

International Megan’s Law to Prevent Demand for Child Sex Trafficking (HR 4573): Misguided and Ineffective Policy

On May 20, 2014, the United States House of Representatives passed the International Megan’s Law to Prevent Demand for Child Sex Trafficking, HR 4573 (IML) by voice vote. It is now awaiting action by the Senate. IML is a misguided attempt to address the very real problem of sex trafficking. It should not pass the Senate.

IML intrudes on the fundamental right of certain American citizens who are required to register as former sex offenders (hereafter called “Registered Citizens”) to travel freely without interference from their government. Additionally, IML violates the due process rights of Registered Citizens, affording them no opportunity to refute the implication of dangerousness that would be broadcast by their government. IML will result in the criminalization of urgent travel by affected Americans who may not be able to notify authorities in advance. Finally, IML attempts to manipulate international law by encouraging the use of the Foreign Assistance Act of 1961 (22 U.S.C. 2152d) to pressure other countries into enacting similar policies.

IML has been appropriately rejected by Congress in four previous iterations.¹ It casts too broad a net, sweeping in many individuals who pose no danger of contributing to the demand for sex trafficking.² IML would establish a costly new bureaucracy, which will have no significant impact on the problem of international sex trafficking. IML may even threaten the welfare of traveling American former sex offenders by implying to foreign authorities that they are the “bad guys.”

International Megan’s Law Will Violate Citizen Rights

Restricts freedom of travel. IML creates two classes of American citizens: those who may travel freely, and those who must notify authorities before leaving the country. The vast majority of Registered Citizens have long since exited the criminal justice system and have lived years, even decades, in the community without re-offending. They have a recognized right to travel freely without interference from their government. IML violates the International Covenant on Civil and Political Rights (1966)³ by interfering with the free movement of citizens.

Criminalizing innocent travel. International travel is often necessary without advance notice (e.g. a sick relative, an urgent business obligation). Many international travel situations require significant financial commitment from the traveler long before the application for a visa. IML could force Registered Citizens with travel emergencies to do

¹ 110th Congress HR 5722 did not pass; 111th Congress HR 1623 did not pass; 111th Congress HR 5238 did not pass; 112th Congress HR 3253 did not pass.

² e.g., The Adam Walsh Act, touchstone for IML, requires lifetime registration for persons as young as 14. Many offenses included in IML do not fit the legal definition of sex trafficking, i.e. “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” 22 U.S. Code § 7102 (10).

³ International Covenant on Civil and Political Rights, Article 12, Section 1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. 2. Everyone shall be free to leave any country, including his own. 3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant. 4. No one shall be arbitrarily deprived of the right to enter his own country.

so without complying with the law, thus risking arrest and prosecution upon return home. Equally troubling, IML would discourage many law-abiding Registered Citizens from ever embarking on legitimate international travel.

Violating due process. The AWA listing of conviction status in no way reflects a person's actual re-offense risk⁴; however the Angel Watch Center (AWC) would proffer Registered Citizens' federally protected information to foreign authorities with the clear implication of dangerousness. Under this bill, Registered Citizens are offered no opportunity to contest the implication of dangerousness nor to prove the innocent nature of their travel in advance. Thus, IML would violate due process rights of Registered Citizens traveling internationally.

International Megan's Law Is Flawed Policy

Insignificant effect on trafficking prevention. The IML findings conflate two facts: that Registered Citizens travel internationally, and that Americans make up a large number of trafficking convictions. Unfortunately there is no logical connection between these two facts. Domestic experience suggests over 95% of arrests for sexual crimes are of first time offenders, not Registered Citizens.⁵ In fact, Registered Citizens have an overall low likelihood of re-offending.⁶ Higher socio-economic status (which permits international travel), may correlate with even lower recidivism risk.⁷ If one first determines what fraction of all international travel is being done by Registered Citizens, then how few of that number even pose a risk for sex trafficking, it is far more reasonable to conclude that most sex offenses committed by international travelers are by persons never previously convicted of a sex crime, and that most travel by Registered Citizens is for legitimate, non-criminal reasons.

Given this critical flaw, IML would be a huge bureaucratic expense, with little if any effect at reducing international sex trafficking. Compounding the problem, IML encourages the President to use of the Foreign Assistance Act of 1961 (22 U.S.C. 2152d) to pressure other countries into enacting similarly misguided policies despite a lack of evidence that such policies will curtail international sex trafficking or the demand for it.

Puts American travelers in harm's way. Many Registered Citizens were originally convicted of behavior which would not have been prosecuted elsewhere.⁸ In spite of the designation in the AWA, many Registered Citizens' convictions involved neither children nor trafficking, and yet the AWC notification strongly implies that the Registered Citizen is guilty of some generic "child-sex offense" that is reasonably related to international sex trafficking. This could and would be interpreted in any manner of

⁴ Zgoba, Kristen, et. al, "A Multi-State Evaluation of Sex Offender Risk and Recidivism Using the Adam Walsh Act Tiers", <http://www.cdjrs.gov/pdffiles1/nij/grants/240099.pdf>

⁵ In a recent study 96% of all new arrests for sexual crimes occurred among those without previous sexual crime convictions. Sandler J, Freeman NJ, Socia KM. "Does a watched pot boil? A time-series analysis of New York State's sex offender registration and notification law". *Psychol Public Policy Law* 2008;14(4):284-302

⁶ Langan, Patrick, et.al., "Recidivism of Sex Offenders Released from Prison in 1994", USDOJ, BJS 2003 NCJ 198281 <http://www.bjs.gov/content/pub/pdf/rsorp94.pdf>

⁷ Broadhurst, R. "Criminal careers, sex offending and dangerousness", in M. Brown & J. Pratt (eds), *Dangerous Offenders: Punishment & Social Order*, Routledge, London, 2000. pp. 109-26.

⁸ e.g. In Europe, the age of consent is 16 in Cyprus, Finland, Georgia, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, and Switzerland. It is 15 in France, the Czech Republic, Denmark, and Greece. It is 14 in Austria, Germany, Portugal and Italy.

ways by officials in the destination country, with no ability to control how those officials handle the situation. A Registered Citizen could be harassed or even harmed by officials or others in the community who are notified of their presumably dangerous background.⁹

Conclusion

IML will violate the travel rights and due process rights of traveling Americans, may have dangerous collateral consequences for affected citizens, and is not supported by any evidence that it will achieve a reduction in international sex trafficking. There exist proven methods of combating international sex trafficking that are worthy of support by the United States Congress. The International Megan's Law is not among them. We strongly urge this legislation not be enacted into law.



Brenda Jones, Executive Director
Reform Sex Offender Laws, Inc.
PO Box 36123
Albuquerque, NM 87176
888-997-7765

⁹ Even without the IML and AWC, Registered Citizens have been turned away at borders, or escorted out of a country based only on their USA registry status.