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Unfavorable Response to SB220 Criminal Procedure – Lifetime Sexual Offender Supervision – Conditions, Violations, and Petitions for Discharge

Families Advocating Intelligent Registries (FAIR) seeks rational, constitutional sexual offense laws and policies. We have substantial concerns with this SB220. It would impose mandatory conditions on individuals subject to lifetime sexual offender supervision, effectively remove any discretion on the part of the sentencing court or juvenile court (as applicable) to establish reasonable and appropriate conditions supported by the circumstances of the individual case, and would potentially subject the individual to prison time and fines.

The Addition of Mandatory Conditions to Lifetime Supervision is Inappropriate

Under existing law, a sentencing court or juvenile court establishes conditions for lifetime supervision of sexual offenders, considering a list of conditions specified in Criminal Procedure 11-723(d)(3). These conditions are all to be reviewed by the court ("may include"), but are not mandatory. At the end of that statutory list is a final condition, providing the sentencing court more opportunity to tailor supervision conditions to the person and situation:

"(ix) any other condition deemed appropriate by the sentencing court or juvenile court." Criminal Procedure 11-723(d)(3)(ix)

This bill would mandate conditions relating to sentencing and parole that would include potentially unnecessary and excessive lifetime restrictions on the person being supervised. These standard and special conditions are intended to be in place for limited periods of time – connected to sentencing or parole – not lifetime. Imposition of blanket conditions for life in every case is unnecessary and duplicative.

Mandatory Conditions Appears to Remove Most Judicial Discretion

This bill effectively removes any discretion on the part of the sentencing judge and effectively removes any meaningful input by preloading the most onerous and comprehensive conditions, appearing to deny the sentencing court the ability to remove or modify mandatory parole/probation provisions once they are imposed at sentencing. This allows any violation imposed administratively, including purely technical violations (GPS errors, alcohol use) to result in up to 10 years in prison as if a new felony.

Under existing law, Criminal Procedure 11-723(d)(4) provides that the Court may adjust special conditions of lifetime sexual offender supervision. The bill would introduce the incorporation of broad standard conditions as "mandatory" conditions in new Criminal Procedure 11-723(d)(3). It is unclear (since they are deemed mandatory by use of the

term "shall include") whether those mandatory provisions can ever be modified by The Court over the course of the supervised person's life.—At a minimum, the bill should be modified to include the following provision in new Paragraph 11-723(d)(3):

"Except as provided for in Paragraph (5) of this Subsection (d), [t]he conditions of lifetime sexual offender supervision shall include: . . ."

Requirement for Polygraph Exam in Petition Is Too Broad

The bill would add a new requirement for a polygraph examination in connection with a discharge petition in 11-724(f)(5)(II).—At a minimum, the bill should be clear that the examination only cover the later of: (1) the date the individual was sentenced for the offense placing them under lifetime sexual offender supervision, or (2) the date of the individual's most recent polygraph.—This would avoid damaging confusion which would occur if matters already considered by the court at sentencing or by the sexual offender management team when making its discharge recommendations were reintroduced into the current discharge process.—This could be accomplished by adding the following language to the provision:

"(II) a polygraph examination of the person conducted by a polygraph examiner approved by the Department, covering a term no earlier than the later of: (1) the individual's sentencing date for the offense placing them under lifetime sexual offender supervision, or (2) the date of the individual's last polygraph examination;"

Unneeded Addition of State's Attorney if Court Grants Discharge Without Hearing

Under current law Criminal Procedure 11-724(f)(5)(ii), the court may approve a discharge petition only where the court "makes a finding on the record that the petitioner is no longer a danger to others."—This is after the court reviews the individual's risk assessment and receives a recommendation from the sexual offender management team that the individual no longer needs lifetime supervision.—Under the bill, the Court also will have the benefit of a polygraph as part of the record.

In our view, once The Court makes a specific finding on the record that the individual does not present a danger to others, there is no role for the State's Attorney in the process.—Under existing law, if the Court has any questions, reservations or concerns about the individual, a hearing is required, and the State's Attorney's role is clear.—We recommend that the addition of proposed Criminal Procedure 11-724(f)(6)(iii) be rejected.

For these reasons, FAIR asks that the committee return an unfavorable report.

Sincerely,



Brenda V. Jones, Executive Director
Families Advocating Intelligent Registries