and other sex offenders to notify police of their whereabouts for at least 10 years after leaving prison.

Under a provision of the crime law enacted last year, Miss Reno proposed minimum standards for state notification laws. The crime act says states failing to enact notification laws that meet the standards within three years could lose up to 10 percent of their Byrne anti-crime grants.

The Byrne grants, distributed to states by formula, total \$450 million this fiscal year. For small states, the 10 percent cut would be about \$200,000; in largest states, the penalty could reach \$2 million.

"This law is about peace of mind," Bonnie Campbell, director of the Justice Department's violence against women office, said at a news conference. "Parents, children and women everywhere need to know that local police are notified when child molesters and sex offenders are released from prison."

Ms. Campbell acknowledged that 40 states have some kind of notification law for sex offenders, but she said they vary widely, often require offenders to register their location only once and often fail to provide notification to other states when offenders move.

State or federal judges have struck down all or part of these laws as unconstitutional in at least seven states — Alaska, Arizona, California, Illinois, New Jersey, Louisiana and New Hampshire — according to the American Civil Liberties Union.

Ms. Campbell said some courts held community notification a violation of due process of law.

"We say community notification is not a punishment at all," Ms. Campbell said. "We think it's regulatory and justified by the fact that sex offenders are much more likely to reoffend than other violent offenders."

She cited a 1998 California Department of Justice study of 1,362 sex offenders that found they were five times more likely than other violent criminals to commit a sex offense after their release from prison. A Washington state study of 1,373 adult male sex offenders this year found that 12 percent had been rearrested for sex offenses an average of 4.6 years after release from prison.

Miss Reno's standards allow each state to decide whether to require just registration with police or add notification of selected groups, such as schools, child care providers and victims.

Child Pornography Prison Terms Altered

Associated Press

The Senate unanimously approved legislation Thursday night that increases prison terms for child pornography and child prostitution, and the use of computers to transmit such pornographic material.

The House passed a similar measure by a 417 to 0 vote earlier this week. Differences between the two versions will have to be resolved when Congress returns from its spring break next month before the bill can be sent to President Clinton.

The legislation would direct the U.S. Sentencing Commission to change its sentencing guidelines for sex crimes involving minors. The measure also specifically increases penalties if computers are used to transmit pornographic pictures or to advertise pornographic material involving minors.



U.S. Department of Justice

Office of Policy Development

Deputy Assistant Attorney General

Washington, D.C. 20530

August 15, 1994

MEMORANDUM

TO: Bruce Reed

FROM: Grace Mastalli

SUBJECT: Rep. Susan Molinari's Two Big Crime Bill Concerns

I. Registration Systems for Sexually Violent Predators

Title VIII of the Senate passed crime bill included two state registration systems one for convicted child molesters (the "Jacob Wetterling" provision) and another for sexually violent predators (a new proposal supported by Dole and Molinari, among others).

The Administration in its views letter supported enactment of the "Jacob Wetterling" provision (Title XIII of the House Bill and Title VIII.C of the Senate Bill) but recommended deletion of provisions designating registration information as "private data" -- House Bill § 1301(b)(5) and Senate Bill § 822(e) -- since this might interfere with state discretion to use the data for other legitimate purposes, such as notifying school authorities or victims of earlier offenses that a child molester has moved nearby.

Subtitle F of Title VIII of the Senate Bill contained the second registration system (the Dole/Molinari proposal), for "sexually violent predators." The Administration also formally supported this with modifications, stating in the views letter sent to conferees:

We favor in concept encouraging the establishment of registration systems for violent sex offenders who prey on adult victims. However, more definite criteria are

desirable concerning the class of covered offenders and the duration of registration requirements, and it would make sense to combine this proposal with the Jacob Wetterling proposal for child molester registration. We would be glad to assist the Committee on questions of formulation if it includes some version of this proposal in the final Bill.

During the course of the conference the Administration's technical drafting assistance was accepted with regard to melding the sexually violent predators system into the Jacob Wetterling system and significantly expanding the provision's scope of coverage to a larger class of offenders. However, notwithstanding a House motion to instruct, the conferees also inserted a privacy protection provision that some believe may effectively prohibit notification to the community of the release of such an offender and limits the registration data's use to "law enforcement purposes".

However, it should be noted that Chairman Biden and National Center for Missing and Exploited Children among others believe the privacy of data and law enforcement purposes language is flexible enough not to restrict community notification provisions of existing state laws on sex offender registration. (At present some states consider sex offender information to be private while others have expanded use of the information. For example, both Washington and Oregon have systems that permit information to be shared with victims and the community in order to protect the public safety. Other states with unrestricted release policies now may have to institute privacy protections, such as requiring requests have a legitimate law enforcement purpose.

II. The Prior Crimes Evidence Rule for Sexual Assault and Child Molestation Cases

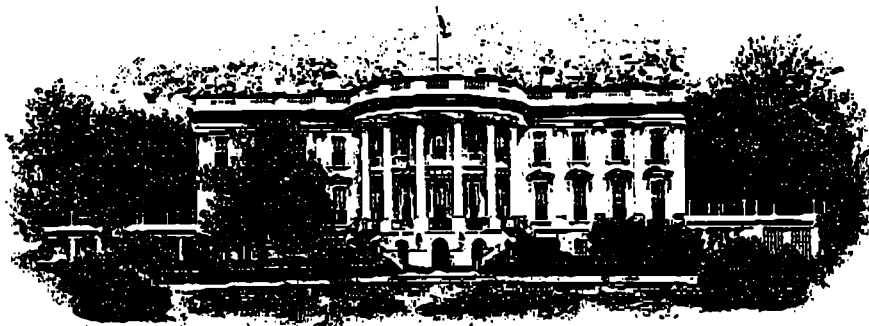
Section 831 of the Senate passed crime bill proposed general rules of admissibility in sexual assault and child molestation cases for evidence that the defendant has committed similar crimes on other occasions. The Senate adopted this Republican sponsored provision as a floor amendment by a vote of 75 to 19.

While the Department of Justice supports this highly controversial provision, the Administration's formal views letter to the conference committee was silent on the subject in deference to Senator Biden's extremely strong objections to the provision.

It was not included in the Democratic conference "mark" and when offered as an amendment by Senator Hatch was defeated with a party-line vote of the Senate conferees. (House Democratic members of the Judiciary Committee have been split on the issue, largely along gender lines. Women's and civil rights groups are

similarly split.)

Supporters such as Rep. Molinari believe that existing evidence rules are inadequate to reliably provide juries with the basis for an informed assessment of the charges against accused child molesters and rapists. Opponents believe the rule change is unfair to defendants and/or that amendment of the Rules of Evidence, should be adopted through the judicial rulemaking process or not at all. However, the Advisory Committee on Evidence and the Advisory Committee on Criminal Rules have considered the proposal in the past few years, and have declined to propose any change. Hence, it is clear that the judiciary is unlikely to act and the only remaining option is reform by legislation.



FAX COVER SHEET

Date: 2/9/95

Number of Pages (w/cover) _____

To: Jose Cerda

From: Rahm Emanuel

FAX Number: 6-7028

Comments: _____

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ATTORNEY GENERAL'S STATEMENT ON "MEGAN'S LAW"

February 9, 1995

I want to advise you that the Justice Department intends to back the State of New Jersey in defending its "Megan's Law" against constitutional challenge. As you know, "Megan's Law" requires that convicted child molesters and violent sex offenders register with law enforcement agencies in the communities where they intend to reside after release from prison and provides for community notification of their presence. Congress enacted the Jacob Wetterling Act last year as part of the 1994 Crime Law to encourage states to enact registration and community notification requirements with respect to convicted ex-offenders. The President and I strongly supported this provision. The federal government has a major interest in seeing to it that the constitutionality of such efforts is sustained in the courts. The public deserves to be protected against the significant risks that convicted child molesters and violent sex offenders pose. For example, child molesters have a recidivism rate as high as 40-75%, according to some studies. We want to make sure that states have the legal flexibility to enact statutes that they believe will provide, as New Jersey has done in passing "Megan's Law," effective protection for their citizenry.

QUESTIONS AND ANSWERS RE: DIAZ V. WHITMAN
THE MEGAN'S LAW CASE

Q: Is the Department of Justice currently a party in Diaz?

A: No. The Department will participate as amicus curiae in support of the State of New Jersey in defending Megan's Law against constitutional challenge.

Q: Why has the Department of Justice decided to become involved?

A: Statistics on the recidivism rate of convicted child molesters and violent sex offenders make clear the national interest in having community notification laws to protect our communities. For example, convicted child molesters have a recidivism rate as high as 40-75% according to some studies. We want to make sure that states have the legal flexibility they need to enact statutes that they believe will provide, as New Jersey has done in passing Megan's Law, effective protection for their citizenry.

Q: Do community notification provisions mean that after an offender has been convicted and served his sentence that the punishment continues?

A: The purpose of community notification provisions is to ensure public safety. This purpose is evident in the Congressional debate on the Jacob Wetterling provisions. Moreover, most state courts reviewing challenges to their own community notification provisions have also concluded that the provisions are meant to protect their state's citizenry.

Q: In which New Jersey federal proceedings will the Department become involved?

A: We are currently reviewing that question and how we might best protect the federal interest. We have the option of filing an amicus brief in the district court with the parties' cross-summary judgment motions or in the Third Circuit in support of the state's appeal of the preliminary injunction granted by the district court. It is also possible to wait to file an amicus brief in the Third Circuit on appeal from the district court's final judgment.

Q: What is the Jacob Wetterling Act?

A: The Act encourages states to adopt registration and community notification programs for convicted sexual offenders and child molesters released from prison.

Q: Have there been any challenges to the Jacob Wetterling Act, the provision in the 1994 Crime Law encouraging states to adopt registration and community notification provisions like "Megan's Law?"

A: No, not that I am aware.

Q: How would a finding by the New Jersey District Court or by the Third Circuit that "Megan's Law" is unconstitutional affect the implementation of the Jacob Wetterling Act?

A: The Diaz case does not directly threaten or address the constitutionality of the Jacob Wetterling Act. The case involves only a challenge to New Jersey's Megan's Law.

Still, the New Jersey federal court would be the first federal court to address the constitutional challenges to a community notification provision such as "Megan's Law." While a federal court ruling in New Jersey would not be binding in other jurisdictions, court rulings that a community notification provision like "Megan's Law" present an ex post facto problem would pose a serious threat to the present effectiveness of community notification provisions. Only those child molesters or sex offenders who committed their crimes after the provisions were enacted would be subject to community notification.

The federal government has a major interest in seeing to it that the constitutionality of community notification laws is sustained in the courts. The public deserves to be protected against the significant risks that convicted child molesters and violent sex offenders pose.

Q: Are there challenges to community notification provisions in other states?

A: Yes, but mostly in state court. (NOTE: The only other case in federal court is also in New Jersey and a challenge to Megan's Law.) The state cases raise the same constitutional challenges as Diaz. The Department is currently investigating how many of these suits exist, where, and their nature.

Q: Will the Department become involved in all of these cases?
Will the Department become involved in other challenges to Megan's Law?

A: The Department is committed to implementing the Jacob Wetterling Act and protecting the national interest in helping communities prevent sex crimes, through such processes as registration and notification. Where it is necessary for the Department to become involved to protect our federal interest, we will do so. We are currently working with United States Attorneys to identify the existing cases and to coordinate our efforts in response.

Q: Does this suit mean that there will be a need to amend the Jacob Wetterling Act?

A: Absolutely not. The Diaz case does not directly threaten or address the constitutionality of the Jacob Wetterling Act. The case involves only a challenge to New Jersey's Megan's Law. The Jacob Wetterling Act as drafted, particularly the community notification provision, has the strong support of President Clinton and the Congress and we are committed to its implementation.

Q: Does Diaz implicate sex offender registration provisions?

A: No. Because sex offender registration provisions involve the dissemination of information to law enforcement only, courts have considered the provisions regulatory measures clearly related to public safety and well within constitutional bounds.

Q: Is Jacob Wetterling an unfunded mandate?

A: No. The Act does not create a federal requirement on the states. Rather, it encourages states through the carrot of federal funding to adopt registration and community notification programs for convicted sex offenders upon their release from prison.

Date: 02/09/95 Time: 11:30

Justice Department to Support Sex Offender Reporting Law

WASHINGTON (AP) The Justice Department will go to court to help defend a New Jersey law that allows police to notify a community where a convicted sex offender plans to reside, Attorney General Janet Reno said today.

``Convicted child molesters have a recidivism rate as high as 40 to 75 percent, according to some studies,'' Reno told her weekly news conference. ``The public deserves a fair chance to be on guard.''

The federal crime law enacted last year ``encourages all the states to adopt the community notification procedures for violent sexual predators,'' Reno noted. As a result, ``the federal government has a major interest in seeing to it that the constitutionality of such efforts is sustained in the courts.''

``Second, we feel strongly that the states must have the flexibility to enact laws that they believe will provide immediate and necessary protection, as New Jersey has done in this case,'' she said.

The New Jersey statute is known as ``Megan's Law'' after Megan Kanka, a 7-year-old Hamilton Township, N.J., girl who was sexually assaulted and slain last year.

Several convicted offenders are challenging the rules, which took effect Jan. 1, in federal and state courts. They claim the law violates constitutional guarantees of privacy and due process and adds an unconstitutional additional punishment to their sentence.

One challenge was brought by Carlos Diaz, 46. On Jan. 3, Diaz won a preliminary injunction from U.S. District Judge John W. Bissell, who said notification in the county where Diaz intended to reside could cause ``irreparable harm'' to Diaz's ``quality of life.''

New Jersey is appealing that order, which covered only Diaz.

Reno said the federal government would file a friend-of-the-court brief backing New Jersey's law but has yet to decide in which case or court the filing would come. Justice spokesman Carl Stern said federal officials were awaiting word from New Jersey on its plans for defending the law so the federal intervention could coordinate with that.

The law prompted some concerns after police said a Warren County man was beaten when his assailants mistook him for a released sex offender.

Asked whether such laws encourage vigilante action, Reno said the law must strike a balance.

``Any time people take the law into their own hands, government has got to respond,'' She said. ``That's part of the balance. The public has a right to know to properly protect itself, and the government has a responsibility to prevent unlawful actions against people who have not otherwise done anything since their imprisonment to endanger anyone.''

Stern said the decision to back the New Jersey law was a consensus view by top department officials based on a long discussion of what previous Supreme Court rulings had indicated was constitutional and what was not in such legislation.

Rep. Dick Zimmer, R-N.J., who wrote the department last month seeking federal help defending the law, said the Justice Department stance will aid the law's chances of surviving challenges by offenders.

``President Clinton called me last summer to say he strongly supported Megan's Law as a parent,'' Zimmer said.

Date: 05/02/95 Time: 21:46

Supreme Court Battle Set As Past Sex Offenders Shy From Registration

(Trenton, New Jersey) -- A New Jersey law that requires sex offenders to register with police after their release faces a challenge today.

The state supreme court will hear arguments on whether the so-called Megan's law is constitutional.

One state judge has ruled that the law is constitutional, saying it doesn't constitute additional punishment for convicted sex offenders.

But a federal judge says notification is unconstitutional in cases where the crime occurred before the law took effect.

The state will get backing from federal officials as it tries today to get notification provisions reinstated.

Megan's law was named for seven-year-old Megan Kanka -- who was slain, allegedly by a convicted sex offender who had kept his criminal past a secret from his neighbors.

(SOUND: 4:32 aed)

APNP-05-02-95 2146EDT

Date: 05/25/95 Time: 13:14

Reno Sets Up Task Force to Coordinate Missing-Children Agencies

WASHINGTON (AP) A federal task force will coordinate government services to find missing children, giving new hope to parents like Janice McKinney, whose daughter disappeared a decade ago.

"Every year my hope dwindles, then something happens like this to give me hope again," McKinney said Thursday after the task force was announced. "They say it gets easier. But it doesn't."

Attorney General Janet Reno used the occasion of the 12th annual Missing Children's Day to announce the task force on missing and exploited children. The goal is to combine the forces of several federal agencies, she said, ranging from the Juvenile Justice and Delinquency Prevention office and the Federal Bureau of Investigation to the Customs Service.

"Our goal is to coordinate services ... and find gaps in services," Reno told an audience of parents.

About 440,000 children are reported missing each year, including those taken by strangers and family members often as part of a custody battle according to Justice Department figures.

The federal government has a 24-hour hotline attached to the National Center for Missing and Exploited Children. Last year's omnibus crime bill created a task force to provide federal agents in difficult cases.

"Until we have done everything in our power to help young people lead happy, productive lives, we cannot say that our country is prepared for the great challenges that lie ahead," President Clinton said in a statement marking the special day to focus on missing children.

Private groups have led the way in searching for missing children. For the past 10 years, Advo Inc., has mailed flyers to homes with pictures of missing children, resulting in the return of one in seven of those featured.

McKinney's daughter, Cherrie Ann Mahan, in 1985 became the first child whose picture was mailed to millions of households. The 8-year-old was abducted on her way home from school in Cabot, Pa. Her picture was featured a second time in April 1990, using age-progression computer technology. And a new enhanced photo will go out soon, showing her at age 18.

Among the family tragedies are some happy endings.

Stephanie Maxwell of Rochester, N.Y., brought her 5-year-old son, Jethro Van't Hul, to the commemoration. The child's father took him to his native Holland last year and refused to return. Maxwell worked with U.S. and Dutch authorities to get Jethro back within four months.

"I had a backup plan," Maxwell said. "If this didn't work I was going to go over there, take him to a park near his grandparents home and run. Thank God the system worked."

APNP-05-25-95 1316EDT

THE WHITE HOUSE

WASHINGTON

November 10, 1993

The Honorable Janet Reno
Attorney General
Washington, D.C. 20530

Dear Madam Attorney General:

A dispute recently has arisen over the scope of the current federal child pornography law. This dispute impelled the Senate to adopt a "sense of the Senate" resolution expressing its view that the law reaches broadly. I fully agree with the Senate about what the proper scope of the child pornography law should be.

I find all forms of child pornography offensive and harmful, as I know you do, and I want the federal government to lead aggressively in the attack against the scourge of child pornography. It represents an unacceptable exploitation of children and contributes to the degradation of our national life and to a societal climate that appears to condone child abuse.

This Administration supports the broadest possible protections against child pornography and exploitation. I understand that the Justice Department recently filed a brief in which the Department concluded that the current child pornography law is not as broad as it could be. Accordingly, the Justice Department should promptly prepare and submit any necessary legislation to ensure that federal law reaches all forms of child pornography, including the kinds of child pornography at issue in the Senate resolution.

Sincerely,

Bill Clinton

Date: 03/02/95 Time: 12:58

Reno: Justice Department Will Maintain Fight for Sex Offender Law

WASHINGTON (AP) A partial court setback for a New Jersey law allowing community notification of sex offenders will not deter federal officials from working toward the same goal, Attorney General Janet Reno said Thursday.

"We continue to believe that the statute is constitutional in its entirety, as we argued in our pleadings," Reno said at her weekly news conference.

Referring to the federal anti-crime law enacted last year, Reno said, "We're committed to moving forward with that portion of the 1994 act that provides for community notification regarding child sexual predators." The Justice Department will soon issue regulations regarding its implementation, she said.

U.S. District Judge Nicholas Politan, ruling Tuesday in Newark, N.J., on the New Jersey statute known as "Megan's Law," decided that sex offenders can be compelled to register with police, but authorities cannot notify a community if the crimes were committed before the law's Oct. 31, 1994 enactment.

In state court last week, Superior Court Judge Harold B. Wells in Burlington County upheld community notification, but said judges, not prosecutors, should decide the risk level of released offenders after a court hearing.

Reno said the Justice Department wants to support state efforts such as New Jersey's because court rulings in those cases could affect the federal law.

"What we are interested in doing and why it is so important is we want to have the ability to enforce the law as vigorously as possible at the federal level," Reno said. "In situations where there may be crossing of state lines, information shared from one jurisdiction to another, we want to make sure that we can do that."

Forty states require sex offenders to register with authorities, and 13 of them provide some form of community notification. Notification rules similar to New Jersey's have been thrown out by state judges in Alaska, Arizona, California, Illinois, Louisiana and New Hampshire, according to the American Civil Liberties Union.

"Megan's Law" was named for 7-year-old Megan Kanka, who was raped and killed last summer, allegedly by a sex offender who lived across the street.

APNP-03-02-95 1301EST

Date: 04/07/95 Time: 14:49

States Pressed to Require Sex Offenders and Child Molesters to

WASHINGTON (AP) Amid a wave of legal challenges to such laws, Attorney General Janet Reno pressured states Friday to require sex offenders and child molesters to notify police of their whereabouts for at least 10 years after their release from prison.

Under a provision of the crime law enacted last year, Reno proposed minimum standards for state notification laws. The crime act provides that states failing to enact notification laws that meet the standards within three years could lose up to 10 percent of their Byrne anti-crime grants.

The Byrne grants, distributed to states by formula, total \$450 million this fiscal year. For small states, the 10 percent cut could cost them about \$200,000; in largest states, the penalty could reach \$2 million.

"This law is about peace of mind," Bonnie Campbell, director of the Justice Department's Violence Against Women Office, told a news conference. "Parents, children and women everywhere need to know that local police are notified when child molesters and sex offenders are released from prison."

Campbell acknowledged that 40 states have some kind of notification law for sex offenders, but she said they vary widely, often require offenders to register their location only once and often fail to provide notification to other states when offenders move.

State or federal judges have struck down all or part of these laws as unconstitutional in at least seven states: Alaska, Arizona, California, Illinois, New Jersey, Louisiana and New Hampshire, according to the American Civil Liberties Union.

The Justice Department this week filed a friend-of-the-court brief in the New Jersey Supreme Court defending that state's notification, known as Megan's Law. Enacted Oct. 31, it was named after Megan Kanka, a 7-year-old Hamilton Township, N.J., girl who was raped and killed last summer, allegedly by a sex offender who lived across the street.

Going beyond many state laws, Megan's Law requires not only that offenders register with police but that communities be notified when a sex offender moves into a neighborhood.

A state judge upheld community notification but said judges, not prosecutors, should decide the risk each offender poses and only after a hearing. A federal judge struck down community notification as an unconstitutional additional penalty for any offender convicted before the law was passed.

Campbell said some courts also held community notification an unconstitutional violation of due process of law.

"We say community notification is not a punishment at all," Campbell said. "We think it's regulatory and justified by the fact that sex offenders are much more likely to reoffend than other violent offenders."

She cited a 1998 California Department of Justice study of 1,362 sex offenders that found they were five times more likely than other violent criminals to commit a sex offense after their release from prison. A 1995 Washington state study of 1,373 adult male sex offenders found that 12 percent had been rearrested for sex offenses an average of 4.6 years after release from prison.

Reno's standards allow each state to decide whether to require merely registration with police or also notification of selected groups such as schools, child-care providers and victims or community-wide notification.

The proposed regulations also require more than 10 years of registration by those designated sexually violent predators. They require that police verify the offender addresses at least annually and every 90 days for violent predators and that they inform states to which offenders move.

Reno also proposed that states establish court proceedings under which an offender could prove he or she was no longer a sexually violent predator.

APNP-04-07-95 1448EDT

Date: 04/07/95 Time: 13:53

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APNP-04-07-95 1352EDT

Date: 02/22/95 Time: 13:47

N.J. Judge Upholds 'Megan's Law' in Case of Offender Released in

MOUNT HOLLY, N.J. (AP) A judge today upheld the ``Megan's Law'' requirements that sex offenders register with police and that communities be notified when dangerous offenders leave prison.

Superior Court Judge Harold B. Wells said notification of where a sex offender lives does not constitute additional punishment. But he said each offender is entitled to a closed hearing before a judge to determine whether he or she is so dangerous that the community should be notified.

He ruled in a case dealing specifically with an offender who was released from prison before Megan's Law took effect.

The law was named for 7-year-old Megan Kanka, who was slain in July, allegedly by a convicted sex offender who lived across the street and kept his criminal past a secret.

The laws to toughen penalties and controls over sex offenders were signed by Gov. Christie Whitman Oct. 31. It required all ex-offenders to register with police but left it up to prosecutors to decide which ex-offenders were such a threat to the community that citizens had to be notified. Wells' ruling would turn that decision over to a judge instead.

The registration rule took effect immediately but it gave offenders previously released from prison 120 days, or until the end of February, to comply.

``No one could say Megan's Law does not impose a burden,'' Wells said, but that must be balanced against public safety concerns.

``The primary goal of this system is to prevent sex offenses,'' Wells said. ``The intent was to protect the public from otherwise unidentifiable dangers.''

The case was brought by a sex offender known only as John Doe, who was convicted of molesting two teen-age boys in 1985. He was sent to a state treatment center for sex offenders at Avenel and released on parole in 1992.

Megan's Law requires Doe to register with local police by next week, but his attorney, John Furlong, said Doe has not done so out of fear he would lose his job and that his family might be harassed.

Furlong said he would appeal Wells' ruling on the constitutionality of registration and notification, but that Doe would comply and register. The lawyer said he was pleased that Doe will be afforded a hearing on notification.

In another challenge to Megan's Law, U.S. District Judge John Bissell in Newark issued an order Jan. 3 blocking the Passaic County prosecutor from notifying a neighborhood in Passaic where a recently released rapist, Carlos Diaz, planned to live.

A hearing on the Diaz case is scheduled before Bissell on Monday.

The Diaz and Doe cases both raised the legal issue of whether Megan's Law can apply to offenders who were convicted before the law took effect.

But the Doe case went further because it involved an offender who completed his sentence at the treatment center, finished parole, ended all forms of state supervision and now is being asked years later to register with authorities.

APNP-02-22-95 1350EST

Date: 01/03/95 Time: 13:48

Federal Judge Blocks Use of NJ's 'Megan's Law' in Case of Released

NEWARK, N.J. (AP) A recently release rapist won a reprieve today from a new law that requires authorities to inform his new neighbors of his whereabouts.

U.S. District Judge John W. Bissell issued a preliminary injunction blocking ``Megan's Law'' from being applied in the case of Carlos Diaz, saying it could cause irreparable harm to the recently released convict.

``The harm that would be visited upon Mr. Diaz is greater ... than the immediate harm to the community,'' Bissell said.

Gov. Christie Whitman said she was not surprised by the order, and believes the law that is named for a slain 7-year-old girl will survive court scrutiny.

``We anticipated as many of those challenges as we possibly could,'' she said. ``We believe we came up with a good law that will stand the test.''

The law was passed last year in the wake of the slaying of Megan Kanka, allegedly by a convicted sex offender living across the street from her in Hamilton Township.

Diaz, 46, was released from East Jersey State Prison in Woodbridge on Sunday morning, after serving 12 years of a 20-year sentence for the kidnap and rape of a 20-year-old woman.

In a federal lawsuit filed from his jail cell last month, Diaz asked that the state be prevented from notifying the public about the release of sex offenders.

Diaz's court-appointed attorney, Ronald K. Chen, said that the law should not apply to sex offenders who were convicted before it went into effect, and that it violates privacy and due process rights.

The law provides for notification of school officials and adult leaders of community organizations, such as churches and day care centers, when a released sex convict considered a ``moderate risk'' of further offenses moves into their area. In the case of a ``high risk'' offender, the law calls for police to go door-to-door and notify neighbors as was done Friday in another case, at a trailer park in Wrightstown.

Diaz reportedly told authorities he planned to move to Passaic. Passaic County Prosecutor Ronald Fava said Monday that Diaz had been classified a ``moderate risk.'' Fava said he was not a ``habitual and compulsive offender'' but does pose some risk to women.

Jesse Timmendequas, the man charged with murdering Megan, is a convicted sex offender and former inmate at the Adult Diagnostic and Treatment Center at Avenel. He lived across the street from Megan.

Richard Kanka, Megan's father, said he hopes the judge will not invalidate the law. ``If he rules the law unconstitutional and this person repeats as an offender, we hope that they can live with that,'' he said.

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Administration to take a stand for 'Megan's law'

By Tony Mauro
and Sam Vincent Meddis
USA TODAY

The Clinton administration is planning court action in New Jersey to defend "Megan's law," the controversial statute that allows the government to warn neighborhoods when convicted sex offenders move in.

The Justice Department is taking the unusual step of intervening at the state court level in a hearing set for next month at the New Jersey Supreme Court.

The brief is expected to be filed today.

In the case before the court, a Burlington County man, identified only as "John Doe," filed suit because he does not want his name released by local police. A lower court judge ruled that Doe has the right to challenge his classification before neighbors are notified.

The Clinton administration will argue that Doe has no legal right to prevent the publication of accurate information about his record — information that is already part of the public record. It also defends the law as a valid law enforcement tool aimed at protecting the public from sex offenders.

Justice Department officials say

their action should be read as a strong signal that the department will fight aggressively for community notification.

They want to avoid any possible legal barrier to a provision in last year's federal crime bill encouraging states to set up registries of people with records of crimes against children. The department is expect-

ed to publish details soon on how it will administer the measure.

The state law was enacted in memory of Megan Kanka, a 7-year-old girl who was raped and killed last summer. A twice-convicted sex offender who, unknown to the community, lived across the street, is charged.

Most states have laws requiring sex offenders to register with police,

but few go as far as New Jersey in requiring public notice. Court rulings have been mixed.

In a separate federal case, the New Jersey law was declared unconstitutional last month because it has the effect of increasing punishments for people convicted before the law took effect last October. The judge in that case upheld a provision that sex offenders register with local police.

In light of the state and federal rulings, New Jersey Attorney General

Deborah Poritz has temporarily halted enforcement of the law.

Megan's law has been controversial. Earlier this year, Guardian Angels swarmed into a Passaic, N.J., neighborhood passing out fliers to warn residents that a newly released rapist might move in after a federal judge barred police from notifying the community.

Notification laws have drawn fire from civil liberties advocates, who say they stigmatize individuals who have paid their debt to society.

"These laws brand people with a modern day scarlet letter," says Georgetown law professor David Cole.

"It's one thing to let police know that a convicted sex offender is in the area, but to disseminate it to the general public is an invitation to vigilantism."



MEGAN: Slain New Jersey girl

AP

The Washington Times

House bill would stiffen penalties for child pornography

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By Laurie Kelman
THE WASHINGTON TIMES

The House today takes up a bill to stiffen penalties against pornographers who use children.

The largely uncontroversial measure, reported from the Judiciary Committee March 22 on a voice vote, comes to the floor three days before the GOP's "Contract With America" ends.

The bill puts obscenity crimes under federal racketeering laws, which would allow prosecutors to go after people running child-pornography rings.

It also accelerates efforts to crack down on abuses of on-line computer services by increasing the penalties imposed for trafficking in child pornography when a computer is used to transmit the material.

And it directs a federal sentencing panel to analyze punishments that judges impose on those convicted of sexual offenses involving children.

Since there was little debate in committee, no amendments will be permitted, aides said.

Though politically popular in most corners, the Sexual Crimes Against Children Prevention Act of 1995 is unlikely to affect many cases, since it only applies to federal cases while such actions are usually handled in state courts, committee staffers said.

For example, had the provision on penalties for creating child pornography been in effect last year, it would have affected three cases nationwide, according to Win Swenson, deputy general counsel of the United States Sentencing Commission.

And the provision to increase penalties for interstate transportation of a minor for prostitution or a criminal sexual act would have affected four cases last year, Mr. Swenson said.

But the federal government has a responsibility to punish severely people who are convicted of such crimes, according to the sponsor, Rep. Bill McCollum, Florida Republican.

SEX-CRIME PREVENTION

The Sexual Crimes Against Children Prevention Act of 1995 in the "Contract With America" would:

Increase penalties for sex crimes involving children.

- Increases, by a minimum of 17 months' incarceration, the range of penalties that may be imposed for creating child pornography.
- Increases, by a minimum of six months' incarceration, the penalties that may be imposed for trafficking in child pornography.
- Increases, by a minimum of one year's incarceration, the penalties that may be imposed for trafficking in child pornography if a computer was used in the transmission of the material or the transmission of an advertisement for the material.
- Increases, by a minimum of one year's incarceration, the penalties that may be imposed for interstate transportation of a minor for the purposes of causing the minor to engage in prostitution or a criminal sexual act.

Amend the Racketeer Influenced and Corrupt Organizations Act.

- Amends the RICO list of "predicate acts" to include obscenity crimes enacted after this section of RICO was drafted.

Correct the U.S. Code.

- Corrects an erroneous cross-reference in federal statutes enacted as part of the 1994 crime bill.

Require a report from the United States Sentencing Commission.

- Requires the commission to submit a report to Congress within 180 days analyzing the punishments that judges have imposed for sexual crimes against children, recommending any modification to the sentencing guidelines for those crimes in light of that analysis and studying the effect of treatment on recidivism for those crimes.

Source: House Judiciary subcommittee on crime

The Washington Times

"The federal government definitely has a reason for being there" in the debate, said Mr. McCollum, chairman of the House subcommittee on crime. "We're not telling the states to do anything; we're just making penalties tougher for federal cases."

The proposal directs the sen-

tencing commission to submit a report within six months of when the act takes effect analyzing the punishments imposed by judges, recommending modifications to the sentencing guidelines, and studying whether treatment affects the number of released prisoners returning to crime.