



S. 431 - The Keeping the Internet Devoid of Sexual Predators Act of 2008

FLOOR SITUATION

S. 431 is being considered on the floor under suspension of the rules and will require a two-thirds majority vote for passage. This legislation was introduced by Senator Charles Schumer (D-NY) on January 30, 2007 and passed the Senate on May 20, 2008 by unanimous consent. Representative Earl Pomeroy (D-ND) introduced similar legislation (H.R. 731) in the House on the same day.

The House of Representatives passed H.R. 731 on November 14, 2007 by a vote of 417-0 (Roll Call Vote 1092).

S. 431 is expected to be considered on the floor on September 27, 2008.

SUMMARY

Registry Requirements: S. 431 requires that, in addition to existing registry requirements, sex offenders must include any electronic mail address, instant message address, or other similar Internet identifier the sex offender used or will use to communicate over the Internet. The offender must also update his or her information prior to use of a new email or instant message address. Any person required to register that does not provide this information will be subject to fines and up to ten years in prison.

Social Networking Sites: The bill requires the Attorney General to maintain a system allowing a commercial social networking website to compare the database of registered users of that commercial social networking website to the list of electronic mail addresses, instant message addresses, and other similar Internet identifiers of persons in the National Sex Offender Registry. Prior to approval by the Attorney General, the networking site is required to provide general information (such as name and location of the site) and certification that the information will only be used for comparison with the registry and will not be disclosed. The Attorney General may require a fee for use of the registry by social networking sites. The bill provides liability protections for social networking sites that use the registry appropriately for screening users or to compare their list of users with the registry.

Age Misrepresentation: The bill also creates a penalty (in addition to penalties imposed within the jurisdiction) of fines and up to 20 years in prison for any person 18 years or older who knowingly misrepresents their age with the intent to use the Internet to engage in criminal sexual conduct involving a minor, or to facilitate or attempt such conduct.

Updating Child Pornography Laws: The bill clarifies the law to prohibit knowingly accessing child pornography on the Internet with the intent to view child pornography. Additionally, the legislation changes current law to include child pornography "affecting interstate or foreign commerce" as well as "using a means or facility of interstate commerce" in order to avoid a court from ruling that "in commerce" requires the actual movement between states.

**Note: In a recent criminal case a defendant (William Schaefer) was found guilty of both "knowingly receiving" and "knowingly possessing" child pornography that had been "transported in interstate commerce, by any means including by computer" in accordance with the laws referenced above.*

However, the 10th U.S. Circuit Court of Appeals reversed the decision on September 5, 2007. The court's ruling stated (in part): "Mr. Schaefer contends the government failed to offer evidence to show that any single visual image he received or possessed traveled across state lines. Mr. Schaefer seeks a reversal and acquittal on both counts...we hold that the government failed to offer sufficient evidence to establish



the requisite jurisdictional nexus of a movement across state lines (i.e., a movement in interstate commerce). Specifically, we conclude that the government's evidence concerning Mr. Schaefer's use of the Internet, standing alone, was not sufficient to establish that the child-pornography images at issue moved across state lines... Congress's use of the 'in commerce' language, as opposed to phrasing such as 'affecting commerce' or a 'facility of interstate commerce,' signals its decision to limit federal jurisdiction and require actual movement between states to satisfy the interstate nexus...we decline to assume that Internet use automatically equates with a movement across state lines. With respect to such interstate movement, the government must introduce sufficient evidence to satisfy its burden of proof."

A similar provision was included in the Effective Child Pornography Prosecution Act of 2007 (HR 4120), which has passed both the House and Senate.

BACKGROUND

The Jacob Wetterling Act was the first law to encourage states to establish sex offender registries, which every state did.

The Adam Walsh Child Protection and Safety Act was signed into law (PL 109-248) by President Bush on July 27, 2006. Among many other provisions, this legislation required states to comply with uniform standards for sex offender registries. States that did not comply with these federal standards would receive a ten percent reduction in their Byrne program law enforcement assistance funds.

According to the Congressional Research Service (CRS), those required to register must provide the following:

- Name
- social security number
- the name and address of their employers
- the name and address of places where they attend school
- the license plate numbers and descriptions of vehicles they own

The jurisdiction of registration must also include:

- a physical description and current photograph of the registrant and a copy of his driver's license or government issued identification card
- a set of fingerprints, palm prints, and a DNA sample
- the text of the law under which he was convicted
- a criminal record that includes the dates of any arrests and convictions, any outstanding warrants, as well as parole, probation, supervisory release, and registration status

The Dru Sjodin National Sex Offender Public Website (www.nsopr.gov), through coordination with state registries, provides a forum to perform national searches for sex offenders. The site was established and is maintained by the Department of Justice.

COST

According to the Congressional Budget Office (CBO), "because those prosecuted and convicted under S. 431 could be subject to criminal fines, the federal government might collect additional fines if the legislation is enacted. Criminal fines are recorded as revenues, then deposited in the Crime Victims Fund, and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the relatively small number of cases likely to be affected.

In addition, S. 431 would require the Department of Justice (DOJ) to establish a system to allow social networking Web sites (such as MySpace) to compare databases of their users with the electronic mail



LEGISLATIVE DIGEST

HOUSE REPUBLICAN CONFERENCE | CHAIRMAN ADAM PUTNAM

1420 LONGWORTH HOB, WASHINGTON, DC 20515

www.GOP.gov

PHONE 202.225.5107

FAX 202.226.0154

addresses or other Internet identifiers maintained in the National Sex Offender Registry administered by DOJ. The bill would permit the department to charge user fees to the social networking Web sites to offset any costs, so we expect that the net costs to DOJ would be insignificant.”

STAFF CONTACT

For questions or further information contact Brianne Miller at 6-2302.