

Wednesday, January 23, 2008

Will states say 'no' to Adam Walsh Act?

By John Gramlich, Stateline.org Staff Writer

Facing a 2009 deadline to comply with a controversial federal law intended to crack down on sex offenders, states are nearing a crossroads. They either must fall in line with the statute or ignore it and absorb the penalty — a 10-percent cut to their share of funds in a congressional grant program used to fight crime.

With most state legislatures reconvening this month, debate is likely to resume soon over the federal [Adam Walsh Child Protection and Safety Act](#), which President Bush signed in 2006.

The sweeping law, named after the murdered 6-year-old son of “[America’s Most Wanted](#)” host John Walsh, requires states to adopt, by July next year, strict new standards for registering sex offenders and providing public information about their crimes and whereabouts. It calls on states to publish photos and addresses of sex offenders online and dramatically toughens criminal penalties for those who fail to register, among other provisions.

For months, however, state legislators across the country have criticized the law as a “one-size-fits-all approach” that does not give states enough time, money or flexibility to make the changes sought by the federal government.

Critics point out that the U.S. Justice Department has yet to issue final guidelines for states to follow, leaving them with roughly half the time originally allotted by Congress to comply with the act. A Justice Department spokeswoman, Sarah Matz, said the guidelines still are being evaluated internally.

Strenuous objections also have been raised by states and advocacy groups over some of the act’s provisions. One in particular has raised concern: a requirement that some juveniles as young as 14 be listed on states’ online sex-offender registries. Most states do not include juveniles on online registries, and juvenile-rights advocates say listing young offenders on the Internet could subject them to harassment or violence.

“You’re damaging their lives and not serving any public safety,” said Sarah Bryer, director of the [National Juvenile Justice Network](#). Bryer said juvenile sex offenders can be rehabilitated and are not as likely as adults to repeat their crimes.

Citing those complaints and others, state lawmakers are questioning whether it makes sense to comply with the act by its 2009 deadline, if at all, said Donna Lyons, a criminal justice analyst with the [National Conference of State Legislatures](#) (NCSL), an alliance representing the nation’s state legislators. The organization recently released a [policy](#)

[statement](#) — approved unanimously by more than 7,000 state lawmakers — seeking congressional amendments to revise the act.

“States are looking at cost-benefit analyses and asking, ‘Is it worth the 10 percent we’re going to lose?’” Lyons said, referring to the penalty states would face for not complying with the act — a 10-percent reduction in criminal justice funding provided by the [Byrne Memorial Justice Assistance Grant Program](#).

States use Byrne grants to pay for drug task forces, anti-gang units, police overtime and other law enforcement activities. But funding for the grant program itself [was slashed by 67 percent](#) — from \$520 million last fiscal year to \$170 million this year — in a \$555 billion appropriations bill signed by Bush last month.

That deep cut has figured into state lawmakers’ thinking as they compare the costs of complying with the Adam Walsh Act with the costs of not complying, said Susan Parnas Frederick, senior committee director of NCSL’s Law and Criminal Justice Committee in Washington.

“What’s 10 percent of nothing, anyway? Maybe we’ll just do what we’re doing, lose the 10 percent and not have to deal with all this garbage,” Frederick said.

At least six states — Delaware, Florida, Louisiana, Mississippi, Nevada and Ohio — last year revised sex-offender laws in an effort to comply with the act. The Justice Department rejected Louisiana’s efforts as not enough, and has yet to rule on the other states’ laws, many of which went into effect Jan. 1.

States found to “substantially comply” with the act by July of this year are eligible for extra federal dollars for sex offender management. Frederick said federal financial incentives may motivate states to comply with the act, despite many lawmakers’ objections.

Matz, of the U.S. Justice Department, noted that states can apply for a pair of one-year extensions under the act if they fail to comply by next year’s deadline. Extensions must be approved on a case-by-case basis by Attorney General Michael B. Mukasey.

“We want to give people enough time. We want to be available for assistance,” Matz said.

In Ohio, legal challenges to the state’s three-week-old law already are mounting. Lawyers have challenged a provision of the law making new registration rules retroactive to old cases — another requirement under the Adam Walsh Act. The state recently sent notices to thousands of sex offenders informing them of new registration obligations.

Jon Paul Rion, a Dayton criminal defense attorney whose firm is representing more than 35 sex offenders with challenges to the new law, told *Stateline.org* the provision for

retroactivity violates constitutional guarantees by imposing punishments beyond those originally handed down by courts.

But the Ohio attorney general's office, which helped craft the state's version of the Adam Walsh Act, has stood by the law, claiming that registration is not criminal punishment, but a civil regulatory measure that enhances public safety.

**See related stories:**

[Federal spending plan slashes anti-crime grants](#)

[New laws take 'Romeo' into account](#)

[Anti sex-offender zoning laws challenged](#)

*Comment on this story in the space below by registering with [Stateline.org](#), or e-mail your feedback to our [Letters to the editor](#) section at [letters@stateline.org](#).*

Contact John Gramlich at [jgramlich@stateline.org](mailto:jgramlich@stateline.org).