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## **International Megan’s Law to Prevent Demand for Child Sex Trafficking: Misguided and Ineffective Policy**

International Megan’s Law (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. RSOL is especially concerned about the amendment to HB 515, added on December 17, 2015 by the Senate regarding identifying marks on the passport.

**Marks are an Un-American branding.** Putting marks on a passport for an unsupervised, fully-reintegrated United States Citizen amounts to branding, as citizens use these in many contexts (banking, shopping, etc). Branding is un-American cruel and unusual punishment, and echoes some of the worst practices of totalitarian regimes.

**Marks are completely unnecessary.** Officials are already identifying Registered Citizens at check-points via instant online background checks, then making notifications as needed. Thus this is a wasted expenditure of time and funds.

**Violates US Citizen Rights.** This provision can be challenged in court on several grounds:

**Equal Protection Clause.** IML creates two classes of American citizens: those who may travel freely, and those who must notify authorities before leaving the country. They have a recognized right to travel freely without interference from their government. IML violates the International Covenant on Civil and Political Rights (1966)<sup>1</sup> by interfering with the free movement of citizens.

**Ex Post Facto Clause.** It punishes registered citizens through loss of freedom of movement, after they have completed their court-ordered punishment. The majority of Registered Citizens have long since exited the criminal justice system and have lived years, even decades, in the community without re-offending.

**14th Amendment right of due process.** The AWA listing of conviction status in no way reflects a person’s actual re-offense risk<sup>2</sup>; however the Angel Watch Center (AWC) would proffer Registered Citizens’ federally protected information to foreign authorities with the

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<sup>1</sup> 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.

<sup>2</sup> 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>

clear implication of dangerousness with no opportunity to prove the innocent nature of their travel in advance. Thus, IML would violate due process rights of Registered Citizens traveling internationally.

### **First Amendment right of association.**

**Robbs citizens of pursuit of happiness.** Citizens have a right to pursue happiness, which for many involves travel with family, satisfying careers as pilots, or being with a dying relative in his or her final days.

**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 so without complying with the law, thus risking arrest and prosecution upon return home.

**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. *There is no logical connection between these two facts.* Domestic studies show over 95% of arrests for sexual crimes are of first time offenders, not Registered Citizens.<sup>3</sup> In fact, Registered Citizens have an overall low likelihood of re-offending.<sup>4</sup> Higher socio-economic status (which permits international travel), may correlate with even lower recidivism risk.<sup>5</sup>

*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.* Only a tiny fraction of all international travel is by Registered Citizens, and a tinier fraction of that number pose any risk for sex trafficking.<sup>6</sup> Given this critical flaw, **IML would be a huge bureaucratic expense, with little if any effect at reducing international sex trafficking.**

**Puts American travelers in harm's way.** Many Registered Citizens were originally convicted of behavior which would not be prosecuted elsewhere.<sup>7</sup> Many Registered Citizens' convictions involved neither children nor trafficking, and yet the AWC notification would strongly imply risk of some generic "predatory behavior" related to sex trafficking. This could and would be interpreted in any manner of ways by officials in the destination country. A Registered Citizen could be

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<sup>3</sup> 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

<sup>4</sup> 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>

<sup>5</sup> 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.

<sup>6</sup> 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: "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act." 22 U.S. Code § 7102 (10).

<sup>7</sup> 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.

harassed or even harmed by officials or others in the community who are notified of their presumably dangerous background.<sup>8</sup>

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<sup>8</sup> 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.