

Arguments against Massachusetts H. 3296 / S. 2281 (2023)

(proposal to make registration with the U.S. Selective Service System for a possible military draft a prerequisite for a Massachusetts drivers' license or state ID)

Bill text and status:

<https://malegislature.gov/Bills/193/H3296/>

<https://malegislature.gov/Bills/193/S2281/>

1. Draft registration is a failure. Linking it to Massachusetts drivers' licenses won't salvage it.
 - (a) An actual draft requires a complete and accurate database of names and current addresses for provable delivery of induction notices. Men 18 through 25 are required to notify the SSS within 10 days of any change of address, but almost none do. Most induction notices sent to the addresses in the SSS database would be returned as undeliverable:
<https://hasbrouck.org/draft/compliance.html>
 - (b) The SSS counts as "in compliance" anyone who ever registers, even if they register late and/or move without notifying the SSS. There has been no independent audit of the SSS database since 1982, when the GAO found that failure to report address changes was already jeopardizing the usefulness of the database for an actual draft.
 - (c) Dr. Bernard Rostker, the former Director of the Selective Service System (the head of the SSS when the current registration system was set up in 1980) testified in 2019 to the National Commission on Military, National, and Public Service that the database has become so incomplete and inaccurate as to be "less than useless" for an actual draft, and that the Military Selective Service Act should be entirely repealed.
 - (d) Registration proved unenforceable, and an actual draft would be similarly unenforceable.
 - i. Prosecutions of nonregistrants (including in Mass.) didn't work, and were abandoned.
 - ii. Too many young people don't comply for more than a handful to be prosecuted.
 - iii. Specific intent element is difficult to prove and requires labor-intensive personal notice.
 - (e) Legislation has been proposed in Congress to repeal the MSSA and end registration entirely:
<https://hasbrouck.org/draft/repeal.html>
2. Massachusetts should not be using state resources to enforce the Military Selective Service Act.
 - (a) Massachusetts is **not required to enact this bill** or impose any state sanctions on people who don't register with Selective Service. There are no Federal penalties against states that don't chose to enact state legislation like this. This is entirely optional for Massachusetts.
 - (b) Federal laws should be enforced by the Federal government, at Federal expense, with uniform legal rights and legal penalties nationwide for violations of Federal laws.
 - (c) Registration for a military draft is irrelevant to the purpose of driver licensing: road safety.
 - (d) The only reason to use drivers' licenses as the primary mechanism for enforcement of draft registration is as a short-cut to evade Federal court proceedings and due process rights.
 - (e) Selective Service registration data is also given automatically to military recruiters. The Registry of Motor Vehicles should not be used as a military recruiting agency.
 - (f) Other large states (e.g. Pennsylvania, New Jersey, California, etc.) don't require Selective Service registration for drivers' license, and aren't likely to do so. To be effective and fair, any compliance measure must be applicable equally to residents of all states and territories.

3. Extrajudicial state sanctions for nonregistration with the SSS deny due process.
 - (a) No opportunity for judicial review of Constitutionality of “peacetime” registration requirement or preparation for draft for maintenance of standing army or undeclared wars. No U.S. Supreme Court review of extrajudicial sanctions: see *Elgin v. U.S. Treasury*, 567 U.S. 1 (2012); n.b. that this was a case brought by a Massachusetts resident.
 - (b) Lack of U.S. Supreme Court review of legality of undeclared wars is basis for existing Massachusetts state law opposing any deployment of Massachusetts inductees or enlistees for undeclared foreign wars (Acts of 1970, Chapter 174). See “The Massachusetts Antiwar Bill”, Anthony A. D’Amato, 42 New York State Bar Journal 639-649 (1970), <<https://scholarlycommons.law.northwestern.edu/facultyworkingpapers/126/>>; Massachusetts in the Federal Courts: The Constitutionality of the Vietnam War, by Anthony D’Amato, 4 Journal of Law Reform 11-21 (1970), <http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/127/>; *Mass. v. Laird*, 400 U.S. 886 (1970); *Mass. v. Laird*, 451 F. 2d 26, 1st Circuit 1971).
 - (c) No provision in Federal law or proposed Massachusetts state law for conscientious objectors to Selective Service registration.
4. Selective Service registration is a bad idea
 - (a) Constitutional objections to peacetime draft and draft for undeclared wars
 - (b) Pacifist and anti-war objections to preparation and planning for war
 - (c) Many people have sincere religious objections to registering for the draft. This bill would force them to violate their consciences in order to get a drivers license. (Federal law currently makes no provision for conscientious objection to registration.)
 - (d) Registration promotes illusion that draft is available as a “fallback”:
 - i. leads to unrealistic mobilization planning
 - ii. enables planning for endless, unlimited wars
5. Only men are currently required to register with the Selective service System, but the proposed Massachusetts law would apply to anyone – male or female – required to register with the SSS. So if Federal law is changed to expand draft registration to women as well as men, the proposed Mass law would require women in Massachusetts to register with the SSS to get a drivers license.
 - (a) Draft registration and military conscription are **not** feminist. Militarism is anti-feminist. See e.g. <https://hasbrouck.org/draft/women/feminism.html>
 - (b) Many people (both feminists and anti-feminists) think it’s wrong to draft women.
 - (c) Mass. should not use its state laws to force women to register for the draft.
6. SSS data sharing with state motor vehicle agencies is being carried out in violation of the Computer Matching Act. This Federal law requires advance notice in the Federal Register, due-process procedures for individuals who are denied benefits on the basis of data matching, and an annual cost-benefit review of each program. The most recent data matching notice published by the SSS left out much of the required information and expired in 2020. In response to a FOIA request in 2022, the SSS said it has no record of any cost-benefit analysis, annual review, or report on any of its data matching programs. States should not share personal data with a Federal agency that flouts Federal privacy law.