



Testimony of Allen Gilbert, executive director, ACLU-VT, on S. 13, sex offender registry bill, March 19, 2015

I want to start by referencing the 2005 report of the Sex Offender Supervision and Community Notification Study Committee. The committee was created by the legislature in Act 14 of the 2004 session. The committee had 13 members; the members were four legislators, three commissioners of state departments, two members of the public appointed by the governor, the defender general, the executive director of the state's attorneys and sheriffs' association, and one representative each from Vermont Legal Aid and the American Civil Liberties Union.

Among the charges to the committee was determining "Whether posting information on registered sex offenders on the internet is a valuable and effective public safety tool." In the committee's report, the finding on this question was this answer: **"Currently, there is insufficient evidence to determine whether posting information about registered sex offenders on the internet is a valuable and effective public safety tool;** however, the general assembly determined through passage of Act 157 that the majority of the public feels that the internet registry provides important information that can be used to protect families and expects such information to be a matter of public record."

Since 2005, the ACLU has seen no evidence to alter this finding. The ACLU was then, and continues to be, opposed to the online posting of information on sex offenders. We do not believe registries improve public safety, and we know they make re-entry more difficult for offenders who have done their time.

The accuracy of information in any registry is important. But with online sex offender registries, it's crucial. In 2006 a New Brunswick man decided he wanted to kill some sex offenders. He looked at online sex offender registries for Maine, New Hampshire, and Vermont. He chose several Maine offenders who had completed their jail time and were living in their communities. Using addresses from Maine's registry, he went to the homes of two men and shot them dead. The killer himself was later gunned down by police in a bus headed to Boston.

The legislature recognized the importance of accuracy when it expanded the online sex offender registry in 2009. The expansion legislation **prohibited the posting of any offender's home address unless the registry – maintained by the Department of Public Safety -- received a "clean" audit from the state Auditor's Office.** "Clean" was interpreted to mean that all information was accurate. In other words, "no errors."

But audits over several years by the state Auditor's Office identified numerous continuing errors – despite the shuffling of staff, the hiring of a new director, and the purchase of a new

computer system. So this year, DPS has decided the solution is to move the goalposts. **DPS has proposed, and the Senate has concurred, that the registry may contain some percentage of “non-critical” errors and still be considered “clean.”**

In the Senate bill, a 10-percent error rate is considered acceptable.

[“Critical errors” have been described in testimony as either an inaccurate determination whether the offender should be on the registry or an incorrect calculation of the length of time the offender’s information is supposed to be posted on the registry. “Non-critical errors” are everything else.]

DPS also successfully proposed the addition of a provision relating to the sentencing of sex offenders that requires a court to certify that the information on file about the offender, his/her offense, and past offenses is correct. DPS said it is too difficult for them to collect all this information and make sure it’s accurate. So what will happen is that information will be submitted by the prosecution to the court. It’s up to the offender to review the information and challenge its accuracy; if there’s no challenge, the information will be assumed correct and certified by a judge as such.

We told the Senate Judiciary Committee that we opposed the bill and registries in general. But we stressed that if the address of an offender is to be posted, it is critically important that all information about that offender be 100-percent accurate. The committee agreed to require a no-error rate for any information connected to an offender whose street address is being posted.

You may hear in testimony by others that other states have error rates higher than 10 percent, and that 10 percent is actually pretty good. We think a 10-percent error rate is unacceptable. It’s a belt-and-suspender fix that blinks at the underlying issue. It is an unfortunate example of the cynical adage, “Good enough for government work.” The standard of getting things right can’t be met, so the standard is changed.

We believe that to the public, this fix is will be viewed as government acceptance of sub-standard work. To the offender, or to others who may have nothing to do with any crime, a mistake in an offender’s information could have dire consequences.

The ACLU asks that you not approve this bill. The approach taken by the 2009 legislature was the correct one.