boundary), the west boundary, and a portion of the subdivisional lines, and the subdivision of sections 6, 7, 18, and 19, T. 32 N., R. 9 W., New Mexico Principal Meridian, Group 1139, Colorado, was accepted February 20, 1997.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivisional lines of sections 1, 12, and 13, T. 32 N., R. 10 W., New Mexico Principal Meridian, Group 1139, Colorado, was accepted February 20, 1997.

These surveys were requested by the Colorado Department of Transportation for administrative purposes.

The plat representing the corrective resurvey of a portion of the subdivision of section 14, Fractional Township 51 N., R. 1 E., New Mexico Principal Meridian, Group 1094, Colorado was accepted March 19, 1997.

The plat (in three sheets) representing the dependent resurvey of portions of the subdivisional lines, the subdivision of sections 22 and 28, a resurvey of a portion of the north right-of-way of U.S. Highway No. 40, a metes-and-bounds survey of Lot 6 in Section 27 and Parcel A in section 28, and an informative traverse of the center line of a dirt road 20 ft. wide for an administrative easement in sections 22 and 27, T. 2 N., R. 77 W., Sixth Principal Meridian, Group 1091, Colorado, was accepted Feburary 20, 1997.

The amended field notes correcting a corner description for cor. No. 2, M.S. No. 13937, Mary McKiniry Lode located in the NW ¼ of sec. 7, T 1 N., R. 72 W., Sixth Principal Meridian, Group 875, Colorado, were accepted February 20, 1997.

The supplemental plat created to facilitate a land transfer in section 1., T. 11 S., R. 98 W., Sixth Principal Meridian, Colorado, was accepted March 19, 1997.

These surveys were requested by BLM for administrative purposes.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 97–8570 Filed 4–3–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF JUSTICE

Civil Rights Division; Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; procedures for the administration of Section 5 of the Voting Rights Act of 1965.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until June 3, 1997.

We request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact David H. Hunter 202–307–2898, Attorney, Voting Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66128, Washington, DC 20035. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, may also be directed to Mr. Hunter.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 CFR Part 51.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: No form; Voting Section, Civil Rights Division.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State or Local Government. Other: None. Jurisdictions specially covered under the Voting Rights Act are required to obtain preclearance from the Attorney General before instituting changes affecting voting. They must convince the Attorney General that voting changes are not racially discriminatory. The Procedures facilitate the provision of information that will enable the Attorney General to make the required determination.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 4,727 responses per year (10,103 respondents making an average of 0.47 responses per year), with the average response requiring 10.02 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: 47,365 burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 1, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–8599 Filed 4–3–97; 8:45 am]

BILLING CODE 4410–13–M

Office of the Attorney General

[A.G. Order No. 2073–97]

RIN 1105–AA50

Proposed Guidelines for Megan's Law and the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act

AGENCY: Department of Justice.

ACTION: Proposed guidelines.

SUMMARY: The United States Department of Justice (DOJ) is publishing Proposed Guidelines to implement Megan's Law and to clarify other issues relating to compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.

DATES: Comments must be received by June 3, 1997.

ADDRESSES: Comments may be mailed to Bonnie J. Campbell, Director, Violence Against Women Office, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, 202–616–8894.

SUPPLEMENTARY INFORMATION: Megan's Law, Pub. L. No. 104–145, 110 Stat. 1345, amended subsection (d) of section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L.

No. 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 (hereafter referred to as the ''Jacob Wetterling Act'' or ''the Act''). The provisions of the Jacob Wetterling Act amended by Megan's Law relate to the release of registration information. The changes in these provisions require conforming changes in the Final Guidelines published by the Department of Justice on April 4, 1996 in the **Federal Register** (61 FR 15110) to implement the Jacob Wetterling Act. In addition, other changes in the Guidelines are necessary to resolve questions that have arisen in the Justice Department's review of state sex offender registration programs and discussion of compliance requirements with the states.

Megan's Law makes two changes in the Jacob Wetterling Act: (1) It eliminates a general requirement that information collected under state registration programs be treated as private data, and (2) it substitutes mandatory language for previously permissive language concerning the release of relevant information that is necessary to protect the public concerning registered offenders.

The time frame for compliance with the Megan's Law amendment to the Jacob Wetterling Act is the general time frame for compliance with the Act specified in section 170101(f) (42 U.S.C. 14071(f))—three years from the Act's original enactment date of September 13, 1994, subject to a possible extension of two years for states which are making good faith efforts to come into compliance with the Act. States that fail to comply with the Megan's Law provisions or other provisions of the Jacob Wetterling Act within the specified time frame will be subject to a mandatory 10% reduction of Byrne Formula Grant funding (under 42 U.S.C. 3756), and any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance.

In addition to changes reflecting the Megan's Law amendment, these proposed guidelines include changes that clarify other provisions of the Jacob Wetterling Act. Since the publication of the original Guidelines for the Act, a large majority of the states have submitted enacted or proposed sex offender registration provisions to the Department of Justice for preliminary review concerning compliance with the Act. This review process has raised a number of questions which indicate that additional guidance would be helpful. This proposed revision of the Guidelines attempts to address these questions. The main changes or additional clarifications concern the following issues:

1. The Jacob Wetterling Act provides that registration information is initially to be taken and submitted by ''the court'' or a ''prison officer.'' 42 U.S.C. 14071(b) (1) & (2). The purpose of this requirement is to ensure that a responsible official will obtain registration information near the time of release and transmit it to the registration agency. Some states assign this responsibility to probation or parole officers, who have functions relating to correctional matters or the execution of sentences, but who might not be regarded as prison officers or courts on a narrow reading of those terms. The revised guidelines make it clear that such assignments of responsibility to such officers are permissible under the Act.

2. The Act provides that, if a person required to register is released, then the responsible officer must obtain the registration information and forward it to the registration agency within three days of receipt. 42 U.S.C. 14071(b)(2). Many states, however, do not wait until the day of release to obtain registration information, but require offenders to provide this information some period of time (e.g. 30 days or 60 days) prior to release. The revised guidelines make it clear that, under the latter type of procedure, it is adequate if the registration information is forwarded no later than three days after release because that equally ensures the submission of registration information within the time frame contemplated by the Act.

3. As noted above, the Act requires that a responsible officer obtain and transmit the initial registration information. Some states provide that the responsible officer is to send the initial registration information concurrently to the state registration agency and to the appropriate local law enforcement agency, as opposed to transmitting the information exclusively to the state registration agency, which would then forward it to the appropriate local law enforcement agency. The revised guidelines make it clear that the concurrent transmission approach is allowed because that approach also results in the availability of the registration information at the state and local levels as contemplated by the Act.

4. The Act requires registrants to report changes of address within 10 days. 42 U.S.C. 14071(b)(1)(A). Most state registration programs do not require registrants to send change of address information directly to the state registration agency but provide that this information is to be submitted to a local law enforcement agency or other intermediary, which is then required to forward it to the state registration agency. The revised guidelines make it clear that providing for the submission of change of address information in this manner (through an intermediary) is allowed under the Act. Likewise, a state could provide for the submission of initial registration information by the responsible prison officer or court through an intermediary. *See* 42 U.S.C. 14071(b)(2).

5. The Act requires that the state registration agency notify local law enforcement agencies concerning the release or subsequent movement of registered offenders to their areas. 42 U.S.C. 14071(b) (2) & (4). The revised guidelines make it clear that states have discretion concerning the form this notice will take. Permissible options include, for example, written notice, electronic transmission of registration information, and provision of on-line access to registration information.

6. The act requires periodic address verification for registered offenders, through the return of nonforwardable address verification forms that are sent to the registered address. 42 U.S.C. 14071(b)(3). Some state registration programs do not have the state registration agency directly send or receive address verification forms but delegate that function to local law enforcement agencies. The revised guidelines clarify that this approach to periodic address verification is permitted under the Act, as long as state procedures ensure that the state registration agency will be promptly made aware if the verification process discloses that the registrant is no longer at the registered address. The revised guidelines also clarify that states, if they wish, may require personal appearance of the registrant at a law enforcement agency to return an address verification form, as opposed to return of the form through the mail.

7. The Act contemplates the creation of a gap-free network of state registration programs, under which offenders who are registered in one state cannot escape registration requirements merely by moving to another state. *See, e.g.,* 42 U.S.C. 14071(b) (4) & (5). The revised guidelines effectuate this legislative objective by more clearly defining the obligation of states to register out-of-state offenders who move into the state.

8. The Act requires that released convicted offenders in the relevant offense categories by subject to registration and periodic address

verification for at least 10 years. 42 U.S.C. 14071(b)(6). This requirement is unqualified, and the revised guidelines make it clear that a state is not in compliance if it allows registration obligations to be waived or terminated before the end of this 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.

9. Where a person required to register is re-incarcerated for another offense or civilly committed, some states toll registration requirements during the subsequent incarceration or commitment. The revised guidelines clarify that this approach is consistent with the Act because tolling the registration period during confinement results in longer aggregate registration while the registrant is released. In addition, it is unnecessary to carry out address registration and verification procedures during confinement and doing so does not further the Act's objective of protecting the public from released offenders.

10. The Act prescribes more stringent registration requirements for a subclass of offenders characterized as ''sexually violent predators.'' *See* 42 U.S.C. 14071(a) (1) & (3) (C)–(E). Some states require that sexually violent predators be civilly committed, as opposed to being subject to more stringent registration requirements. The revised guidelines clarify that this approach may be allowed because it would be superfluous to carry out address registration and verification procedures while such an offender is committed.

11. The Act requires that the determination whether a person is (or is no longer) a ''sexually violent predator'' be made by the sentencing court. 42 U.S.C. § 14071(a)(2). In light of the variation among states in court structure and assignments of judicial responsibility, the revised guidelines clarify that this requirement means only the determination must be made by a court whose decision is legally competent to trigger the more stringent registration requirements prescribed for sexually violent predators by the Act. It does not mean that ''the sentencing court'' for purposes of the sexually violent predator determination must be the same court in which the offender was convicted for an underlying sexually violent offense.

12. The Act requires registration by persons convicted of a ''criminal offense against a victim who is a minor.'' 42 U.S.C. § 14071(a)(1). One of the clauses in the Act's definition of this term covers ''criminal sexual conduct toward a minor.'' § 14071(a)(3)(A)(iii). The revised guidelines state explicitly that this includes incest offenses against minors. The Act's definition of ''criminal offense against a victim who is a minor'' also includes two clauses relating to solicitation offenses: ''solicitation of a minor to engage in sexual conduct,'' and ''solicitation of a minor to practice prostitution.'' §§ 14071(a)(3)(A) (iv) & (vi). The revised guidelines provide greater detail in explaining the solicitation offenses that state registration systems must cover to comply with these provisions.

13. The Act also requires registration by persons convicted of a ''sexually violent offense.'' 42 U.S.C. § 14071(a)(1). It essentially provides that the term ''sexually violent offense'' means aggravated sexual abuse and sexual abuse as described in federal law or the state criminal code. § 14071(a)(3)(B). The revised guidelines clarify that states may comply with this requirement either by covering offenses that meet the federal law definition, or by covering comparable offenses under state law. The availability of the latter option is not limited to states that use the terms ''aggravated sexual abuse'' and ''sexual abuse'' or other specific terminology in referring to sex offenses in their criminal codes.

14. The revised guidelines clarify that the Act's time limits for reporting initial registration information and change of address information refer to the time within which the information must be submitted or sent, as opposed to the time within which it must be received by the state registration agency.

15. The Act requires criminal penalties for persons in the relevant offense categories who knowingly fail to register or keep registration information current. 42 U.S.C. § 14071(c). The revised guidelines clarify that this neither requires states to allow a defense for offenders who were unaware of the legal obligation to register 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 or release and obtaining a signed acknowledgment that this information has been provided.

16. The revised guidelines clarify that the Act does not preclude states from taking measures for the security of registrants who have been relocated and provided new identities under federal or state witness protection programs because the Act does not require that the registration system records include the registrant's original name or the registrant's residence prior to the relocation.

17. The revised guidelines encourage states to require registration for all convicted offenders in the pertinent offense categories, including offenders convicted in federal, military, and Indian tribal courts, as well as offenders convicted in state courts.

18. The revised guidelines encourage states to ensure that their sex offender registration agencies are ''criminal justice agencies'' as defined in 28 C.F.R. 20.3(c), to permit the free exchange of registration information between state registries and the FBI's records systems.

Subsequent to the enactment of Megan's Law, Congress enacted additional legislation relating to sex offender tracking and registration in the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104–236, 110 Stat. 3093 (hereafter referred to as the ''Pam Lychner Act'') The Pam Lychner Act includes, *inter alia,* amendments to the Jacob Wetterling Act affecting the duration of registration requirements, sexually violent predator certification, fingerprinting of registered offenders, address verification, and reporting of registration information to the FBI. The changes made by the Pam Lychner Act will be the subject of future guidelines. States have until three years for the Pam Lychner Act's enactment date of October 4, 1996 to come into compliance with the features of the Wetterling Act added by the Pam Lychner Act, subject to a possible two-year extension. These new provisions are not addressed in this publication.

Proposed Guidelines

These guidelines carry out a statutory directive to the Attorney General, in section 170101(a)(1) (42 U.S.C. § 14071(a)(1)), to establish guidelines for registration systems under the Act. Before turning to the specific provisions of the Act, four general points should be noted concerning the Act's interpretation and application.

First, states that wish to achieve compliance with the Jacob Wetterling Act should understand that its requirements constitute a floor for state registration systems, not a ceiling, and that they do not risk the loss of part of their Byrne Formula Grant funding by going beyond its standards. For example, a state may have a registration system that covers a broader class of sex offenders than those identified in the Jacob Wetterling Act, requires address

verification for such 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 provisions in the Jacob Wetterling Act concerning duration of registration, covered offenders, and other matters, do not preclude states from imposing additional or more stringent requirements that encompass the Act's baseline requirements. The general objective of the Act is to protect people from child molesters and violent sex offenders through registration requirements. It is not intended to, and does not have the effect of, making states *less* free than they were under prior law to impose registration requirements for this purpose.

Second, states that wish to achieve compliance with the Jacob Wetterling Act also should understand that they may, within certain constraints, use their own criminal law definitions in defining registration requirements and will not have to revise their registration systems to use technical definitions of covered sex offenses based on federal law. This point will be explained more fully below.

Third, the Jacob Wetterling Act contemplates the establishment of programs that will impose registration requirements on offenders who are subsequently convicted of offenses in the pertinent categories. The Act does not require states to attempt to identify and impose registration requirements on offenders who were convicted of offenses in these categories prior to the establishment of a conforming registration system. Nevertheless, the Act does not preclude states from imposing any new registration requirements on offenders convicted prior to the establishment of the registration system.

Fourth, 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 violet 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.

Some state registration and notification systems have been challenged on constitutional grounds. The majority of courts that have dealt with the issue have held that systems like those contemplated by the Jacob Wetterling Act do not violate released offenders' constitutional rights. A few courts, however, have found that certain provisions of the state systems violate (or likely violate) the Constitution. *See Rowe* v. *Burton*, 884 F. Supp. 1372 (D, Alaska 1994) (on motion for preliminary relief) (notification provision), *appeal dismissed*, 85 F.3d 635 (9th Cir. 1996); *State* v. *Babin*, 637 So.2d 814 (La. App.) (retroactive application of notification provision), *writ denied*, 644 So.2d 649 (La. 1994); *State* v. *Payne*, 633 So.2d 701 (La. App. 1993) (same), *writ denied*, 637 So.2d 497 (La. 1994); *cf. In re Reed*, 663 p.2d 216 (Cal. 1983) (en banc) (registration requirements for misdemeanor offenders violate the California Constitution).

There has been extensive litigation concerning whether aspects of New Jersey's community notification program violate due process or ex post facto guarantees as applied to individuals who committed the covered offense prior to enactment of the notification statute. The Department of Justice believes that the New Jersey community notification statute at issue in those cases does not violate the Ex Post Facto Clause and that the Fourteenth Amendment's Due Process Clause of its own force does not require recognition of such a liberty interest on the part of offenders affected by that statute, and has filed ''friend of the court'' briefs supporting the New Jersey law.

The New Jersey Supreme Court, in *John Doe* v. *Poritz*, 142 N.J. 1, 662 A.2d 367 (1995), upheld the New Jersey statute, although it imposed certain procedural protections under federal and state law. In *Artway* v. *Attorney General of New Jersey*, 876 F. Supp. 666 (D.N.J. 1995), the District Court held that retroactive application of the notification provisions of New Jersey's Megan's Law violated the Ex Post Facto Clause. On appeal, however, this part of the District Court's decision was vacated on ripeness grounds. 81 F.3d 1235, *rehearing denied*, 83 F.3d 594 (3d Cir. 1996). Then, the District Court ruled in a class-action case that the notification provisions of New Jersey's Megan's Law, as modified by the New Jersey Supreme Court's decision in *Doe*, are constitutional, even when retroactively applied. *W.P.* v. *Poritz*, 931 F. Supp. 1199 (D.N.J. 1996), *appeal pending.*

There is ongoing litigation over the validity of notification systems—and particularly the validity of their retroactive application—in other states as well. *See, e.g., Doe* v. *Pataki*, 940 F. Supp. 603 (S.D.N.Y. 1996) (enjoining retroactive application of community notification as an ex post facto punishment), *appeal pending; Doe* v. *Weld*, 1996 WL 769398 (D. Mass. Dec. 17, 1996) (declining to enjoin retroactive application of community notification provisions); *Stearns* v. *Gregoire*, Dkt. No. C95–1486D, slip op. (W.D. Wash. Apr. 12, 1996) (same), *appeal pending; Opinion of the Justices*, 423 Mass. 1201, 668 N.E.2d 738 (1996) (advisory opinion that community notification provisions are constitutional, even as retroactively applied); *Kansas* v. *Myers*, 260 Kan. 669, 923 P.2d 1024 (1996) (holding that retroactive application of community notification violates the Ex Post Facto Clause), *petition for cert. pending.* The United States has filed briefs in several of these cases supporting the state laws. The United States Supreme Court soon will decide whether to grant a petition seeking review of the Kansas Supreme Court's holding that the retroactive application of Kansas' sex offender community notification provisions violates the Ex Post Facto Clause.

The remainder of these guidelines addresses the provisions of the Jacob Wetterling Act—including the Megan's Law amendment, but not including the changes made by the Pam Lychner Act—in the order in which they appear in section 170101 of the Violent Crime Control and Law Enforcement Act of 1994.

General Provisions—Subsection (a)(1)–(2)

Paragraph (1) of subsection (a) of section 170101 directs the Attorney General to establish guidelines for state programs that require:

(A) current address registration for persons convicted of ''a criminal offense against a victim who is a minor'' or ''a sexually violent offense,'' and

(B) current address registration under a different set of requirements for persons who are determined to be ''sexually violent predators.''

For purposes of the Act, ''state'' should be understood to encompass 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)) in light of the tie-in between compliance with the Act and the allocation of Byrne Formula Grant funding. Hence, the ''states'' that must comply with the Act 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.

Paragraph (2) of subsection (a) states that the determination whether a person is a ''sexually violent predator'' (which brings the more stringent registration standards into play), and the

determination that a person is no longer a ''sexually violent predator'' (which terminates the registration requirement under those more stringent standards), shall be made by the sentencing court after receiving a report by a state board composed of experts in the field of the behavior and treatment of sexual offenders.

''State board'' in paragraph (2) should be understood to mean a body or group containing two or more experts that is authorized by state law or designated under the authority of state law. Beyond the requirement that a board must be composed of experts in the field of the behavior and treatment of sexual offenders, the Act affords states discretion concerning the selection and composition of such boards. For example, a state could establish a single permanent board for this purpose, could establish a system of state-designated boards, or could authorize the designation of different boards for different courts, time periods, geographic areas or cases. In addition, the Act permits states to set their own standards concerning who qualifies as an expert in the field of the behavior and treatment of sexual offenders for purposes of board participation, and to utilize qualifying experts from outside the state to serve on the boards.

''Sentencing court'' in paragraph (2) should be understood to mean a court whose determination is competent under state law to trigger or terminate the more stringent registration requirements the Act prescribes for sexually violent predators. It does not mean that ''the sentencing court'' for purposes of the sexually violent predator determination must be the same court in which the offender was convicted for an underlying offense that gave rise to a requirement to register.

As noted above, subsection (a)(1) requires states to register persons convicted of certain crimes against minors and sexually violent offenses, but states are free to go beyond the Act's minimum standards and include other classes of offenders within their sex offender registration programs. For example, states are encouraged to require sex offenders convicted in federal, military, or Indian tribal courts who reside in their jurisdictions to register. Although the Act does not require states to register such offenders, the presence of any convicted sex offender in the state—whether the offender was prosecuted in a state, federal, military, or Indian tribal court—raises similar public safety concerns. Some states (*e.g.*, Washington and California) already require sex offenders convicted in federal or military courts to register.

The Act's requirement is one of current address registration, and the Act 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 pre-relocation 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. Due to the federal statutory preemption concerning what may or may not be disclosed about federally protected witnesses, 18 U.S.C. §§ 3521(b) (1)(G) & (3), a state's failure to promulgate protective provisions may adversely affect its eligibility to send witnesses to, or to receive witness data from, the federal witness security program.

Definition of ''Criminal Offense Against a Victim Who is a Minor''—Subsection (a)(3)(A)

The Act prescribes a 10-year registration requirement for persons convicted of a ''criminal offense against a victim who is a minor''. Subparagraph (A) of paragraph (3) of subsection (a) defines the term ''criminal offense against a victim who is a minor.'' ''Minor'' should be understood to mean a person below the age of 18.

States do not have to track the terminology used in the Act's definition of ''criminal offense against a victim who is a minor'' in defining registration requirements. Rather, compliance depends on whether the substantive coverage of a state's registration requirements includes the offenses described in subparagraph (A) of paragraph (3).

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

(1) Clause (i) and (ii) cover kidnapping 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 ''kidnapping,'' ''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. The Act does not require inclusion of these offenses in the registration requirement when the offender is a parent, but states may choose to require registration for parents who commit these offenses.

(2) 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 involved physical contact with a victim—such as provisions defining crimes of ''rape,'' ''sexual assault,'' ''sexual abuse,'' or ''incest''—in cases where the victim was in fact 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). Offenses that do not involve physical contact, such as exhibitionism, are not subject to the Act's mandatory registration requirements pursuant to clause (iii), but states are free to require registration for persons convicted of such offenses as well if they so choose.

(3) 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.

(4) 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.

(5) 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.

(6) Clause (vii) covers offenses consisting of any conduct that by its nature is a sexual offense against a minor. This clause is intended to insure uniform 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 uniformly in the registration requirement.

(7) Considered in isolation, clause (viii) gives states discretion whether to require registration for attempts to commit offenses described in clauses (i) through (vii). However, 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. Moreover, this provision must be considered in conjunction with the Act's requirement of registration for persons convicted of a ''sexually violent offense,'' which does not allow the exclusion of attempts if they are otherwise encompassed within the definition of a ''sexually violent offense.''

Hence, state discretion to exclude attempted sexual offenses against minors from registration requirements pursuant to clause (viii) is limited by other provisions of the Act. The simplest approach for states would be to include attempted sexual assaults on minors (as well as completed offenses) uniformly as predicates for the registration requirement.

At the conclusion of the definition of ''criminal offense against a victim who is a minor,'' the Act states that (for purposes of the definition) conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger. However, here again, states are free to go beyond the Act's baseline requirements. The exemption of certain offenders based on age from the Act's mandatory registration requirements does not bar states from including such offenders in their registration systems if they wish. Moreover, the scope of subsection (a)(3)(A)'s exemption is also limited by other provisions of the Act that require registration of persons convicted of ''sexually violent offenses'' (as defined in (a)(3)(B)), with no provision excluding younger offenders where the criminality of the conduct depends on the victim's age.

Since the Act's registration requirements depend in all circumstances on conviction of certain types of offenses, 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, states may require 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.

Defintion of ''Sexually Violent Offense''—Subsection (a)(3)(B)

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.''

Subparagraph (B) of paragraph (3) defines the term ''sexually violent offense'' to mean any criminal offense that consists of aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2241 of title 18, 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 could satisfy the requirement of registration for persons convicted of ''sexually violent offenses'':

First, a state could comply by requiring registration for offenders convicted for criminal conduct that would violate 18 U.S.C. § 2241 or § 2242—the federal ''aggravated sexual abuse'' and ''sexual abuse'' offenses—if prosecuted federally. Specifically, sections 2241 and 2242 generally proscribe non-consensual ''sexual acts'' with anyone, ''sexual acts'' with persons below the age of 12, and attempts to engage in such conduct. ''Sexual act'' is generally defined (in 18 U.S.C. § 2246(2)) to mean an act involving any degree of genital or anal penetration, oral-genital or oral-anal contact, or direct genital touching of a victim below the age of 16 in certain circumstances. (The second part of the definition in subparagraph (B) of paragraph (3), 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 2241 and 2242 explicitly encompass attempts as well as completed offenses.)

Second, a state could 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.

Definition of ''Sexually Violent Predator''—Subsection (a)(3) (C)-(E)

Offenders who meet the definition of ''sexually violent predator'' are subject to more stringent registration requirements than other sex offenders.

(1) 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.

(2) 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. There is no definition of ''personality disorder'' in the Act; hence, the definition of this term is a matter of state discretion. For example, a state may choose to utilize the definition of ''personality disorder'' that appears in the Diagnostic and Statistical Manual of Mental Disorders: DSM–IV. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (4th ed. 1994).

(3) 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.

As noted earlier, the Act provides that the determination whether an offender is a ''sexually violent predator'' is to be made by the sentencing court with the assistance of a board of experts. The Act does not require, or preclude, that all persons convicted of a sexually violent

offense undergo a determination as to whether they satisfy the definition of ''sexually violent predator.'' It also does not specify under what conditions such an inquiry must be undertaken. A state that wishes to comply with the Act must adopt some approach to this issue, but the specifics are a matter of state discretion. For example, a state might provide that the decision whether to seek classification of an offender as a ''sexually violent predator'' is a matter of judgment for 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 by the responsible court when the offender has served a term of imprisonment and is about to be released from custody.

As with other features of the Jacob-Wetterling Act, sexually violent predator provisions only define baseline requirements for states that wish to maintain eligibility for full Bryne Formula Grant funding. States are free to impose these more stringent registration requirements on a broader class of offenders and may use state law categories or definitions for that purpose, without contravening the Jacob Wetterling Act. Likewise, while the Act does not require civil commitment of sexually violent predators or other offenders under any circumstances, states may, if they so wish, require civil commitment of persons determined to be sexually violent predators under the Act's standards and procedures in lieu of the Act's heightened registration requirements for such persons.

If a state chooses to subject all persons convicted of a ''sexually violent offense'' to the more stringent registration requirements and standards provided by the Act for ''sexually violent predators,'' then a particularized determination that an offender is a ''sexually violent predator'' would have no practical effect and would be superfluous. Hence, if a state elected this approach, it would not be necessary for the state to have ''sexually violent predator'' determinations made by the sentencing court or to constitute boards of experts to advise the courts concerning such determinations, prior to the commencement of registration. In a state that eschewed particularized ''front end'' determinations of ''sexually violent predator'' status in this manner, however, it would still be necessary to condition termination of the registration requirement on a determination by the sentencing court (assisted by a board of experts) pursuant to section 170101(b)(6)(B) of the Act that the person does not suffer from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.

Specifications Concerning State Registration Systems under the Act—Subsection (b)

Paragraphs (1) and (2) of subsection (b) set out duties for prison officers and courts 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 generally include taking registration information, informing the offender of registration obligations, and transmitting the registration information to the designated state law enforcement agency.

The terms ''prison officer'' and ''court'' should be understood to include any officer having functions relating to correctional matters, offender supervision, or the execution of sentences. Hence, states have the option of assigning responsibility for the initial taking and transmission of registration information to probation or parole officers, as well as to persons who are prison or court officers in a narrower sense.

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 give written notice of a new address within 10 days to a designated state law enforcement agency if he changes residence, (iii) informing the person that, if he changes residence to another state, he must inform the registration agency in the state he is leaving and must also register the new address with a designated state law enforcement agency in the new state within 10 days (if the new state has a registration requirement), (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.

Beyond these basic requirements, which apply to all registrants, subparagraph (B) of paragraph (1) of subsection (b) requires that additional information be obtained in relation to a person who is required to register as a ''sexually violent predator.'' The information that is specifically required under subparagraph (B) is 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. The Act does not require that prison officers or courts conduct an investigation to determine the offender's treatment history. For purposes of documenting the treatment received, prison officials and courts may rely on information that is readily available to them, either from existing records or the offender. In addition, prison officers and courts may comply with the requirement to document an offender's treatment history simply by noting that the offender received treatment for a mental abnormality or personality disorder. If states want to require the inclusion of more detailed information about the offender's treatment history, however, they are free to do so.

States that wish to comply with the Act will need to adopt statutes or administrative provisions to establish the duties specified in subsection (b)(1) and ensure that they are carried out. These informational requirements, like other requirements in the Act, only define minimum standards, and states may require more extensive information from offenders. For example, the Act does not require that information be obtained relating to registering offenders' employment, but states may legitimately wish to know if a convicted child molester is seeking or has obtained employment that involves responsibility for the care for children.

As a second example, although it is not required under the Act, states are strongly encouraged to collect DNA samples, where permitted under applicable legal standards, to be typed and stored in state DNA databases. States also are 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.

Paragraph (2) of subsection (b) states, in part, that the officer or court shall forward the registration information obtained from an offender who is being released to a designated state law enforcement agency within three days. In some states, the responsible official does not wait until the time of release to obtain registration information but obtains this information some period of time (e.g., 30 days or 60 days) prior to release. Under such a procedure, it is adequate if the registration information is forwarded no later than three days after release.

The Act leaves states discretion in designating an agency as the responsible ''state law enforcement agency,'' including the means by which such a designation is made, the timing of such a designation, and the agencies that may be designated. States are not required to select the state policy as the designated agency and may choose any agency with functions relating to the enforcement of law or protection of public safety. For example, states may designate as the pertinent ''state law enforcement agency'' a correctional agency, a crime statistics bureau or criminal records agency, or a department of public safety.

States are encouraged, however, to ensure that the designated state law enforcement agency is a ''criminal justice agency'' as defined in 28 C.F.R. 20.3(c). This will permit the free exchange of registration information between the state registry and the FBI's records systems.

Paragraph (2) of subsection (b) also provides that after receiving the registration information from the responsible officer or court, the designated state law enforcement agency must immediately enter the information into the appropriate state law enforcement record system and notify a law enforcement agency having jurisdiction where the person expects to reside. The Act leaves states discretion concerning the form of notification to the relevant local law enforcement agency. Permissible options include, for example, written notice, electronic transmission of registration information, and provision of on-line access to registration information. The Act also leaves states discretion in determining which state record system is appropriate for storing registration information. States that wish to achieve compliance with the Act, however, may need to modify state record systems if they are not currently set up to receive all the types of information that the Act requires from registrants.

In some states, the responsible prison officer or court sends the initial registration information both to the designated state law enforcement agency and to a local law enforcement agency having jurisdiction where the registrant will reside, as opposed to transmitting the information only to the state agency. This approach is allowed, and in such states the state agency need not be required to provide notice to the local law enforcement agency because such notice would be superfluous in relation to a local law enforcement agency that has received the registration information directly from the prison officer or court.

Likewise, the Act does not preclude a state procedure under which the prison officer or court transmits the initial registration information indirectly to the designated state law enforcement agency by sending it in the first instance only to a local law enforcement agency having jurisdiction where the registrant will reside, which is then required to forward the information to the state agency. Procedures of this type will be deemed in compliance, so long as the information is submitted or sent to the local law enforcement agency within the applicable time frame (no later than three days after release), and state procedures ensure that the local agency will forward the information promptly to the state agency. In a state with this type of procedure, having the state agency notify a local law enforcement agency from which it received the initial registration information would be superfluous and is not required.

Paragraph (2) of subsection (b) further provides that the state law enforcement agency shall immediately transmit the conviction data and fingerprints to the FBI. The Act 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).

Paragraph (3) of subsection (b) relates to verification of the offender's address. In essence, annual verification of address with the designated state law enforcement agency is required for all offenders through the return within 10 days of an address verification form sent by the agency to the registrant. However, the verification intervals are 90 days (rather than a year) for ''sexually violent predators.''

As noted earlier, these are baseline requirements which do not bar states from requiring verification of address at shorter intervals than those specified in the Act. Likewise, states may, if they wish, strengthen the requirements for transmission and return of verification forms beyond the minimum required by the Act, such as requiring registrants to appear in person at a law enforcement agency to return verification forms that have been sent to their residences.

In some states, the designated state law enforcement agency does not directly carry out address verification but develops verification forms which are sent out and received by local law enforcement agencies. This delegation of responsibility for the verification function is allowed, so long as the procedure specified in the Act for periodic address verification through transmission and return of a verification form is complied with, and state procedures ensure that the designated state law enforcement agency will promptly be made aware if the verification process discloses that the registrant is no longer at the registered address.

As indicated above, under paragraph (1)(A) of subsection (b) of the Act, registrants are required to submit or send change of address information within 10 days of the change of residence. Paragraph (4) of subsection (b) requires the designated state law enforcement agency to notify other interested law enforcement agencies of a change of address by the registrant. Specifically, when a registrant changes residence to a new address, the designated law enforcement agency must (i) notify a law enforcement agency having jurisdiction where the registrant will reside, and (ii) if the registrant moves to a new state, notify the law enforcement agency with which the offender must register in the new state (if the new state has a registration requirement).

Under many state registration programs, registrants do not send change of address information directly to the designated state law enforcement agency but provide this information to a local law enforcement agency or other intermediary (such as a probation officer), which is then required to forward it to the state agency. This approach is allowed under the Act, so long as the registrant is required to submit or send change of address information to the intermediary within the time frame specified by the Act (no later than 10 days after the change of address), and state procedures ensure that the intermediary will forward the information promptly to the designated state law enforcement agency. If the intermediary that receives the change of address information in the first instance is a local law enforcement agency

having jurisdiction where the registrant will reside, then the designated state law enforcement agency does not have to notify that local law enforcement agency of the change of address because doing so would be superfluous. If, however, the intermediary is a local law enforcement agency in the place from which the registrant is moving, the requirement remains of immediately notifying a law enforcement agency having jurisdiction over the new place of residence. Either the state agency or the local law enforcement agency that receives the change of address information in the first instance must provide such notification.

Paragraph (5) requires a person convicted of an offense that requires registration under the Act who moves to another state to register within 10 days with a designated state law enforcement agency in his new state of residence (if the new state has a registration requirement). This entails responsibilities for states in relation to out-of-state offenders who move into the state, as well as personal responsibilities for the registrant. To comply with the Act, a state registration program must require registration by out-of-state offenders in the Act's offense categories who move into the state and must provide that such offenders are required to register within 10 days of establishing residence in the state.

Subparagraph (A) of paragraph (6) states that the registration requirement remains in effect for 10 years. As noted earlier, states may choose to establish longer registration periods, but registration requirements of shorter duration are not consistent with the Act. Hence, for example, a state program is not in compliance with the Act if it allows 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, a state may toll registration requirements during periods in which an offender is incarcerated for another offense or civilly committed because it is superfluous to carry out address registration and verification procedures while the registrant is confined.

Subparagraph (B) of paragraph (6) states that the registration requirement for ''sexually violent predators'' under the Act terminates upon a determination that the offender no longer suffers from a mental abnormality or personality disorder that would make him likely to engage in a predatory sexually violent offense. This provision does not require review of the offender's status at any particular interval. For example, a state could set a minimum period of 10 years before entertaining a request to review the status of a ''sexually violent predator,'' the same period as the general minimum registration period for sex offenders under the Act.

The termination provision in subparagraph (B) of paragraph (6) only affects the requirement that a person register as a ''sexually violent predator'' under subparagraph (B) of subsection (a)(1) of the Jacob Wetterling Act. It does not limit states in imposing more extensive registration requirements under their own laws. Moreover, even if it has been determined as provided in subparagraph (B) of paragraph (6) that a person is no longer a ''sexually violent predator,'' this does not relieve the person of the 10-year registration requirement under other provisions of the Jacob Wetterling Act which applies to any person convicted of a ''criminal offense against a victim who is a minor'' or a ''sexually violent offense.''

Criminal Penalties for Registration Violations—Subsection (c)

The Act 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 will need to enact criminal provisions covering this situation as part of, or in conjunction with, the legislation defining their registration systems, if they have not already done so.

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. If the violation by a registrant consists of failing to return an address verification form within 10 days of receipt, the state may allow a defense if the registrant can prove that he did not in fact change his residence address, as provided in subsection (b)(3)(A)(iv).

Release of Registration Information—Subsection (d)

Subsection (d) governs the disclosure of information collected under a state registration program. This part of the Act has been amended by the federal Megan's Law (Pub. L. No. 104–145, 110 Stat. 1345). To comply with the Megan's Law amendment, 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 Megan's Law amendment made two important changes from the prior law:

First, subsection (d) originally provided that information collected under state registration programs is to be treated as private data, subject to limited exceptions. The Megan's Law amendment has repealed the general ''private data'' restriction and has substituted an affirmative statement (in subsection (d)(1)) that information collected under a state registration program may be disclosed for any purpose permitted under the law of the state. Hence, under the current law, there is no requirement that registration information be treated as private or confidential to any greater extent than the state may wish.

Second, paragraph (2) of subsection (d), as amended, provides that the designated state law enforcement agency, and any local law enforcement agency authorized by the state agency, *shall* release relevant information that is necessary to protect the public concerning a specific person required to register under the Act. In contrast, the prior law only provided that information *may* be released for this purpose.

The principal objective of this change 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. In light of this change, 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 mandatory 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 Jacob Wetterling Act as amended, 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 (1) Registration information limited to law enforcement uses for offenders in the ''low risk'' level, (2) notice to organizations with a particular safety interest (such as schools and other child care entities) for ''medium risk'' offenders, and (3) notice to neighbors for ''high risk'' offenders.

States are also 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 consistent 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, by establishing call-in numbers which members of the public can contact to obtain information on the registration status of identified individuals, or by providing such information in response to written requests. 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.

Paragraph (2) of subsection (d) does not deprive states of the authority to exercise centralized control over the release of information, or if the state prefers, to have local agencies make determinations concerning public safety needs and information release.

A proviso at the end of paragraph (2) states that the identity 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) which 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.

Immunity for Good Faith Conduct—Subsection (e)

Subsection (e) states that law enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct under the Act.

Compliance—Subsection (f)

States have three years from the date of enactment (i.e., September 13, 1994) to come into compliance with the Act unless the Attorney General grants an additional two years where a state is making good faith efforts at implementation. States that fail to come into compliance within the specified time period 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.

States are requested to submit descriptions of their existing or proposed registration systems for sex offenders to the Bureau of Justice Assistance as soon as possible. These submissions will be reviewed to determine the status of state compliance with the Act and to suggest any necessary changes to achieve compliance before the funding reduction goes into effect.

To maintain eligibility for full Byrne Formula Grant funding following September 13, 1997—the end of the three-year implementation period provided by the Act—states must submit to the Bureau of Justice Assistance by July 13, 1997, information that shows compliance with the Act 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. States will also be required to submit information in subsequent program years concerning any changes in sex offender registration systems that may affect compliance with the Act.

Dated: March 28, 1997.

Janet Reno,

Attorney General.

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Drug Enforcement Administration

[Docket No. 96–24]

Jose R. Castro, M.D.; Denial of Application

On February 20, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jose R. Castro, M.D. (Respondent), of Alma, Georgia, notifying him of an opportunity to show cause as to why DEA should not deny his application for a DEA Certificate of Registration as a practitioner under 21 U.S.C. 823(f), for reason that his registration would be inconsistent with the public interest. The Order to Show Cause alleged, in substance, that: (1) From August 1989 through February 1990, Federal and state agents made 12 undercover visits to Respondent's office and that on each occasion, Respondent issued the agents prescriptions for