

make this section any more complicated than necessary.

As an example, let's say Offender 1 commits a covered offense in state A in 1999 and then is released in 2003 and commits a covered offense in state B in 2005 and is convicted in that same year. DOJ should authorize a fund transfer if State A's term of imprisonment for the covered offense was less than the national average, using the latest sentencing data (probably from 2004). I do not expect DOJ to search back to 1999 to determine whether state A was behind the national average. Again, the national average is simply a benchmark to provide some relief to states, that do at least an average job of keeping certain violent offenders behind bars. Even if this state is average or better on sentences imposed, Aimee's Law would apply in this case if the criminal had failed to serve 85 percent of his sentence for his prior offense in 1999.

I'm more interested in murderers, rapists and child molesters serving appropriately long sentences than serving any particular percentage of their term. Most can agree, however, that a murderer, rapist, or child molester released before 85 percent of the expiration of a (minimum) sentence has been prematurely released. Most probably would agree that this would be the case for those released after 85 percent of their maximum.

As to payment schedule, the Attorney General and the state affected have great latitude in arranging the transfer. Any federal crime funds (excluding funds designated to victims) can be used so long as the funds have not already been distributed. There is also flexibility as to the term of the payment.

As has been the case for administering the truth-in-sentencing grant program and other DOJ programs, the agency will presumably need to issue guidelines. I am confident that the U.S. Department of Justice can implement the law in a manner consistent with congressional intent that is both workable and fair.

Unable to defeat Aimee's Law in the court of public opinion or in Congress, some critics are girding for a constitutional challenge. Again, I would implore them not to spend their time on an effort, that if successful, would be welcomed by the child molester community. In any event, a careful review of Supreme Court decisions suggest that a challenge would be futile.

Some critics contend that Aimee's Law could run afoul of the spending clause because it coerces states, is not unambiguous and could induce the states to take action that is unconstitutional. The suggestion has also been raised that there could be a violation of the ex post facto clause.

In upholding the spending power of Congress in *South Dakota v. Dole*, the Supreme Court did, indeed, place limits on this power: (1) the requirement must be related to the purpose of the funding; (2) the condition can pressure but not coerce; (3) the condition cannot induce unconstitutional behavior; and (4) the condition must be unambiguous. A careful review exonerates Aimee's Law of all raised constitutional issues.

Aimee's Law is clearly related to the source of funding, dollars to fight crime. No one even contests this point.

While Aimee's Law certainly provides encouragement to states to increase sentences

and improve post-incarceration policies, it does not rise to the level of coercion. Some opponents of the measure suggest that Aimee's Law does not create a large enough penalty to encourage states to take this action, since roughly seven out of eight repeat offenses occur in the same state as the first offense. I do believe that the transfer mechanism will result in increased public safety efforts on the part of the states, but the bill does so in a fair and reasonable manner.

Aimee's Law does not pressure states to adopt unconditional means to protect public safety, only reasonable ones. There are several constitutional steps states can take to reduce their potential liability under Aimee's Law. The law will provide a powerful incentive for states to better communicate with each other concerning each other's convicts. It should also provide increased incentive for the states to amend the Interstate Compact to give states the right to reject dangerous out-of-state offenders. States can also do a better job of monitoring their own released prisoners. They may also civilly commit certain offenders. I have never suggested nor would I condone a state that took action that exceeded constitutional boundaries.

Finally, Aimee's Law unambiguously imposes a condition on Federal money that passes constitutional muster. The language only affects federal money not yet distributed. The expectations are clear: A state will lose future federal crime dollars if it fails to protect other states from certain released criminals. The mechanism Aimee's Law uses may be novel. But, it is not constitutionally prohibited. The leading Supreme Court case on this matter, *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1 (1981) states: "[L]egislation enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions. The legitimacy of Congress' power to legislate under the spending power thus rests on whether the State voluntarily and knowingly accepts the terms of the 'contract.'" Again, Aimee's Law only involves federal crime funds not yet distributed.

Ex post facto concerns are similarly misplaced, since the clause applies to laws criminalizing behavior after that behavior has already taken place. The Supreme Court recently ruled in *Johnson v. United States*, 120 S. Ct. 1795 (2000) that for a law to have problems with this clause it must apply to conduct completed before its enactment and raise the penalty from whatever the law provided when he acted. Aimee's Law will have no effect on any particular criminal sentence already meted out. Aimee's Law does create an incentive for states to properly monitor those out of prison still under its jurisdiction. The bill should also spur states to develop laws similar to Stephanie's Law that provide for the post-incarceration civil confinement of certain dangerous sexual predators. Additionally, Aimee's Law should encourage states to increase penalties for crimes not yet committed, which is proper, constitutional, and necessary given the outrageously low sentences currently served by the average murderer, rapist, and child molester.

In conclusion, Aimee's Law will make America safer. While the safe harbor provision—

added at the insistence of the states—has added complexity to the legislation, Aimee's Law is still a workable, constitutional effort to protect innocent citizens from a completely preventable type of interstate crime. The safe harbor was added as a way to offer relief to states with an above average criminal sanctioning system. If their is concern about its applicability, it could easily be removed. But perhaps we should watch this law in action before we begin tinkering with it. And for those who would seek to undermine, weaken, or repeal it, be warned that victims from around the country, the National Fraternal Order of Police, and the supermajorities in the House and Senate who support the bill stand ready to expose and block any effort to undo the benefits of Aimee's Law.

ENVIRONMENTAL COMPLIANCE

HON. GREG WALDEN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Friday, December 15, 2000

Mr. WALDEN of Oregon. Mr. Speaker, I would like to share with my colleagues some information about a new approach being explored to transition environmental compliance from what is widely perceived as an adversarial process to a cooperative, results-oriented effort between companies and state regulators.

So far, fourteen states have formed a Multi-State Working Group (MSWG), whose focus is to develop regulatory incentives that get companies to take a more proactive, systematic approach in managing their environmental impacts.

Oregon was one of the first states to implement an incentive-based environmental regulation program, which is uniquely tied to its permitting process. Through its Green Permits Program, Oregon Department of Environmental Quality will be awarding one of its first incentive based permits to a Louisiana Pacific (LP) building products plant in Hines, Oregon.

A key component of the Green Permits program is the adoption of an environmental management system that has enabled LP's facility in Hines to go the extra mile in exceeding the operating standards set by the state of Oregon. The Hines' plant has kept their air emissions to only 10 percent of the total annual levels allowed by its Oregon Department of Environmental Quality air permit and proactively works with a Community Advisory Council in addressing community concerns. In addition, more than \$90,000 is generated each year through the plant's planer shavings recycling effort. These improvements have led to better cooperation with Oregon Department of Environmental Quality and the U.S. Environmental Protection Agency.

The Green Permits Program has several benefits including addressing a wider range of potential environmental impacts on a regular basis and increasing communication and involvement between environmental agencies, communities and companies. Also, companies can improve credibility with stakeholders in addition to potential cost saving and operational improvements.