

H.R. 5138 - International Megan's Law of 2010
Sponsored by Rep. Christopher H. Smith

Section-By-Section Analysis

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.

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

(a) Findings:

(1) and (2) explain the crime that was committed against Megan Kanka and the Megan’s Law adopted by Congress in 1996 as a means to encourage States to protect children by identifying the whereabouts of sex offenders and providing the means to monitor their activities.

(3) – (8) explain the global phenomenon of the sexual exploitation of minors including child sex tourism, and how sexual exploitation affects minors.

(9) – (13) state that most victims of sex offenders are minors, that media reports indicate that known sex offenders are travelling internationally, that U.S. Immigration and Customs Enforcement has taken a leading role in the fight against the sexual exploitation of minors abroad, and that 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.

(14) states that sex offenders are also attempting to enter the United States and provides an example.

(15) notes that foreign governments need to be encouraged to notify the United States when a known sex offender is entering our borders.

(16) and (17) list the reasons why child sex tourists travel overseas to commit sexual offenses against minors and state 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.

(18) and (19) state the obligation of the United States under the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography to take all necessary steps to strengthen international cooperation for the prevention and detection of those responsible for acts involving the sale of children, child prostitution, child pornography, and child sex tourism.

(20) – (22) state 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.

(23) states that the United States, with its international law enforcement relations, technological and communications capability, and established sex offender registry system, should now take the opportunity to lead the global community 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.

(b) Declaration of Purposes -- 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:

- (1) 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;
- (2) 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;
- (3) 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;
- (4) 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;
- (5) 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;
- (6) 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; and
- (7) providing assistance to foreign countries to establish systems to identify and provide notice of international travel by sex offenders against minors.

Section 3. Definitions

This section defines certain terms used in the Act, including:

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, and who is legally required to register with a jurisdiction.

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

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:

- (i) Solicitation to engage in sexual conduct.
- (ii) Use in a sexual performance.
- (iii) Solicitation to practice prostitution (whether for financial or other forms of remuneration).
- (iv) Video voyeurism as described in section 1801 of title 18, United States Code.
- (v) Possession, production, or distribution of child pornography.
- (vi) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.
- (vii) 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.
- (viii) Any other conduct that by its nature is a sex offense against a minor.

A sex offender does not include someone convicted of:

- (i) 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; or
- (ii) 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.

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

“**Convicted**” or a variant thereof, 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.

Section 4. Sex Offender Travel Reporting Requirement

- (a) **Duty to Report** – 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.

- (b) **Rules for Reporting** – requires that the Department of Homeland Security, 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.
- (c) **Fee Charge** – ICE may charge sex offenders who report their intent to travel a fee of up to \$25. The fee can be increased no sooner than 30 days after consultation with Congress. It is to be collected by the jurisdiction at the time the report is filed, and 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.
- (d) **Criminal Penalty for Failure to Register or Report** – 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 Offender 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.

- (e) **Duty to Notify Sex Offenders of Reporting and International Registration Requirement** – at the same time as 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 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.
- (f) **Procedures with Respect to Sex Offenders Who Regularly Transit Across the United States Borders** -- Within one year after the bill is enacted, DHS must establish a system to identify and monitor sex offenders who regularly transit across the borders between the U.S., Mexico and Canada for legitimate reasons, and submit a report to Congress about such system.

Section 5. Foreign Registration Requirement for Sex Offenders

- (a) **In General** – 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. The foreign registries must be established within 13 months after the bill's enactment.
- (b) **International Registry Requirement for Sex Offenders** – a U.S. 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 so 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.
- (c) **Criminal Penalties for Nonregistration** – see section 4(d).
- (d) **Information Required in the Registration** – specifies the information that must be provided by the sex offender, the Attorney General, the jurisdiction of conviction, or the diplomatic mission.
- (e) **Periodic In-Person Verification** –the 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.

- (f) **Transmission of Registry Information to the Attorney General** – the U.S. diplomatic or consular mission must 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.
- (g) **Access to Registry Information by United States Law Enforcement** – all domestic law enforcement must be given access for official purposes to information on the sex offender registries maintained by U.S. diplomatic missions.
- (h) **Other Access to Registry Information** -- *In general*, the information on the registry maintained by a diplomatic mission is not to be made available to the general public.

An exception is made for entities in the country of the diplomatic mission that provide direct services to minors, that are official law enforcement, and 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 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.

- (i) **Actions to be Taken if a Sex Offender Fails to Comply** – 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.

- (j) **Federal Assistance Regarding Violations of Registration Requirements** – 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. SORNA includes an authorization of appropriations “for such sums” to implement this provision.

Section 6. International Sex Offender Travel Center

- (a) **Establishment** – the President is required to establish the Center within 90 days of the enactment of the bill.
- (b) **Participants** – the Center 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.
- (c) **Leadership** – The Center is to be headed by ICE.
- (d) **Activities** -- The Center is to:
 - (1) cooperate with jurisdictions to implement the means for transmitting travel reports from that jurisdiction to the Center.
 - (2) 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.
 - (3) establish a means to process inquiries from sex offenders as to whether they are required to report international travel pursuant to this Act.
 - (4) conduct assessments of sex offender travel pursuant to section 7.
 - (5) establish a panel to review and respond within [one] week to appeals from sex offenders determined to be high interest registered sex offenders. The panel is to consist of individuals from the Department of Justice, Department of State, and Department of Homeland Security Office for Civil Rights and Civil Liberties.
 - (6) 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.
 - (7) establish a system to maintain and archive all relevant information related to the sex offender travel assessments and high interest registered sex offender appeals.
 - (8) establish an annual review process to ensure that the Center Sex Offender Travel Guidelines are being consistently and appropriately implemented.
 - (9) establish a means to identify sex offenders who travel without notice as required by section 4.

- (e) **Additional Activity Related to Transmission of Notice** – 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 warn the sex offender of such risk before transmitting the notice to the destination country.
- (f) **Consultations** – The Center is required to consult with:
 - (1) NCMEC, ECPAT-USA, World Vision, and other relevant NGOs.
 - (2) 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.
 - (3) Internet service providers regarding available and potential technology to facilitate the implementation of an international sex offender travel notification system.
- (g) **Technical Assistance** – DHS and the State Department may 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.

- (a) **Issuance of Center Sex Offender Travel Guidelines** – within 180 days after enactment of this bill, the Center must issue the Center Sex Offender Travel Guidelines for the assessment of sex offenders who report their intention to travel internationally or who are reported by law enforcement (pursuant to subsection b) for purposes of determining whether such sex offenders are “high interest registered sex offenders.”
- (b) **Law Enforcement Notification** – Domestic law enforcement entities or officials who have reasonable grounds to believe that a sex offender is travelling outside the U.S. and may engage in a sex offense against a minor may notify the Center. The Center is to notify all known domestic law enforcement of the possibility of conveying such information to the Center no later than 425 days after the bill’s enactment.
- (c) **Travel Report Receipt Confirmation** – no later than 7 days prior to the 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; 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; the procedure that the sex offender may follow if he/she encounters an emergency or other unforeseen circumstance that prevents him/her from travelling 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 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.

If the sex offender is travelling 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 sex offender must also 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.

- (d) **Report** – Upon issuance of the Center Sex Offender Travel Guidelines, the Center must submit a report containing the Guidelines to Congress in a manner consistent with the protection of law enforcement-sensitive information.

Section 8. Authority to Restrict Passports –Authorizes the Secretary of State to:

- (1) 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.
- (2) 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.

In no case shall a United State 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 – 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

- (a) **Bilateral Agreements** – Sense of Congress that the President should negotiate bilateral agreements with foreign governments to further the purposes of the Act, including by:
- (1) establishing systems to receive and transmit sex offender travel notices;
 - (2) requiring Internet service providers and other private companies located in foreign countries to report evidence of child exploitation; and
 - (3) establishing mechanisms for private companies and NGOs to report voluntarily suspected child pornography or exploitation to foreign governments or, in cases involving US citizens, the nearest U.S. embassy.
- (b) **Minimum Age of Consent** – To better protect children from sexual exploitation, this provision is a sense of Congress that the President should 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.

- (c) **Notification to the U.S. of Sex Offenses Committed Abroad** – Sense of Congress that the President should 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 –

This section would amend the minimum standards (section 108(b)) in the Trafficking Victims Protection Act (TVPA) by adding the following underlined language to paragraph (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.

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

The Secretary of State, in consultation with the Attorney General, must 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:

- (1) A list of countries that have or could easily acquire the technological capacity to identify child sex offenders who reside within the country;
- (2) 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;
- (3)
 - (A) A list of those countries that currently provide, or may be willing to provide, information about a child sex offender who is travelling internationally to the destination country;
 - (B) With respect to those countries that currently notify destination countries that a child sex offender is travelling to that country:
 - (i) the manner or manners in which such notice is transmitted;

- (ii) how many notices are transmitted on average each year, and to which countries;
 - (iii) were the child sex offenders whose travel was so noticed denied entry to the destination country on the basis of such notice;
 - (iv) 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 on a case-by-case basis;
 - (v) how child sex offenders are defined for purpose of providing notice of travel by such individuals; and
 - (vi) what international cooperation or mechanisms currently are unavailable and would make the transmission of such notifications more efficacious in terms of protecting children.
- (C) With respect to those countries that are willing but currently do not provide such information, the reason why destination countries are not notified.
- (4) (A) 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;
- (B) a description of the mechanism identified in subparagraph (A);
- (C) the number of reports of arriving sex offenders received in each of the past 5 years;
- (D) what international cooperation or mechanisms currently are unavailable and would make the receipt of such notifications more efficacious in terms of protecting children.
- (5) A list of those countries that do not provide information about a sex offender who is travelling internationally to the destination country, and the reason or reasons for such failure. If the failure is due to a legal prohibition within the country, then an explanation of the nature of the legal prohibition and the reason for such prohibition is requested.

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

The President is strongly encouraged 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

The President must 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 -- Authorizes “such sums as may be necessary” for FY 2011 – 2015 for implementation of this Act.