

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee
On S. 1060, The Recidivism Reduction and Second Chance Act of 2007
Executive Business Meeting
August 2, 2007

The Committee today turns to the Recidivism Reduction and Second Chance Act of 2007. I was pleased to again join Senators Specter, Biden, and Brownback as an original co-sponsor of this legislation. The Second Chance Act is a good first step toward a new direction in criminal justice that focuses on making America safer by helping prisoners turn their lives around and become contributing members of society.

In recent years, this Congress and the states have passed a myriad of new criminal laws creating more and longer sentences for more and more crimes. As a result, this country sends more and more people to prison every year. There are currently more than 2 million people in jail or prison, and there are more than 13 million people who spend some time in jail or prison each year. Most of these people will at some point return to our communities. What kind of experience inmates have in prison, how we prepare them to rejoin society, and how we integrate them into the broader community when they get out are issues that profoundly affect the communities in which we live.

As a former prosecutor, I believe strongly in securing tough and appropriate prison sentences for people who break our laws. But it is also important that we do everything we can to ensure that, when these people get out of prison, they enter our communities as productive members of society, so we can start to reverse the dangerous cycles of recidivism and violence. I hope that the Second Chance Act will help us begin to break that cycle.

The Second Chance Act would fund collaborations between state and local corrections agencies, nonprofits, educational institutions, service providers, and families to ensure that offenders released into society have the resources and support they need to become constructive members of the community. The bill would require that the programs supported by these grants demonstrate measurable positive results, including a reduction in recidivism. We should be supporting good programs and demanding results for our federal tax dollars.

The bill would also set up a task force to determine ways to improve the effectiveness and efficiency of federal programs related to prisoner reentry and would authorize additional programs that would encourage employment of released prisoners, improve substance abuse treatment programs for prisoners, and assist the children of prisoners.

I want to thank Senator Biden, Senator Specter, and Senator Brownback for working with me to make a good bill even better. They accepted my suggestion to fix a provision that would have made it difficult for states without large urban areas to obtain grants. They also agreed with me that it made sense for victim services agencies to have a role in administering grants, for victims' needs to be specifically addressed by grants authorized by the bill, and for safeguards to be added to provisions aiming to integrate families of offenders in order to ensure that children are protected. Finally, they worked with me to include an important study of the collateral consequences of criminal convictions federally and in the States, which will encourage appropriate policy to help successfully reintegrate released offenders into society. All of these changes have been incorporated into the bill.

I thank the Vermont Department of Corrections and the Vermont Center for Crime Victim Services for helping me to identify these improvements and to make this bill better for the people of Vermont and the people of America. The Vermont Department of Corrections strongly supports the Second Chance Act, which gives me confidence that this legislation represents an important step in making our country safer. I hope all Senators will support this important legislation.

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Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee
On S. ____, the School Safety and Law Enforcement Improvement Act
August 2, 2007

Today the Committee will take up the School Safety and Law Enforcement Improvement Act, which responds to the tragic deaths that occurred this past April on the campus of Virginia Tech. Obviously there is no magic Congressional response that will be guaranteed to prevent another horrific school tragedy. Working with a number of Senators, we are originating this bill to combine five legislative pieces into a more comprehensive strategy. In particular, I wish to acknowledge the hard work and initiative of Senator Boxer and Senator Jack Reed from outside this Committee and the leadership of Senators Specter, Feingold, Schumer, and Durbin here.

Our Committee-originated bill seeks to enlist the States as partners in the dissemination of critical information, to distribute Federal dollars to improve the safety and security of our schools and institutions of higher education and provide equitable benefits to law enforcement serving those institutions, and to ensure that law enforcement officers may answer the call of duty wherever they may be.

A number of law enforcement and other organizations have signaled their support for this package. The Fraternal Order of Police, the National Consortium for Justice Information and Statistics (SEARCH), the International Association of Chiefs of Police, the International Association of Campus Law Enforcement Administrators, and campus police forces from around the country have all worked with us and contributed to this package. I thank them for their strong support. I will make their letters of support part of our record. Support from this cross section of organizations is a good start to building a solid bipartisan consensus for this legislation, and I hope all Senators will join in supporting this bill.

In the aftermath of the events last April at Virginia Tech, Governor Tim Kaine convened the Virginia Tech Review Panel to provide an independent, thorough, and objective incident review, and to make recommendations for improved campus safety. I commend Governor Kaine and the work of the panel and look forward to their final report. In the meantime, to order to do what we can in connection with school resuming in the fall, I hope that we will move forward today. I first listed the bill in our notice of July 5 for our business meeting on July 12. We circulated the text of the measure on July 11 expecting to allow until July 19 for all Members to be familiar with it. Nonetheless, the matter was held over on July 19, and not enough Members came to last week's business meeting to make a quorum. I hope that we can finally complete our work on this important and timely measure today.

Here is a brief outline of what the bill does:

Title I - the School Safety Enhancements Act - would improve safety and security of students both at the elementary and secondary school level, and on college and university campuses. The K-12 improvements are drawn from a bill that Senator Boxer introduced in April, and I want to thank Senator Boxer for her hard work on this issue. I also want to thank Senator Durbin for his commitment to this issue.

This title allows existing Justice Department grants to now be used for tip lines, surveillance equipment, and capital improvements to schools. It increases authorized federal funding to ease the burden on local school districts for implementing security enhancements. These improvements will make our elementary and secondary schools safer by funding much-needed infrastructure improvements, and they will enable students to report potentially dangerous situations to school administrators before they occur.

The tragic events at Virginia Tech underscore that we must be vigilant at all levels of government to ensure that our more than 4,000 colleges and universities are safe and secure. Institutions of higher education are home to more than 15 million students. They serve not only their students, but also the wider community. Campuses also contain some of our most prized and sensitive assets, such as world-class research facilities and nuclear reactors. There is a strong federal interest in ensuring the safety and security of colleges and universities. According to the Congressional Research Service, however, there is currently no federal funding targeted to help these institutions comply with existing campus security requirements, let alone to fund new campus safety initiatives.

To address the new realities of campus safety in the wake of the events at Virginia Tech, and in an era of increased risk of terrorist attacks, the bill creates a matching grant program for campus safety and security to be administered out of the COPS Office of the Department of Justice. The grant program allows institutions of higher learning to apply directly for federal funds to make school safety and security improvements. The program is authorized to be appropriated at \$50,000,000 for the next two fiscal years. While this amounts to just \$3 per student each year, it will enable schools to more effectively respond to dangerous and emergency situations on campus. It is encouraging that the Higher Education bill and perhaps other bills include similar provisions and may make additional federal funds available for college and university safety improvements.

Title I also authorizes appropriations for the creation of a National Center for Campus Public Safety. The Department of Justice COPS Office recommended the creation of a National Center after its 2004 National Summit on Public Safety, in order to support research, sharing of best practices, and strategic planning. A national clearinghouse for campus safety information is needed now more than ever.

Title II of the bill seeks to improve the National Instant Criminal Background Check System, known as the NICS system. The senseless loss of life at Virginia Tech revealed deep flaws in the transfer of information relevant to gun purchases between the States and the Federal Government. The deficiencies in the current system permitted the perpetrator of this terrible crime to obtain a firearm despite the fact that a judge had declared him to be a danger to himself and thus ineligible under federal law. Sueng-Hui Cho was not eligible to buy a weapon given his mental health history, but he was still able to pass a background check because data was missing from the system. We are working to close gaps in the NICS system.

This bill will correct these problems and should dramatically improve the NICS system. It incorporates the NICS Improvement Amendments Act of 2007, which was recently passed by the House. Senator Schumer has been the Senate sponsor on this measure. I have worked with many of the Senators on the Committee over the past few weeks to address concerns with this and other parts of the bill.

For the first time, this bill will create a legal regime in which disqualifying mental health records, both at the State and Federal level, would regularly be reported into the NICS system. This bill would require Federal agencies to report mental health and other disqualifying records into NICS, and would create significant new incentives for States to report this information.

For the States, the bill is structured with funding rewards for States that substantially comply and penalties for States that do not, in order to encourage every State to reach realistic compliance targets in reporting to NICS. To accomplish these important goals, the bill authorizes up to \$400 million a year for 5 years to allow States to make the costly technological improvements necessary to improve the NICS system.

If we are serious about improving the NICS system, the Federal Government must work in partnership with the States, and we must provide the resources necessary to assist the States in making these changes. We must avoid unfunded mandates that would hinder this partnership.

Title III of the bill includes a measure to make sworn law enforcement officers who work for private institutions of higher education, as well as rail carriers, eligible for death and disability benefits, and for funds administered under the Byrne Grant program and the bulletproof vest partnership grant program. Providing this equitable treatment is in the best interest of our nation's educators and students, and will serve to place the support of the Federal Government behind the dedicated law enforcement officers who serve and protect private colleges and universities across the country. I commend Senator Jack Reed for his leadership in this area.

Title IV of the bill makes improvements to the Law Enforcement Officers Safety Act of 2003. This Committee recently ordered these provisions reported. These amendments to existing law will streamline the system by which qualified retired and active officers can be certified under LEOSA. Congress passed the 2003 bill in recognition of the fact that law enforcement officers are never off duty and face lasting dangers due to the nature of their profession. It serves us all when we permit qualified officers, with a demonstrated commitment to law enforcement and no adverse employment history, to protect themselves and their families wherever they may be.

Finally, Title V incorporates the PRECAUTION Act, which Senators Feingold and Specter asked to have included. I thank them for their work on this important piece. The national commission created by this provision will identify the most successful violence prevention and intervention strategies that can be used in schools and will issue a report for local law enforcement and school boards to utilize when deciding how to keep their students safe. This provision also creates a program through the National Institute of Justice that funds grants to further develop cutting-edge prevention and intervention programs for our schools. Of course, keeping our students and communities safe does not stop at the schoolhouse doors, so the PRECAUTION Act also provides funds for this important work in community-based programs and programs run by the police. I have long been a supporter of crime prevention and intervention programs, and these programs nicely complement the school safety provisions in this bill.

I recognize that there is no panacea to end the sad phenomenon of school violence. The tragedy at Virginia Tech should remind us all that we need to remain vigilant, and that we need to respond in realistic and meaningful ways when we are presented with such challenges. I hope we can reach a consensus and move this bill forward to invest in the safety of our students, who are our nation's future, improve the NICS system, and support law enforcement officers across the country.

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Statement of Senator Patrick Leahy,
Chairman, Senate Judiciary Committee,
On the Nomination of Leslie Southwick to the Fifth Circuit
Executive Business Meeting
August 2, 2007

Today I have put back on the Committee's agenda the controversial nomination of Leslie Southwick to the United States Circuit Court of Appeals for the Fifth Circuit. As I have noted previously, I took the Southwick nomination off the agenda at the request of Republican Senators. I refused to ambush Mr. Southwick the way Republicans ambushed Ronnie White in 1999 when they voted him down. Instead, I alerted the White House and Senate Republicans to the opposition and have tried to be constructive in consulting with the White House. All of my good faith efforts in that regard have been rejected.

I had been waiting patiently, but in vain, to hear back from interested Republican Senators and, in particular, those who requested delay in the consideration of Mr. Southwick's nomination. Instead, several Republican Senators have complained publicly about the delay that they themselves requested.

This nomination has engendered significant opposition. Those opposing this nomination include: the Leadership Conference on Civil Rights, the Human Rights Campaign, the Mississippi State Conference of the NAACP, the NAACP Legal Defense Fund, Lambda Legal, the National Employment Lawyers Association, the Magnolia Bar Association, the National Organization of Women, the National Urban League, the AFL-CIO, the Congressional Black Caucus, and many more. A number of other Members of this Committee have shared with me their concerns and doubts about this nomination, as well.

I have given careful consideration to Mr. Southwick's record. With respect to the Richmond case, which has been so much discussed, I note that Judge Southwick provided the deciding vote. In my view, the Mississippi Supreme Court did the right thing in reversing that decision and I commend them. There is no place for "the n word" in the workplace or in use by a supervisor to and about an employee. None.

If, as Mr. Southwick now says, his view of the Richmond case was the narrow, technical, legalistic one that he says justifies his providing the deciding vote to the majority opinion, he could have said so back then in a separate opinion. He could have noted that he felt such use of "the n word" was inexcusable, but that he felt constrained by his limited role on appeal to apply a standard of review that compelled him to reverse Judge Graves of the Circuit Court and reaffirm the Employee Appeals Board's reinstatement of the offending supervisor with back pay. That is not what he did, however. In the face of a cogent dissent, he provided the deciding vote to uphold the decision excusing that remark.

Likewise in the case of *S.B. v. L.W.*, my concern is not just that Judge Southwick joined the majority opinion but that he went out of his way to sign on to a concurring opinion that suggested that sexual orientation is an individual "choice" and an individual must accept that losing the right of custody over one's child is one of the "consequences flowing from the free exercise of such choice."

I also have concerns about his approach in some cases involving allegations of race discrimination in jury selection, such as his opinion in a 1997 case, *Brock v. Mississippi* upholding a criminal conviction where the prosecution struck an African American juror, purportedly because he lived in a high crime area. The dissenting judge criticized Judge Southwick's opinion for accepting a strike which "on its face appears geared toward a racially identifiable group." In another case involving jury discrimination, *Bumphis v. State* (1996), three judges criticized Judge Southwick's majority opinion for "establishing one level of obligation for the state, and a higher one for defendants on an identical issue."

His legal writing also points to a narrow view of the role of the federal courts in upholding protections against race discrimination. In one article, he found "compelling" a statement of a Mississippi Supreme Court Justice that "the judiciary is not the avenue to effectuate the removal of the Confederate battle flag from public property."

I have questions whether he would be balanced in protecting the rights of employees given the overwhelming number of cases -- 160 out of 180 written decisions -- in which he has offered a narrow interpretation of the law to favor protecting business and corporate interests at the expense of the rights of workers and consumers. In one 1999 case, *Dubard v. Biloxi, H.M.A.*, Judge Southwick authored a dissent expressing the virtues of a legal doctrine that would allow employers to fire employees for any reason, even though such an analysis was not relevant in the case before him. My concerns about his bias are heightened by a law review article he wrote characterizing litigation against tobacco companies led by former Mississippi Attorney General Michael Moore as destabilizing and posing separation of powers concerns.

I have thought long and hard about this nomination and this is not a decision I come to easily. I take seriously the strong support of Senator Cochran and Senator Lott and I have expressed my concerns directly to them as well as to the White House. I also take seriously Mr. Southwick's answers to my questions and to those of others in connection with his hearing. I was glad to see that he acknowledged the offensiveness of the racial epithet used in the Richmond case and also that human rights law has evolved since 2001 when he joined the decision in the child custody case.

Still, I share the deep disappointment of members of the African-American and civil rights communities that this Administration continues to renege on a reported commitment to appoint an African American to the Mississippi federal bench. In more than six years, President Bush has failed to do so. He has appointed only 20 African-American judges to the federal bench, compared to 52 African-American judges appointed by President Clinton in his first six years in office.

With an ever-growing number of outstanding African-American lawyers in Mississippi, the state with the highest percentage of African Americans in the country, it is not as if there is a dearth of qualified candidates. Nonetheless, President Bush has now submitted 10 nominees to the federal bench in Mississippi, seven at the district level and three to the United States Court of Appeals for the Fifth Circuit, and none of these nominees has been African-American. Our nation's diversity is one of its greatest strengths, and I am disappointed that the President has missed yet another opportunity to reflect this great strength in our federal courts. This process begins with the President, and he has the ability to unite the nation and the Senate in the choices he makes, or to divide us. This is a divisive choice.

When viewed against his record on the bench, the importance of this seat on the Fifth Circuit, and the troubling lack of diversity on that court, I am not convinced that he is the right nominee for this vacancy at this time. I shall vote no.

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