

# **LEGAL BULLETIN**

## **9.3**

### **Pennsylvania Megan's Law**

---

Lewisburg Prison Project  
P.O. Box 128  
Lewisburg, PA 17837  
Phone: (570) 523 – 1104

Updated February, 2008

#### **Introduction**

This bulletin is an overview of Pennsylvania's Registration of Sexual Offenders Act, also known as Megan's Law. Megan's Law is readily challenged, rewritten and amended. Such activity necessitates frequent updates of this important law and the cases that analyze it. This bulletin will provide a rough outline and overview of the Act. However, this should only be used as a starting point for research.

The Registration of Sexual Offenders Act originally went into effect on April 24, 1996, but was deemed unconstitutional in 2000 and was subsequently revoked. The new statute, known as Megan's Law II (henceforth referred to as Megan's Law, or "the Act"), took effect on July 9, 2000. It was further amended on October 17, 2002. The law can be found at 42 Pa. C.S.A §9791 et. seq. The purpose of the law is stated in its declaration of policy:

It is hereby declared to be the intention of the General Assembly to protect the safety and general welfare of the people of this Commonwealth by providing for registration and community notification regarding sexually violent predators who are about to be released from custody and will live in or near their neighborhood. It is further declared to be the policy of this Commonwealth to require the exchange of relevant information about sexually violent predators among public agencies and officials and to authorize the release of necessary and relevant information about sexually violent predators to members of the general public as a means of assuring public protection and shall not be construed as punitive. 42 Pa. C.S.A §9791.

Under both versions of Megan's Law, only persons convicted of certain predicate offenses are required to register. Under the new Megan's Law, there is a two-tier system that provides stricter registration requirements for more severe convictions.

#### **The Two-Tier System**

Megan's Law lists specific sex offenses that trigger its application. If convicted of one or more of these, offenders are subject to the provisions of the Act. A person convicted of any of

these specific sex offenses is required to adhere to the registration and notification rules of that particular crime, regardless of whether the conviction resulted from a trial, guilty plea or nolo contendere (no contest) plea.

Megan's Law currently has two tiers of offenses with separate punishments and requirements. A person convicted of a Tier I offense is required to register for ten years upon release from any state-run facility. A Tier II offender, a person who has committed one of the listed offenses or is considered a sexually violent predator, has the same registration requirements, but is subject to lifetime registration. Prior to sentencing, the court will order an assessment to determine if the offender is a sexually violent predator (this will be explained in a later section).

Megan's Law applies to anyone convicted of the following offenses under 42 Pa. C.S.A. § 9795.1:

TEN-YEAR REGISTRATION—The following individuals shall be required to register with the Pennsylvania State Police for a period of ten years:

- (1) Individuals convicted of any of the following offenses:
  - 18 Pa. C.S. § 2901 (relating to kidnapping) where the victim is a minor.
  - 18 Pa. C.S. § 2910 (relating to luring a child into a motor vehicle)
  - 18 Pa. C.S. § 3124.2 (relating to institutional sexual assault)
  - 18 Pa. C.S. § 3126 (relating to indecent assault) where the offense is a misdemeanor of the first degree.
  - 18 Pa. C.S. § 4302 (relating to incest) where the victim is 12 years of age or older but under 18 years of age.
  - 18 Pa. C.S. § 5902(b) (relating to prostitution and related offenses) where the actor promotes the prostitution of a minor.
  - 18 Pa. C.S. § 5903(a)(3), (4), (5) or (6) (relating to obscene and other sexual materials and performances) where the victim is a minor.
  - 18 Pa. C.S. § 6312 (relating to sexual abuse of children).
  - 18 Pa. C.S. § 6318 (relating to unlawful contact with minors).
  - 18 Pa. C.S. § 6320 (relating to sexual exploitation of children).
- (2) Individuals convicted of an attempt to commit any of the offenses listed above or any of the offenses listed in section (4) below.

LIFETIME REGISTRATION—The following individuals shall be subject to lifetime registration:

- (3) An individual with two or more convictions of any of the offenses in section 1.
- (4) Individuals convicted of any of the following offenses:
  - 18 Pa. C.S. § 3121 (relating to rape).
  - 18 Pa. C.S. § 3123 (relating to involuntary deviate sexual intercourse).
  - 18 Pa. C.S. § 3124.1 (relating to sexual assault).

18 Pa. C.S. § 3125 (relating to aggravated indecent assault).

18 Pa. C.S. § 4302 (relating to incest) when the victim is under 12 years of age.

(5) Sexually violent predators.

### **Sexually Violent Predators**

After a person is convicted of a crime triggering Megan's Law, but before sentencing, the court will order the individual to be assessed by a board in order to determine if he/she is a sexually violent predator. The State Sexual Offenders Assessment Board's determination shall include an examination of, but not limited to, the following factors:

- (1) Facts of the case:
  - (i) Whether the offense involved multiple victims.
  - (ii) Whether the individual exceeded the means necessary to achieve the offense.
  - (iii) The nature of the sexual contact with the victim.
  - (iv) Relationship of the individual to the victim.
  - (v) Age of the victim.
  - (vi) Whether the offense included a display of unusual cruelty by the individual during the commission of the crime.
  - (vii) The mental capacity of the victim.
- (2) Prior offense history, including;
  - (i) the individual's prior criminal record.
  - (ii) Whether the individual completed any prior sentences.
  - (iii) Whether the individual participated in available programs for sexual offenders.
- (3) Characteristics of the individual, including:
  - (i) Age of the individual.
  - (ii) Use of illegal drugs by the individual.
  - (iii) Any mental illness, mental disability or mental abnormality.
  - (iv) Behavioral characteristics that contribute to the individual's conduct.
- (4) Factors that are supported in a sexual offender assessment field as criteria reasonably related to the risk of re-offense.

The Board has 90 days from the date of conviction of the individual to submit a written report. There will then be a hearing to determine if the offender should be deemed a sexually violent predator. The offender has the right to counsel, to call witnesses, and to request another expert assessment. A copy of the expert assessment must be given to the district attorney prior to the hearing. If found to be a SVP, the offender is subject to Tier II lifetime registration.

### **Registration Requirements**

Anyone convicted of a crime that falls under Megan's Law is required to register with the Pennsylvania State Police. Under this law, all offenders must register with the police upon release from incarceration, parole from a state or county correctional institution, or commencement of a probationary sentence. Offenders are required to supply police with the

address of their current or intended residence, all information concerning employment, and all information concerning current or intended enrollment in school.

An offender must also inform police of any change of residence, change of employment, or any change of institution or location in which he/she is enrolled as a student. If offenders are not enrolled as students or employed at the time of their initial registration, offenders must register if and when they become enrolled or employed. All registration must occur within ten days of any of these changes. If an offender moves to another state, he/she has ten days to register with the state police of the new state.

The convicted offender must verify his/her address annually, unless that person is deemed a sexually violent predator. SVPs must verify their addresses quarterly (every 90 days). A Tier I offender must continue this verification and registration process for 10 years. SVPs and other Tier II offenders are required to register for the individual's lifetime.

18 Pa. C.S. § 4915 sets forth the penalties associated with knowingly failing to comply with registration requirements, which differ depending on the offender's status as a Tier I or Tier II offender.

If a Tier I offender fails to register, to verify his address, or be photographed, it is considered a misdemeanor of the third degree. If he fails to comply for a second time, it is a second degree misdemeanor. If he fails to comply three or more times, it is a felony of the third degree. It is also a third degree felony if a Tier I offender does not provide accurate information when registering or verifying an address.

If a Tier II offender fails to register, to verify his address, or be photographed, it is considered a misdemeanor of the second degree. If he fails to comply a second time, it is a first degree misdemeanor. If he fails to comply three or more times, it is a felony of the third degree. It is also a third degree felony if a Tier II offender does not provide accurate information when registering or verifying an address.

### **SVPs: Neighborhood Notification**

Upon receiving the registration of a sexually violent predator, the head of the local law enforcement agency where the SVP resides is required to give written notifications to the following people:

- Neighbors (should be notified within 72 hours of receiving the registration)
- The director of the children and youth service agency of the county where the SVP lives
- The superintendent, or the equivalent for parochial and private schools, of each school district in the area.
- The licensee of each certified day care center and licensed preschool program in the municipality where the SVP lives
- The president of each college, university or community college within 1000 ft. of the SVP's residence

This written notification must be issued within 7 days after the chief law enforcement officer receives the information. The notification shall contain: the offender's name, address, the offense for which he/she was convicted, and a recent photograph of the SVP. The notice shall also include a statement from the court that the offender is a sexually violent predator. The public will also be able to receive this information upon request.

### **Internet Notification and Additional Expansion of Megan's Law**

In early 2005, Pennsylvania enacted legislation broadening the notification features of Megan's Law. The Pennsylvania State Police have created a website open for public viewing containing information regarding all registered sex offenders in Pennsylvania. An offender's name, birth date, city, county, zip code, picture, crime and year of conviction, town where employed, and whether the offender attends or is employed by a post-high school educational institution can be found on the website. Searches can be conducted by a first or last name, any aliases, or the county, city, or zip code of the offender's current residence. Addresses are only provided if the offender is considered an SVP.

While police will continue to notify immediate neighbors when a SVP moves into the area, now they must also alert all residents of multifamily housing complexes. The new legislation also requires stricter regulation of the registration of sex offenders who move into Pennsylvania from another state or country.

### **Counseling Requirement for SVPs**

Upon release, offenders considered SVPs are required to attend sex offender counseling sessions. Under 42 Pa. C.S. § 9799.4, the offender must pay any fees associated with the counseling. However, if the offender can prove to the satisfaction of the court that he cannot afford the counseling sessions, he must still attend the sessions, but the parole office will pay the fees. The statute does not address who is responsible for finding an adequate counselor. In all probability, if the offender cannot find counseling himself, the responsibility should lie with the Commonwealth or the sentencing county.

### **Court Cases**

As stated at the beginning of this bulletin, Megan's Law is constantly being amended and challenged. Cases are frequently brought before the Pennsylvania Supreme Court, forcing legislators to make necessary changes to the law. Listed below are several such cases that have influenced Megan's Law. These cases should be used to supplement your research or help you get started. If you are attempting to appeal or argue a Megan's Law decision, make sure you have up-to-date research. It is of paramount importance to be mindful of the ever-changing nature of Megan's Law.

#### **Registration Provisions and Non-compliance**

Commonwealth v. Williams, 574 Pa. 487, 832 A.2d 962 (2003) – In this case, the Supreme Court of Pennsylvania ruled that the mandatory registration, notification and counseling provisions of

Megan's Law constitute "non-punitive regulatory measures supporting a legitimate governmental purpose." The Court found these provisions were for the purpose of protecting the community, non-punitive, and therefore, constitutional. However, the Court ruled that the possible lifetime incarceration of SVPs who did not comply with registration provisions was unconstitutional. The Court deemed incarceration to be in excess of what was needed to ensure compliance.

#### Intent to Violate Registration Requirements

Commonwealth v. Pond, 2004 PA Super 81; 846 A.2d 699; 2004 Pa. Super. LEXIS 304 – In this case the Supreme Court of Pennsylvania established that an offender must have intent to violate the registration provisions in order to be punished. The defendant accidentally put the wrong address on his registration form. Since he never saw the form after that, he could not correct it. The Commonwealth argued the law was a strict liability law. However, the Court ruled that the law was not one of strict liability. Rather, the Commonwealth must establish the defendant's failure to properly register was intentional, knowing, or reckless.

#### SVP Classification

Commonwealth v. Krouse, 2002 PA Super 162; 799 A.2d 835; 2002 Pa. Super. LEXIS 1022– In this case the defendant appealed against his classification as a Sexually Violent Predator (SVP). The Superior Court conducted plenary review of the record and concluded there was not clear and convincing evidence to prove he was a SVP. As stated in 42 Pa.C.S. § 9795.4 (e)(3), the Commonwealth must prove by "clear and convincing evidence" that the offender is a SVP. In this case, the Superior Court found that many of the statutory factors did not indicate the defendant to be a SVP, and some of the statutory factors even went against such a classification. Subsequently this case was overruled in Commonwealth v. Meals, 590 Pa. 110 (2006) on the issue of appellate review. In this case, similar to *Krouse*, the appellate court was considering the statutory factors in a balancing test to determine if the defendant was to be classified as a SVP. The court found that the Superior Court (court of appeals) is a court of review and not one that is meant to weigh and assess evidence for the first time.

Doe v. Pa. Bd. of Prob. & Parole, 2008 U.S. App. LEXIS 1265 (3<sup>rd</sup> Circ. 2008)- In this case an out of state sex offender was required to give community notification whereas an in state sex offender was required to do so only after being designated as a SVP. The court found that the disparity of treatment was unconstitutional as against Equal Protection and so decided that out of state sex offenders, like in state offenders, must be given an opportunity to be designated a SVP prior to being required to give community notice.