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INTERNATIONAL MEGAN'S LAW OF 2010

JULY 27, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BERMAN, from the Committee on Foreign Affairs, submitted the following

R E P O R T

[To accompany H.R. 5138]

[Including cost estimate of the Congressional Budget Office]

The Committee on Foreign Affairs, to whom was referred the bill (H.R. 5138) to protect children from sexual exploitation by mandating reporting requirements for convicted sex traffickers and other registered sex offenders against minors intending to engage in international travel, providing advance notice of intended travel by high interest registered sex offenders outside the United States to the government of the country of destination, requesting foreign governments to notify the United States when a known child sex offender is seeking to enter the United States, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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89–006

SUMMARY AND PURPOSE

The purpose of H.R. 5138, the International Megan's Law of 2010 (the "Act"), is to protect children from registered child sex offenders who pose a high risk of sexually exploiting children while traveling or residing overseas. The Act consists of two major components: (1) the establishment of a system for providing advance notice to foreign government officials when a child sex offender who poses a high risk to children is traveling to their country; and (2) the establishment of a registration requirement for child sex offenders from the United States who reside abroad. The Act also provides discretionary authority to the Secretary of State to revoke or limit the validity of passports of dangerous child sex offenders, a sense of Congress that foreign governments should notify the United States when a U.S. citizen has committed a sex offense against a minor overseas, and a mandate for a special report to Congress on international mechanisms to protect children everywhere from traveling sex offenders.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 5138, the International Megan's Law, is a bipartisan effort to combat the growing problem of the sexual exploitation of children by known sex offenders who travel internationally. This legislation also is the product of negotiations between the Committee on Foreign Affairs and the Committee on the Judiciary.

The Act is titled in memory of Megan Nicole Kanka, who was sexually assaulted and brutally murdered in 1994 by a convicted child sex predator who lived across the street from her New Jersey home. Megan was only 7 years old at the time. The publicity that resulted from this horrific occurrence and the consequent public outcry led to the passage of both state Megan's laws and a Federal Megan's law and the establishment of sex offender registries throughout the United States.

ECPAT International (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes), a network of organizations and individuals who combat the commercial sexual exploitation of children, identify child sex tourism as a growing trend around the world. ECPAT defines child sex tourism as "the sexual exploitation of children by a person or persons who travel from their home district, home geographical region, or home country in order to have sexual contact with children." The Protection Project of The Johns Hopkins University Paul H. Nitze School of Advanced International Studies has conducted research that indicates that sex tourists from the United States who target children form a significant percentage of child sex tourists in some of the most significant destination countries for child sex tourism.

Officials from the United Kingdom, Australia, Spain and other countries have expressed interest in working with the United States Government for increased international cooperation to protect children from sexual exploitation, and are calling for formal arrangements to ensure that the risk posed by certain child sex offenders is combated most effectively. With regard to sex offenders traveling internationally, the United States Immigration and Customs Enforcement Agency (ICE) and other Federal law enforcement agencies currently are sharing information with law enforcement

entities in some other countries, on an ad hoc basis. The technology to detect travel by child sex offenders and to notify foreign governments is available, but a legal structure is needed to systematize and coordinate these detection and notification efforts.

The International Megan's Law establishes the legal structure to detect and notice international travel by known child sex offenders in the United States who pose a high risk of committing a sex offense against a minor in the destination country. It also establishes a child sex offender registry at U.S. diplomatic missions for U.S. citizens and lawful permanent residents residing abroad, and gives the Secretary of State the discretionary authority to revoke the passport of an individual who has been convicted overseas of a sex offense against a minor or to limit the period of validity of a passport issued to a high interest registered sex offender.

The Act strongly encourages notification by foreign governments of known child sex offenders traveling to the United States, and allows assistance to enable foreign governments to establish systems to provide such notice. It further amends the minimum standards for the elimination of human trafficking in the Trafficking Victims Protection Act (22 U.S.C. 7106(b)(4)) by clarifying that countries are expected to cooperate with other governments in the investigation and prosecution of suspected human trafficking of minors by nationals of that country. Finally, the Act calls for a special report to congress on international mechanisms to identify and provide notice of travel by child sex offenders, including child sex offenders attempting to enter the United States.

In order to identify and notice travel by high interest registered child sex offenders, the Act mandates that any registered sex offender who was convicted of a felony sex offense against a minor provide advance notice of his or her intent to travel outside the United States to the jurisdiction where he or she is registered. The travel notice will be forwarded to an International Sex Offender Travel Center (the "Center"), headed by the United States Immigration and Customs Enforcement Agency which, in coordination with other designated departments and agencies, will make a determination, based on established guidelines, as to whether the sex offender poses a high risk of committing a sex offense against a minor in the country of destination.

If the determination is made that the individual is a high interest registered sex offender, this Act gives the Center the ability to notify the country of destination of such determination and of details about the intended travel. The sex offender will be informed as to whether the destination country is being notified of his or her travel and provided an opportunity to appeal the Center's determination no later than seven days prior to the date of travel. The Act is not intended to prevent anyone from traveling for legitimate purposes, but instead is a way to track the travel of certain sex offenders, namely those who pose a high risk of sexually exploiting children in the destination country.

The Act also mandates the establishment of sex offender registries at U.S. diplomatic missions for U.S. child sex offenders who remain in a foreign country for more than 30 consecutive days or for more than 30 days within a 6-month period. Such sex offenders will be required to register for such time period as they would have had to register in the United States pursuant to the law of the ju-

risdiction in which they were convicted. This foreign registration system is for the purpose of enabling U.S. law enforcement to track the location of child sex offenders and to better ascertain if and when they reenter the United States. The Act also allows the official in charge of the individual registry, in his or her sole discretion, to respond to inquiries from entities in that country as to whether a child sex offender seeking to work for such entity who will have direct access to children is listed on the registry. Sexual predators often seek employment or volunteer opportunities in foreign countries, particularly at schools and orphanages that will give them access to children. Possible access to information on a local sex offender registry will help to assure potential employers that an applicant from the United States does not have a prior child sex offense in this country.

The Committee has been informed that the Department of Justice and INTERPOL, in cooperation with other agencies within the Administration, currently are undertaking, or considering how to undertake, certain measures related to activities included in this Act. However, for several reasons, the Committee considers the enactment of this Act to be necessary despite those measures. After extensive research and investigation, the Committee finds that the best approach to combat the growing problem of child sex tourism is by performing a careful, individualized evaluation of the sex offender and the circumstances surrounding his or her travel. Such an assessment, based on the totality of the circumstances as is required by this Act, is the most helpful to our own law enforcement, as well as to nations seeking to protect children from child sex predators.

The measures being undertaken by the Administration only partially address the purpose and goals of this Act. To the extent the measures being considered or undertaken reflect activities called for in this Act, the Committee questions the measures' efficacy based on the Committee's knowledge of ICE's current activities in this area, the relevant situation in foreign countries, and related exchanges that have taken place between the Committee, foreign government officials, and non-governmental organizations. It is also concerning that the Administration's consideration and implementation of these measures is occurring at a slow pace. Finally, Congress has little formal oversight of those measures, and even the information that the Committee has obtained was only acquired after considerable and repeated efforts by the Committee.

HEARINGS

The Committee did not hold hearings directly related to the subject of the Act.

COMMITTEE CONSIDERATION

The Committee marked up H.R. 5138 on April 28, 2010, and favorably reported the Act to the House by voice vote, a quorum being present.

VOTES OF THE COMMITEE

There were no recorded votes during consideration of H.R. 5138.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with Clause 3(c)(2) of House Rule XIII, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the Act, H.R. 5138, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 21, 2010.

Hon. HOWARD L. BERMAN, *Chairman,*
Committee on Foreign Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5138, the International Megan's Law of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Sunita D'Monte and Grete Willis.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

cc: Honorable Ileana Ros-Lehtinen
Ranking Member

H.R. 5138—International Megan's Law of 2010.

SUMMARY

H.R. 5138 would require a person convicted of a sex offense against a minor to notify the jurisdiction in which he or she is registered as a sex offender before traveling to or from the United States. The bill would require that a United States diplomatic or consular mission in each foreign country maintain a registry of sex offenders. The bill also would establish the International Sex Offender Travel Center to set guidelines for international travel by such sex offenders and coordinate federal and state efforts to record and monitor such travel. CBO estimates that implementing H.R.

5138 would cost $252 million over the 2011–2015 period, assuming appropriation of the necessary amounts.

Enacting the bill would affect direct spending and revenues; therefore, pay-as-you-go procedures would apply to the legislation. CBO estimates that any such effects would not be significant.

H.R. 5138 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) by requiring state, local, and tribal governments to collect travel information and fees from registered sex offenders and provide information to federal officials. CBO estimates that the cost of those intergovernmental mandates would fall below the annual threshold established in UMRA ($70 million for fiscal year 2010, adjusted annually for inflation).

The bill also would impose private-sector mandates, as defined in UMRA, on individuals who have been convicted of certain sex offenses, but CBO estimates that the aggregate direct costs of those mandates would fall well below the annual threshold established in UMRA for private-sector mandates ($141 million in 2010, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 5138 is shown in the following table. The costs of this legislation fall within budget functions 150 (international affairs) and 750 (administration of justice).

	By Fiscal Year, in Millions of Dollars					
	2011	2012	2013	2014	2015	2011–2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION [1]						
International Monitoring of Sex Offenders						
Estimated Authorization Level	0	39	57	75	87	258
Estimated Outlays	0	25	45	65	79	214
International Sex Offender Travel Center						
Estimated Authorization Level	6	8	8	8	9	39
Estimated Outlays	5	8	8	8	9	38
Total Changes						
Estimated Authorization Level	6	47	65	83	96	297
Estimated Outlays	5	33	53	73	88	252

[1] H.R. 5138 also would affect direct spending and revenues, but CBO estimates that those changes would each be less than $500,000 a year for all years.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted near the beginning of fiscal year 2011, but that most of the provisions will be implemented beginning in 2012. CBO further assumes that the necessary amounts will be appropriated each year, and that outlays will follow historical spending patterns for similar and existing programs.

Spending Subject to Appropriation

The bill contains provisions that would affect spending on personnel by the Departments of State and Homeland Security. In total, CBO estimates that implementing the bill would cost $252

million over the 2011–2015 period, assuming appropriation of the necessary amounts.

International Monitoring of Sex Offenders. Section 5 would require a United States diplomatic or consular mission in each foreign country to maintain a registry of certain citizens or legal residents of the United States traveling or living in that country who have been convicted of sex offenses against minors. The diplomatic or consular mission would be required to collect information about sex offenders and transmit all notifications regarding their travel plans to the International Sex Offender Travel Center. It also would require the mission to keep the registry current and share the information with other United States missions in the country, as well as certain local employers.

Based on information from Immigration and Customs Enforcement (ICE), CBO expects that in most years about 10,000 sex offenders covered by the bill would travel internationally. According to the Department of State, the United States has a diplomatic presence in 173 countries. Based on the number of visitors from the United States and the magnitude of the child sex tourism industry in each country, CBO estimates that United States missions in the majority of countries would require less than one new full-time position to maintain the registry. According to research by the Protection Project of the Johns Hopkins University, countries in Southeast Asia and Central and South America have experienced the highest levels of child sex tourism originating in the United States. CBO estimates that missions in those countries and countries that have large numbers of visitors from the United States would require at least one new full-time position to maintain the registry.

CBO estimates that about 75 new personnel would be hired in 2012 at a cost of $24 million, gradually increasing to about 150 personnel by 2015 at a cost of $78 million annually. Those costs would include salaries, benefits, travel, training, and overhead. Based on information from the Department of Justice on existing registries of sex offenders maintained domestically, CBO estimates that the cost to establish and maintain the overseas registries would be an additional $1 million each year. In total, after adjusting for inflation, CBO estimates that implementing this section would cost $214 million over the 2011–2015 period, assuming appropriation of the estimated amounts.

International Sex Offender Travel Center. Section 6 would establish the International Sex Offender Travel Center within ICE. The center would receive and record notifications from states and other jurisdictions of international travel by sex offenders and would provide sex offenders with written confirmation of receipt of travel reports. The center would establish a system to monitor sex offenders who regularly travel to Mexico or Canada. In addition, this new office would provide any necessary training to jurisdictions, respond to inquiries from sex offenders, and share information as appropriate with the Departments of State and Justice.

Considering the number of sex offenders who travel internationally, CBO expects that the agency would need to hire 40 to 50 persons to carry out the responsibilities of the International Sex Offender Travel Center, which ICE anticipates would be staffed at all times. Once fully phased in, and subject to appropriation of the necessary amounts, CBO estimates that the costs of additional em-

ployees would reach $8 million annually, including salaries, benefits, computer systems, and support costs. For this estimate, we assume that the new positions would be fully staffed by fiscal year 2012 and that costs would increase annually with inflation.

Revenues and Direct Spending

H.R. 5138 would affect revenues and direct spending through fees charged to registrants and the collection of criminal fines. CBO estimates, however, that any such effects would not be significant.

Fees Charged to Sex Offenders. Section 4 would authorize jurisdictions to collect fees of up to $25 from sex offenders who provide notice of international travel. This fee would be shared with ICE. Assuming that about 10,000 sex offenders would travel each year, CBO estimates that fee collections would total less than $500,000 each year. Those amounts would be spent mostly in the same year, so there would be no significant net effect on direct spending.

Criminal Penalties. Section 4 also would establish criminal penalties for sex offenders who violate the bill's provisions; therefore, the federal government might collect more fines if the bill was enacted. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent. CBO estimates that any net effects would not be significant in any year because of the small number of cases likely to be affected.

PAY–AS–YOU–GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO Estimate of Pay-As-You-Go Effects for H.R. 5138 as ordered reported by the House Committee on Foreign Affairs on April 28, 2010

	By Fiscal Year, in Millions of Dollars												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
NET INCREASE OR DECREASE (–) IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	0	0	0	0	0	0	0	0	0	0	0	0	0

Note: H.R. 5138 would authorize jurisdictions to collect fees from sex offenders who provide notice of international travel and would impose new criminal penalties on certain sex offenders. CBO expects those penalties and fees would total less than $500,000 each year and would be spent in the same year in which they are collected. CBO estimates the direct spending and revenue effects of H.R. 5138 would not be significant over the 2010–2015 period or the 2010–2020 period.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 5138 contains intergovernmental mandates as defined in UMRA by requiring state, local, and tribal governments to collect travel information and fees from registered sex offenders and provide information to federal officials. Because jurisdictions are currently collecting most of the required information and the number of sex offenders that would have to provide additional travel information is relatively small, CBO estimates that the cost of the intergovernmental mandates would fall well below the annual threshold established in UMRA ($70 million for fiscal year 2010, adjusted annually for inflation). In addition, those jurisdictions would benefit

from some of the fees authorized in the bill to process the information.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 5138 would impose private-sector mandates, as defined in UMRA, on individuals convicted of a sex offense, either in the United States or abroad. The bill would marginally expand existing reporting requirements for registered sex offenders by requiring them to file a notice of intent to travel into or out of the United States with the appropriate jurisdictions no later than 30 days before their departure or arrival. Upon notification of intent to travel, sex offenders also would have to pay a nominal processing fee to be collected by officials in the jurisdiction in which they file.

Because the cost of filing would be low and the change in reporting requirements would be small, CBO estimates that the aggregate cost of the mandates would fall well below the annual threshold for private-sector mandates ($141 million in 2010, adjusted annually for inflation).

ESTIMATE PREPARED BY:

Federal Costs: Department of State—Sunita D'Monte and Grete Willis; Department of Homeland Security and Criminal Penalties—Mark Grabowicz
Impact on State, Local, and Tribal Governments: Burke Doherty and Melissa Merrell
Impact on the Private Sector: Marin Randall

ESTIMATE APPROVED BY:

Theresa Gullo
Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

H.R. 5138, the International Megan's Law of 2010 is intended to protect children from registered child sex offenders who pose a high risk of sexually exploiting children while traveling or residing overseas. The Act provides notice of travel by high interest registered sex offenders to the government of the destination country, establishes registries at U.S. diplomatic missions for U.S. child sex offenders residing overseas, and requests foreign governments to notify the United States when a known child sex offender is seeking to enter the United States.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8 of the Constitution.

NEW ADVISORY COMMITTEES

H.R. 5138 does not establish or authorize any new advisory committees.

CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 5138 does not apply to the Legislative Branch.

EARMARK IDENTIFICATION

H.R. 5138 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title and Table of Contents.

This section provides that the Act may be cited as the "International Megan's Law of 2010," and includes the table of contents.

Section 2. Findings and Declaration of Purposes.

This section articulates the findings that frame the purpose of the Act, which is to protect children from sexual exploitation by preventing or monitoring the international travel of sex traffickers and other sex offenders who pose a high risk of committing a sex offense against a minor in a country to which the sex offender intends to travel.

This section finds that in 1994, 7-year-old Megan Kanka was sexually assaulted and killed by a sex offender. As a result of the ensuing public outcry, Megan's Law was enacted by Congress in 1996 to encourage States to protect children by identifying the whereabouts of sex offenders and providing the means to monitor their activities. The sexual exploitation of minors, including child sex tourism is a global phenomenon. Most victims of sex offenders are minors. Commercial sexual exploitation can result in serious lifelong consequences on the child. Media reports indicate that known sex offenders are traveling internationally. A system to prevent such crimes against children would safeguard vulnerable populations and reduce the cost burden of addressing such crimes after they are committed. Foreign governments need to be encouraged to notify the U.S. when a known sex offender is entering our borders.

This section also lists many of the reasons child sex tourists travel overseas to commit sexual offenses against minors and states that individuals arrested overseas for sexually exploiting children have used long-term passports to escape to a third country where they have continued to exploit children. The section further states the importance of U.S. law enforcement being able to identify high risk child sex offenders who are leaving or entering the United States, the need for the cooperation of other governments, and the willingness of some governments already to help to achieve this end, and the need for a legal structure and additional resources to systematize and coordinate current ad hoc efforts by law enforcement entities.

This section emphasizes that the United States, with its international law enforcement relations, technological and communications capability, and established state sex offender registry systems, should now take the opportunity to lead the nations of the world in the effort to save thousands of potential child victims by notifying other countries of travel by sex offenders who pose a high risk of exploiting children, maintaining information about sex offenders from the United States who reside overseas, and strongly encouraging other countries to undertake the same measures to protect children around the world.

This section states that the purpose of this Act is to protect children from sexual exploitation by preventing or monitoring the international travel of sex traffickers and other sex offenders who pose a risk of committing a sex offense against a minor while traveling by: establishing a system in the United States to notify the appropriate officials of other countries when a sex offender who is identified as a high interest registered sex offender intends to travel to their country; strongly encouraging and assisting foreign governments to establish a sex offender travel notification system and to inform United States authorities when a sex offender intends to travel or has departed on travel to the United States; establishing and maintaining non-public sex offender registries in United States diplomatic and consular missions in order to maintain critical data on United States citizen and lawful permanent resident sex offenders who are residing abroad; providing the Secretary of State with the discretion to revoke the passport or passport card of an individual who has been convicted overseas for a sex offense against a minor, or limit the period of validity of a passport or passport card issued to a high risk sex offender against a minor; including whether a country is investigating and prosecuting its nationals suspected of engaging in severe forms of trafficking in persons abroad in the minimum standards for the elimination of human trafficking under the Trafficking Victims Protection Act of 2000; and mandating a report from the Secretary of State, in consultation with the Attorney General, about the status of international notifications between governments about child sex offender travel.

An additional purpose is to allow assistance to foreign countries to establish systems to identify and provide notice of international travel by sex offenders against minors. The Committee anticipates that such assistance will be part of ongoing related activities conducted by the Department of Homeland Security, the Department of Justice and the Department of State with foreign governments and civil society.

Section 3. Definitions.

This section defines terms for use in the Act.

A jurisdiction is defined as a State, the District of Columbia, U.S. territories, federally recognized Indian tribes that maintain a sex offender registry, or a U.S. diplomatic or consular mission that maintains a sex offender registry.

The use of the word "convicted" or a variant thereof, used with respect to a sex offense of a minor, does not include: adjudicated delinquent as a juvenile for that offense; or convicted as an adult for that offense, unless the offense took place after the offender had attained the age of 14 years and the conduct upon which the conviction took place was comparable to or more severe than aggravated sexual abuse, or was an attempt or conspiracy to commit such an offense.

A high interest registered sex offender ("HIRSO") is a sex offender who the International Sex Offender Travel Center (the "Center"), pursuant to the Center Sex Offender Travel Guidelines, and based on the totality of the circumstances, has a reasonable belief presents a high risk of committing a sex offense against a minor in a country to which the sex offender intends to travel.

A minor is defined as an individual who has not attained the age of 18 years.

A sex offender is defined as a United States citizen or lawful permanent resident who is convicted of a sex offense against a minor, including a conviction by a foreign court, if it meets certain safeguards, and who is legally required to register with a jurisdiction.

A sex offense is defined as a criminal offense against a minor, including any Federal offense, that is punishable by statute by more than one year of imprisonment and involves any of the following: solicitation to engage in sexual conduct; use in a sexual performance; solicitation to practice prostitution (whether for financial or other forms of remuneration); video voyeurism as described in section 1801 of title 18, United States Code; possession, production, or distribution of child pornography; criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct; conduct that would violate section 1591 (relating to sex trafficking of children or by force, fraud or coercion) of title 18, United States Code, if the conduct involved interstate or foreign commerce and where the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of 18 years at the time of the conduct; or any other conduct that by its nature is a sex offense against a minor. The term "sex offender" does not include someone convicted of a foreign conviction if it was not obtained with sufficient safeguards for fundamental fairness and due process for the accused. There is a rebuttable presumption that a conviction was so obtained if it complies with the guidelines or regulations established under section 112 of the Sex Offender Registration and Notification Act. The term "sex offender" does not include an offense involving consensual sexual conduct if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.

Section 4. Sex Offender Travel Reporting Requirement.

Subsection 4(a) establishes the requirement that a sex offender must report to a jurisdiction where he or she is registered before leaving from or arriving into the United States. The sex offender must report no later than 30 days before the date of travel. In individual cases in which the Center determines that a personal or humanitarian emergency, business exigency, or other situation renders the 30-day deadline impracticable or impossible, then the notice must be given as early as possible. The jurisdiction notified is to in turn notify the Center within 24 hours or the next business day, whichever is later. This reporting requirement takes effect 425 days after the Act is enacted or after a sex offender has been notified of the duty to report travel, whichever is later, and terminates when the sex offender is no longer required to register in any jurisdiction for a sex offense. Not later than 395 days after the Act is enacted, the Center must notify all jurisdictions of the requirement to receive sex offender travel notifications and the means for conveying such notices to the Center.

Given the important role of the jurisdictions in furthering the purposes of this Act, the Committee expects that the Center will consult with the jurisdictions or their representatives in the development of the form of notice of the travel reporting requirement that must be provided to the sex offender, the sex offender travel

report and the means of conveying such reports from the jurisdiction to the Center.

Subsection 4(b) requires that the Department of Homeland Security (DHS), in coordination with the Attorney General and the Secretary of State, establish rules, no later than one year after the date of enactment, setting forth the procedures and reporting information for the above reporting requirement. The rules must provide appropriate transitional provisions, written in consultation with the jurisdictions, in order to make the phase-in of the Act's requirements practicable.

Subsection 4(b) includes a list of information that the sex offender must provide in the travel report, including "all e-mail addresses." The Committee acknowledges that, while the provision of e-mail addresses is important in the context of furthering the purposes of this legislation, individuals frequently add or change e-mail addresses, and someone may inadvertently forget to list an e-mail address (for example, one that has not been used for some time). It is not the intent of the Committee to criminalize an inadvertent omission to list an e-mail address that does not involve any other criminal conduct. The Committee expects that prosecutorial discretion will be used only to prosecute the omission of an e-mail address when such omission was intentional for the purposes of misleading or concealing information from law enforcement.

Pursuant to subsection 4(c), a sex offender may be charged a fee of up to $25 when he or she reports the intent to travel internationally. The fee can be increased no sooner than 30 days after consultation with Congress. It must be waived if the sex offender shows that the fee would impose an undue financial burden. The money collected from the fees can only be used for the purposes of travel reporting and risk assessment process, and must be shared "equitably" with the jurisdiction that processes the report.

If a fee is charged, it is to be collected from the sex offender by the jurisdiction at the time the report is filed. The jurisdiction is to transmit the entire fee amount to the Center. The Center should periodically assess such fee collection, and return a reasonable percentage to the jurisdiction.

The authorization for any fee collected pursuant to this subsection 4(c) is intended by the Committee to further the purposes of this Act by subsidizing the cost of processing sex offender travel reports that will be incurred by both the jurisdictions and the Center. The Committee recognizes that the fee is unlikely to cover such costs completely. In determining what portion of any such fee should be given to the jurisdiction processing the travel report, the Center should take into account the burden incurred by the jurisdiction in processing the report (which may vary depending on the jurisdiction's capacity in general and the number of reports it must process during any given period of time) and the costs incurred by the jurisdiction relative to those incurred by the Center. Whether the revenues from the fee are ultimately disbursed to the respective jurisdictions or the Center, the Committee emphasizes that such revenues are to be utilized exclusively to further the purposes of this Act.

Subsection 4(d) establishes a criminal penalty which may consist of a fine or imprisonment up to 10 years, or both (the same penalty as for failure to register domestically under the National Sex Of-

fender Registration and Notification Act (SORNA)), for knowingly failing to report as required above or to register with a U.S. diplomatic mission in the case of child sex offenders living abroad. The penalty specifies that it applies only after the sex offender has been notified of the requirement to report or register. A defendant being prosecuted for a violation of this provision would be entitled to the affirmative defense—also provided in SORNA—that uncontrollable circumstances prevented him or her from complying; the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to report or register; and the individual complied as soon as such circumstances ceased to exist.

A sex offender residing abroad at the time of the passage of this Act is subject to the registration and travel reporting requirement established by this Act only if and for such time as the sex offender would be required to register in his or her jurisdiction of conviction if he or she were residing in the jurisdiction of conviction and after either: 1) he or she has provided the signed form acknowledging notification of the obligation to register and report travel in accordance with section 4(e)(2) of the Act; or 2) a consular or other U.S. Government official properly certifies that the sex offender was duly informed of the requirements and refused to sign a form acknowledging that such information had been provided.

Subsection 4(e) mandates that when an official is required to notify a sex offender of a duty to register in a jurisdiction, the official must also notify the sex offender of the duty and procedure to report international travel, including travel from a foreign country to the U.S., and to register with a U.S. diplomatic mission in the case of foreign residents. In the case of a foreign conviction, the U.S. diplomatic or consular mission is responsible for notifying the United States citizen or lawful permanent resident sex offender of the travel reporting and registration requirements. In all cases, the sex offender is required to sign an acknowledgment of such notification, and the acknowledgment is to be maintained by the jurisdiction in which the sex offender was convicted.

With respect to providing notice to sex offenders of the travel reporting and foreign registration requirements, it is not the intent of the Committee to impose an undue burden on the jurisdictions or to criminalize individuals who did not receive notice of these requirements. The Committee understands that there will be challenges in notifying sex offenders who already are on state sex offender registries at the time this Act is enacted. The Committee anticipates that such notification will take place as these sex offenders are required to appear in person within a one-year period before an official of the jurisdiction to update their registry information. Given that the jurisdictions have differing procedures for the individual registry update, the legislation itself does not mandate the means for providing notice to those who are subject to the reporting requirement at the time the legislation takes effect. It is expected that the Attorney General will consult extensively with each jurisdiction to determine the most effective and efficient means of providing notice to this population.

Subsection 4(f) provides that within one year after the Act is enacted, DHS must establish a system to identify and monitor sex offenders who, for legitimate reasons, regularly transit across the

borders between the U.S. and Mexico, or between the U.S. and Canada, and submit a report to Congress about such system.

Section 5. Foreign Registration Requirement for Sex Offenders.

This section requires a U.S. diplomatic or consular mission in each country to maintain a non-public registry for sex offenders against minors from the U.S. residing in that country. According to subsection 5(a), the foreign registries must be established within 13 months after enactment of the Act.

Pursuant to subsection 5(b), a U.S. child sex offender residing in a foreign country for more than 30 consecutive days or for more than 30 days within a 6-month period must register at the U.S. diplomatic or consular mission in that country. The registration requirement begins when the registry in that country is established and the sex offender has been notified of the registration requirement. The requirement applies as long as the sex offender remains in the country, or until such time has elapsed as the sex offender would have otherwise been required to register in the state of conviction. In the case of a foreign conviction, the sex offender must register for the time period specified in the Sex Offender Registration and Notification Act for the sex offense involved.

Subsection 5(d) specifies the information that must be provided by the sex offender, the Attorney General, and the diplomatic mission for the child sex offender registry established under this section. The list of information that a sex offender must provide under Subsection 5(d) includes "all e-mail addresses." The Committee acknowledges that, while the provision of e-mail addresses is important in the context of furthering the purposes of this legislation, individuals frequently add or change e-mail addresses, and someone may inadvertently forget to list an e-mail address (for example, one that has not been used for some time). It is not the intent of the Committee to criminalize an inadvertent omission to list an e-mail address that does not involve any other criminal conduct. The Committee expects that prosecutorial discretion will be used only to prosecute the omission of an e-mail address when such omission was intentional for the purposes of misleading or concealing information from law enforcement.

With respect to information that must be obtained from a jurisdiction to register a child sex offender at a diplomatic or consular mission, the Committee expects that the Attorney General will consult with the jurisdictions or their representatives in developing the most appropriate and feasible means for obtaining and transmitting such information from the jurisdiction to the mission, given the important role of the jurisdictions in furthering the purposes of this Act.

Pursuant to subsection 5(e), the child sex offender must update the information on the registry every six months by appearing at any diplomatic or consular mission in the country of residence. If the mission is not the mission where the registry is maintained, then the updated information must be forwarded to the appropriate mission.

Subsection 5(f) requires that the U.S. diplomatic or consular mission forward new or changed information on its sex offender registry to the Attorney General for purposes of updating the National Sex Offender Registry and informing domestic law enforcement.

The mission must forward new or changed information to the Attorney General within 24 hours or the next business day, whichever is later, and the Attorney General must in turn transmit such information to the State of legal residence or State of last known address. Subsection 5(g) states that all domestic law enforcement must be given access for official purposes to information on the sex offender registries maintained by U.S. diplomatic missions.

Subsection 5(h) states that, in general, the information on the registry maintained by a diplomatic mission is not to be made available to the general public. However, an exception is made for entities in the country of the diplomatic mission that provide direct services to minors, that are official law enforcement, or that are investigative entities affiliated with official law enforcement for purposes of investigating a possible sex offense against a minor. These entities, referred to as "eligible entities," may request information from the U.S. official designated in the diplomatic mission to receive such requests. The designated official, in consultation with the head of mission, has the sole discretion as to whether and to what extent to provide information about a particular sex offender. If the designated official decides to release information from the registry, they can do so only after obtaining a written certification from the eligible entity that the entity will provide access to the information only to persons designated in the certificate, that the information will be used only for employment or volunteer screening, or for law enforcement purposes, and specified steps will be taken to safeguard the confidentiality of the information. If the eligible entity fails to comply with the certificate provisions, it may be denied future access to information at the discretion of the designated official. The employing agency of the designated official may charge the eligible entity a reasonable fee for providing information on the sex offender registry. The diplomatic or consular mission that maintains a sex offender registry should make a reasonable effort to notify eligible entities within the country, particularly schools that hire foreign teachers, of the possibility of obtaining information on the registry, and the process for requesting such information.

In making this exception for access to eligible entities that provide direct services to minors, the Committee is taking into account entities such as schools and other educational facilities for minors, orphanages and day care centers. According to information obtained by the Committee, child sex predators seek employment or volunteer opportunities at such entities in order to obtain access to children to sexually exploit them. The purpose of this section is to provide these entities with a means to verify that United States citizens and lawful permanent residents who apply to work or volunteer at such entities are not known child sex offenders.

Subsection 5(i) states that when a U.S. diplomatic or consular mission determines that a U.S. sex offender has failed to comply with the registration requirement of this section, the mission must notify the Attorney General and revise the sex offender registry to reflect the nature of such failure.

Subsection 5(j) amends the Sex Offender Registration and Notification Act (SORNA) so that the Attorney General may use the resources of Federal law enforcement, including the U.S. Marshals

Service, to assist in locating and apprehending sex offenders who violate the registration requirements of this section.

Section 6. International Sex Offender Travel Center.

This section establishes the International Sex Offender Travel Center that is responsible for making high interest registered sex offender determinations and for notifying destination countries of travel by such individuals, when appropriate.

Subsection 6(a) requires that the President establish the Center within 90 days of the enactment of the Act.

Subsections 6(b) and (c) state that the Center is to be headed by ICE, and is to include relevant officials from the Department of Homeland Security, Department of State, Department of Justice, and other officials as determined by the President.

Subsection 6(d) lists the activities of the Center, which are: to cooperate with jurisdictions to implement the means for transmitting travel reports from that jurisdiction to the Center; to offer to provide training to officials within the jurisdictions who will be responsible for implementing any aspect of the travel reporting system prior to its implementation; to establish a means to process inquiries from sex offenders as to whether they are required to report international travel pursuant to this Act; to conduct assessments of sex offender travel pursuant to section 7; to establish a panel to review and respond within one week to appeals from sex offenders determined to be high interest registered sex offenders; to transmit notice of international travel of high interest registered sex offenders to the Secretary of State, with an advisory as to whether the period of validity of the sex offender's passport should be limited to one year or such period as the Secretary determines to be appropriate; to establish a system to maintain and archive all relevant information related to the sex offender travel assessments and high interest registered sex offender appeals; to establish an annual review process to ensure that the Center Sex Offender Travel Guidelines are being consistently and appropriately implemented; and, to establish a means to identify sex offenders who travel without notice as required by section 4. The panel that is established to review determinations that an individual is a high interest registered sex offender is to consist of individuals from the Department of Justice, Department of State, and the Department of Homeland Security Office for Civil Rights and Civil Liberties.

Pursuant to subsection 6(e), the Center, in its sole discretion, may transmit notice of impending or current international travel of high interest registered sex offenders to the countries of destination. Such transmission can take place only after the completion of any appeal requested by the high interest registered sex offender determination. If the Center has reason to believe that transmission of the notice poses a risk to the life or well-being of the high interest registered sex offender, then the Center must make every reasonable effort to warn the sex offender of such risk in the travel report receipt confirmation provided to the sex offender pursuant to section 7(c)(2) (see discussion below) before transmitting the notice to the destination country.

Subsection 6(f) requires that the Center consult with: the National Center for Missing and Exploited Children, ECPAT–USA, World Vision, and other relevant non-governmental organizations;

the governments of countries interested in cooperating in the creation of an international sex offender travel notification system, or that are primary destination or source countries for international sex tourism; and, Internet service providers regarding available and potential technology to facilitate the implementation of an international sex offender travel notification system.

Subsection 6(g) authorizes DHS and the State Department to provide technical assistance to foreign authorities to assist in the establishment of the notification system established under this section.

Section 7. Center Sex Offender Travel Guidelines.

Subsection 7(a) requires that the Center issue the Center Sex Offender Travel Guidelines for the assessment of child sex offenders who report their intention to travel internationally or who are reported by law enforcement for purposes of determining whether such sex offenders are "high interest registered sex offenders." The Committee expects that the Center will consult an array of relevant experts from multiple disciplines in the development of these guidelines, including psychologists with significant experience working with or studying the behavior of sex offenders against minors.

Subsection 7(b) provides that domestic law enforcement entities or officials who have reasonable grounds to believe that a sex offender is traveling outside the U.S. and may engage in a sex offense against a minor may notify the Center. No later than 425 days after the Act's enactment, the Center is to notify all known domestic law enforcement of the possibility of conveying such information to the Center.

Subsection 7(c) states that no later than 7 days prior to the child sex offender's departure date, the Center must provide the sex offender with written confirmation of receipt of the travel report. The written communication must advise the sex offender: that he/she should have the communication in his/her possession when he/she departs from and arrives in the United States; that the communication shows compliance with the travel reporting requirement if travel is commenced and completed within seven days before or after the date of travel indicated in the travel report; on the procedure that the sex offender may follow if he/she encounters an emergency or other unforeseen circumstance that prevents him/her from traveling within seven days of the dates specified in the travel report and he/she needs to change the travel period indicated in the travel report; and of the requirement to register with a U.S. embassy or consulate pursuant to section 5 if the sex offender remains in a foreign country for more than 30 days.

The same subsection stipulates that if the child sex offender is traveling from the United States, the written communication must indicate either that the destination country is not being notified of the sex offender's travel, or that the destination country is being notified that the sex offender is a high interest registered sex offender and intends to travel to such country. If notice is being given to the destination country, the child sex offender must be informed that a review by an appeals panel of this determination is available together with an explanation of the process for requesting such review. In the latter case, if the Center has reason to believe

that transmission of the notice poses a risk to the life or well-being of the high interest registered sex offender, then a warning of such risk must also be included in the written communication.

Pursuant to subsection 7(d), the Center must submit a report containing the Guidelines to Congress in a manner consistent with the protection of law enforcement-sensitive information when the Guidelines are issued.

Section 8. Authority to Restrict Passports.

Section 8 authorizes the Secretary of State to revoke the passport or passport card of an individual convicted in a foreign country of a sex offense until the individual returns to the U.S. and is determined eligible for the reissuance of the passport or passport card. This section also authorizes the Secretary of State to limit to one year or such period of time as the Secretary determines appropriate, the passport or passport card of a high interest registered sex offender. However, in no case shall a United States citizen be precluded from entering the United States. The Secretary of State may, prior to revocation, limit a previously issued passport only for return to the United States, or may issue a limited passport that only permits return travel to the United States.

Section 9. Immunity for Good Faith Conduct.

This section grants immunity to the Federal Government, jurisdictions, political subdivisions of jurisdictions and their employees for good faith conduct under this Act.

Section 10. Sense of Congress Provisions.

Section 10 encourages the President to negotiate bilateral agreements with foreign governments to further the purposes of the Act, including by: establishing systems to receive and transmit sex offender travel notices; requiring Internet service providers and other private companies located in foreign countries to report evidence of child exploitation; and, establishing mechanisms for private companies and NGOs to report voluntarily suspected child pornography or exploitation to foreign governments or, in cases involving U.S. citizens, the nearest U.S. embassy.

To better protect children from sexual exploitation, this section also urges the President to strongly encourage those countries with an age of consent to sexual activity *below* the age of 16 to raise the age of consent to sexual activity to *at least* the age of 16, and those countries that do not criminalize the appearance of persons below the age of 18 in pornography or the engagement of persons below the age of 18 in commercial sex transactions to prohibit such activity.

This section further encourages the President to formally request foreign governments to notify the U.S. when a U.S. citizen has been arrested, convicted, sentenced or completed a prison sentence for a sex offense against a minor in that country.

Section 11. Enhancing the Minimum Standards for the Elimination of Trafficking.

Section 11 would amend the minimum standards (section 108(b)) in the Trafficking Victims Protection Act (TVPA) by adding the following language to subsection (4): "(b) Criteria.—In determinations

under subsection (a)(4) (whether a government is making serious and sustained efforts to eliminate severe forms of trafficking in persons), the following factors should be considered as indicia of serious and sustained efforts to eliminate severe forms of trafficking in persons: . . . (4) whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons, including cases involving nationals of that country who are suspected of engaging in severe forms of trafficking of persons in another country." "Severe forms of trafficking of persons" is defined in the TVPA as including sex trafficking in which the person induced to perform a commercial sex act has not attained 18 years of age.

It has been reported that nationals from countries currently designated as Tier 1 in the State Department's Trafficking in Persons report are escaping investigation and prosecution for the trafficking of minors in other countries because their own governments either are not cooperating in their criminal investigation or may even be complicit in assisting them to escape from the country where the crime was allegedly committed. If the reports are true, such failure or cooperation is inconsistent with a Tier 1 ranking, and must be given considerable weight in the tier ranking determinations.

Section 12. Special Report on International Mechanisms Related to Traveling Child Sex Offenders.

Section 12 requires that not later than one year after the date of enactment of the Act, the Secretary of State, in consultation with the Attorney General, provide Congress with a report containing the following information, to the extent such information is available from the government concerned or from other reliable sources: a list of countries that have or could easily acquire the technological capacity to identify child sex offenders who reside within the country; a list of those countries that utilize electronic means to identify and track the current status of such child sex offenders, and a summary of any additional information maintained by the government with respect to sex offenders;

This section also requires that the report list those countries that currently provide, or may be willing to provide, information about a child sex offender who is traveling internationally to the destination country. With respect to those countries that currently notify destination countries that a child sex offender is traveling to that country, the report must indicate: the manner in which such notice is transmitted; how many notices are transmitted on average each year, and to which countries; whether the child sex offenders whose travel was so noticed were denied entry to the destination country on the basis of such notice; details as to how frequently and on what basis notice is provided, such as routinely pursuant to a legal mandate, or by individual law enforcement personnel on a case-by-case basis; how child sex offenders are defined for purpose of providing notice of travel by such individuals; and, what international cooperation or mechanisms currently are unavailable and would make the transmission of such notifications more efficacious in terms of protecting children. With respect to those countries that are willing but currently do not provide such information, the report must state the reason why destination countries are not notified.

Section 12 further requires a list of those countries that have an established mechanism to receive reports of sex offenders intending to travel from other countries to that country, together with a description of the mechanism; the number of reports of arriving sex offenders received in each of the past 5 years; and, what international cooperation or mechanisms currently are unavailable and would make the receipt of such notifications more efficacious in terms of protecting children.

Finally, this section mandates that the report list those countries that do not provide information about a sex offender who is traveling internationally to the destination country, and the reasons for such failure. If the failure is due to a legal prohibition within the country, then the report must explain the nature of the legal prohibition and the reason for such prohibition.

Section 13. Assistance to Foreign Countries to Meet Minimum Standards for the Elimination of Trafficking.

Section 13 strongly encourages the President to provide assistance to foreign countries for the purpose of establishing a system to identify sex offenders and provide and receive notification of child sex offender international travel.

Section 14. Congressional Reports.

Section 14 requires that the President report to Congress initially on certain aspects of this Act and then annually on numerous other aspects, so that Congress can monitor closely the implementation of the International Megan's Law.

Section 15. Authorization of Appropriations.

Section 15 authorizes "such sums as may be necessary" for FY 2011–2015 for implementation of this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

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PART I—CRIMES

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CHAPTER 109B—SEX OFFENDER AND CRIMES AGAINST CHILDREN REGISTRY

Sec
2250. Failure to register *or report international travel*.

§ 2250. Failure to register *or report international travel*

(a) * * *

(b) AFFIRMATIVE DEFENSE.—In a prosecution for a violation under subsection (a) *or (d)*, it is an affirmative defense that—

(1) * * *

* * * * * * *

(c) CRIME OF VIOLENCE.—

(1) IN GENERAL.—An individual described in subsection (a) *or (d)* who commits a crime of violence under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States shall be imprisoned for not less than 5 years and not more than 30 years.

(2) ADDITIONAL PUNISHMENT.—The punishment provided in paragraph (1) shall be in addition and consecutive to the punishment provided for the violation described in subsection (a) *or (d)*.

(d) Whoever knowingly fails to register with United States officials in a foreign country or to report his or her travel to or from a foreign country, as required by the International Megan's Law of 2010, after being duly notified of the requirements shall be fined under this title or imprisoned not more than 10 years, or both.

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SECTION 142 OF THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT

SEC. 142. FEDERAL ASSISTANCE WITH RESPECT TO VIOLATIONS OF REGISTRATION REQUIREMENTS.

(a) IN GENERAL.—The Attorney General shall use the resources of Federal law enforcement, including the United States Marshals Service, to assist jurisdictions in locating and apprehending sex offenders who violate sex offender registration requirements*, including under the International Megan's Law of 2010*. For the purposes of section 566(e)(1)(B) of title 28, United States Code, a sex offender who violates a sex offender registration requirement shall be deemed a fugitive.

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SECTION 108 OF THE TRAFFICKING VICTIMS PROTECTION ACT OF 2000

SEC. 108. MINIMUM STANDARDS FOR THE ELIMINATION OF TRAFFICKING.

(a) * * *

(b) CRITERIA.—In determinations under subsection (a)(4), the following factors should be considered as indicia of serious and sustained efforts to eliminate severe forms of trafficking in persons:

(1) * * *

* * * * * * *

(4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons*, including cases involving*

nationals of that country who are suspected of engaging in severe forms of trafficking of persons in another country.

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