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Effort to Track Sex Offenders Draws Resistance

By [ABBY GOODNOUGH](#) and [MONICA DAVEY](#)

An aggressive federal effort to keep track of sexual offenders is at risk of collapse because of objections from states and legal challenges from sex offenders and others.

The effort, approved by Congress three years ago, requires all states to adopt strict standards for registering sex offenders and is meant to prevent offenders from eluding the authorities, especially when they move out of state.

The law followed several heinous crimes by sex offenders on the run, including Joseph E. Duncan III, who in 2005 fled North Dakota, where he had been registered, and committed sex crimes and murder in three states, ending with the torture and killing of a 9-year-old boy in Montana.

An estimated 100,000 sex offenders are not living where they are registered, according to the National Center for Missing and Exploited Children, which collects the data from the states and provides it to the United States Marshals Service and other federal agencies.

But officials in many states complain about the law's cost and, in some instances, contend their laws are more effective than the federal one. The states also suggest that the federal requirements violate their right to set their own policies and therefore may be unconstitutional, at least in part.

Despite a looming July deadline, no state has been deemed compliant with the law, and some are leaning toward ignoring major requirements. As a result, one of the toughest child-protection initiatives in the nation's history is languishing.

"We support the intent, and I'm sure every one of my attorney general colleagues supports the intent," said Mark J. Bennett, the attorney general of Hawaii. "But we believed we couldn't follow every single provision because, legally and practically, some of the provisions didn't make sense."

Some sex offenders and civil liberties groups have also taken court action to block the law's provisions. In Ohio, a man convicted 15 years ago of "gross sexual imposition" involving a teenage girl is challenging the requirement that he remain on the state's registry of sex offenders for the rest of his life, instead of the 10 years previously required by Ohio law.

"That's not what I want my children to grow up with," said the man, Darren L. Coey, 35.

Members of Congress say they may try to address some of the problems with the law. Senator [Patrick J. Leahy](#), Democrat of Vermont and chairman of the Senate Judiciary Committee, said through a spokeswoman that he planned "to determine whether revisions and improvements can strengthen

compliance, and then to quickly make whatever changes may be needed.”

While some of the law’s backers acknowledge that the states have legitimate concerns, they remain fundamentally committed to the law, and suggest that the delays leave a patchwork of differing state laws that keep children unnecessarily vulnerable to predators.

Even with the spotty compliance and shortcomings, supporters say, the law has reaped benefits. Since its passage, the Marshals Service has brought charges against 615 sex offenders for failing to register or update their registration, an agency spokesman said.

“The single most important thing about it was creating a more consistent, uniform process across the country,” said Ernest E. Allen, president of the National Center for Missing and Exploited Children, an advocacy group. “There are a lot of states that really don’t know where these guys are.”

The law, the [Adam Walsh Child Protection and Safety Act](#) — named for a 6-year-old boy whose abduction and murder in 1981 changed how law enforcement agencies look for missing children — makes it a federal felony to fail to reregister as a sex offender after moving to another state and requires states to toughen their penalties, now often misdemeanors, for failing to register at all.

It also requires offenders deemed especially dangerous to register for life and to renew their registration, usually in person, four times a year. In addition, the law expands the number of crimes for which sex offenders must register and requires states to collect more of their personal information and post much of it publicly.

But legal challenges have been mounted over requirements that juvenile sex offenders appear on public registries, possibly for life, despite research suggesting that young offenders are less likely to commit sex crimes later in life than older offenders.

Other lawsuits have challenged the requirement that adults whose crimes were committed before the law’s passage appear on public registries for longer than they had been led to expect. Some lawyers say that amounts to changing an offender’s penalty after the fact, a potential constitutional breach.

There are also concerns that the law does not take into account the individual circumstances of each sex offender, including the likelihood of committing more crimes. Instead, it lumps all offenders into broad levels of dangerousness based on the crime for which they were convicted, allowing, the law’s critics say, the worst offenders to blend in with less threatening ones.

John Walsh, Adam’s father and the host of the television show “America’s Most Wanted,” said the law was vital to monitoring sex offenders but suggested Congress postpone the compliance deadline. Mr. Walsh said the many obstacles — most recently the recession, which has made it tough for some states to pay for the law’s provisions — need more time to be worked out.

He warned, however, that delays come with a cost. Criminals like Mr. Duncan, who has been sentenced to death, are glaring examples of why the law must succeed, he said.

“As long as it isn’t fully funded and implemented,” Mr. Walsh said, “the bad guys can still float through the country and commit horrible crimes.”

States can ask to extend the July deadline for one or two years, and officials at the [Justice Department](#), which oversees state compliance with the law, said they had granted seven such requests.

According to the Justice Department, 20 states have sent materials for review, though in response to a Freedom of Information Act request filed by Andrew J. Harris, an assistant professor of criminal justice at the [University of Massachusetts](#), the department said in December that only Arizona, Idaho, Louisiana and Ohio had tried to fully comply.

States that do not fully comply stand to lose part of their federal crime prevention grants. But the grants have shrunk in recent years — they currently range from \$281,000 to \$1.1 million a year, based on a state's size — and many states have calculated that losing the money would be far less expensive than meeting the law's requirements.

Most states overhauled how they monitor offenders in the 1990s, after federal initiatives like Megan's Law created general requirements for registering offenders and making information about them public. Many states complain that the new federal law disrupts and even clashes with their own carefully created policies for managing sex offenders.

“It's this point in history where states have had many years of developing systems that they feel are working pretty well, and they look at this as a bit of a step backwards,” said Mr. Harris, who studies sex offender laws.

For example, opponents say, the federal law's requirement that offenders update their information in person as many as four times a year makes no sense in rural states where they would have to travel great distances.

“That is a huge problem,” said Richard Svobodny, deputy attorney general of Alaska. “We have people who live in the village of Eek, Alaska, who would have to fly hundreds of miles to comply.”

Some top state law enforcement officials said they supported the law in spirit but were shocked by the statutory changes it demands, which some estimated would result in an utter rewrite of their state criminal codes.

“It would shut the justice system down to do this,” said Buddy Caldwell, the attorney general of Louisiana, a state whose effort to comply with the law last year was rejected by the Justice Department as inadequate. “And to be quite honest with you, it's bordering on the ridiculous.”

In [California](#), officials have estimated that even an “incomplete list” of costs to meet the federal act would be more than \$38 million for efforts that include additional records checks, more frequent reporting to local law enforcement agencies and reclassifying current offenders.

The legal backlash has also been widespread.

In Nevada, which passed sweeping legislation in 2007 meant to bring the state into compliance, the public defender's office in Clark County filed suit on grounds that the juvenile requirements went too far. The case is pending in the State Supreme Court.

In a separate [Nevada case](#) filed by the [American Civil Liberties Union](#), a federal district judge invalidated the state's attempt at compliance in September on the ground that it violated constitutional protections against retroactive laws.

The judge also found that the law violated both the constitutional right to due process, because it did not give sex offenders notice of changes to their registration status, and the contracts clause of the Constitution, because it changed the terms of plea agreements. Compliance in Nevada is delayed while its appeal is pending.

In Florida and other states, some federal judges have found that the federal government does not have the authority to punish sex offenders who fail to register as required under federal law. These judges have ruled that under the commerce clause of the Constitution, such punishment is the responsibility of the states, not the federal government. The rulings are under appeal.

Concerns over the retroactive requirements of the law set off thousands of legal challenges in Ohio, which has tried unsuccessfully to comply, passing legislation in 2007 that included provisions requiring many offenders to stay on the state's registry longer than expected.

Many such offenders were originally told that they would be on the registry for 10 years, but will now be on it for life. They include Mr. Coey, the convicted offender who has asked a court to block the requirement, and who, with help from the [Ohio Justice and Policy Center](#), earlier succeeded in fighting a residency restriction barring him from living within 1,000 feet of a school.

Mr. Coey planned to marry Crystal Mullins, the mother of his two young children, once he was off the registry.

"I've reached my limit with the changing laws," Mr. Coey said. "I can accept that it was my decision that put my name on a list, but it's not Crystal's fault. I can't do this to them if I'm going to be on that list for life."

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