

*Sex Offender Identification*

10.1 CHAPTER OVERVIEW ..... 7

10.2 SEX OFFENDER REGISTRATION ACT: MEGAN’S LAW..... 7

    A. Legislative History ..... 7

    B. Definitions ..... 9

    C. Registration..... 11

        1. Ten Year Registration ..... 11

            (a) Specified Offenses ..... 11

            (b) Attempt ..... 12

            (c) Tolling ..... 12

        2. Lifetime Registration ..... 12

            (a) Multiple Convictions ..... 12

            (b) Specified Offenses ..... 13

            (c) Sexually Violent Predators ..... 13

        3. Relevant Case Law ..... 13

            (a) No Ex-Post Facto Violation ..... 13

            (b) Plea Withdrawals ..... 13

            (c) Retroactive Application ..... 14

    D. Registration Procedures and Applicability ..... 14

        1. Time for Mandatory Registration ..... 14

        2. Information to be Provided ..... 14

        3. Notification of Changes ..... 15

        4. Registration in Another State ..... 15

        5. Tolling ..... 15

        6. Collection of Registration Information ..... 15

            (a) Collection Responsibility ..... 15

            (b) No Release Pending Verification ..... 15

            (c) Expiration of Incarceration ..... 16

            (d) Refusal to Provide Necessary Registration Information ..... 16

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7. Out-of-State or Court Martialed Individuals .....	16
(a) Individuals Covered .....	16
(b) Registration Requirements .....	17
(c) Lifetime Registration .....	17
(d) Ten Year Registration .....	18
(e) Individuals Subject to Active Notification .....	18
(f) Passive Notification .....	19
(g) Relevant Case Law .....	20
8. Penalty for Failure to Register .....	20
9. Registration Sites .....	20
E. Sentencing Court Responsibilities .....	21
F. Assessments .....	22
1. Order for Assessment .....	22
2. Factors .....	22
3. Release of Information .....	23
4. Submission of Report by Board .....	23
5. Hearing .....	23
6. Presentence Investigation .....	24
7. Parole Assessment .....	24
8. Delinquency .....	24
9. Other Assessments .....	25
10. Pertinent Case Law .....	25
(a) Constitutionality .....	25
(b) Sufficiency of Evidence .....	25
(c) Expert Testimony .....	26
(d) SVP Classification – Evidence Sufficient .....	27
(e) SVP Classification – Evidence Insufficient .....	29
(f) Court Findings .....	31
(g) Self Incrimination .....	31
(h) Privilege .....	31
(i) Juvenile Records and Confidentiality .....	32
(j) SVP Assessments and <i>Frye</i> .....	32

## Sex Offender Identification

---

G. Verification of Residence.....	32
1. Verification.....	32
(a) Annual Verification of Residence for Offenders .....	32
(b) Quarterly Verification of Residence .....	32
2. Pennsylvania State Police Responsibilities .....	33
3. Effect of Notice .....	33
4. Change of Residence .....	33
5. Failure to Provide Verification .....	34
H. Victim Notification.....	36
I. Other Notification (“Community Notification”).....	36
1. Notification of SVP’s Residence .....	36
2. Exemption .....	38
J. Exemptions from Certain Notifications.....	38
1. Non SVP .....	38
K. Information Made Available on the Internet .....	39
1. Information to be Provided .....	39
2. Duties of Pennsylvania State Police.....	39
L. Immunity for Good Faith Conduct .....	40
M. Counseling of Sexually Violent Predators .....	41
N. Annual Performance Audit .....	41
O. Photographs and Fingerprinting .....	41
P. Noncompliance Laws .....	41
1. Failure to Comply with Registration Requirements .....	41
(a) Offense Defined .....	41
(b) Grading .....	42
(c) Effect of Notice .....	42
(d) Arrests for Violation .....	43
<b>10.3 CIVIL COMMITMENT OF JUVENILE SEX OFFENDERS .....</b>	<b>43</b>
A. Assessment of Delinquent Children by the State Sexual Assessment Board .....	43
1. General Rule .....	43
2. Duty of Probation Officer .....	44
3. Assessment.....	44

4.	Dispositional Review Hearing .....	44
B.	Court-Ordered Involuntary Treatment of Certain Sexually Violent Persons .....	45
1.	Definitions .....	45
2.	Court-Ordered Involuntary Treatment .....	45
	(a) Individuals Subject to Involuntary Treatment .....	45
	(b) Procedures for Initiating Involuntary Commitment .....	46
	(c) Hearing .....	46
	(d) Determination and Order .....	47
3.	Duration of Commitment and Review .....	47
4.	Right to Counsel .....	48
5.	Duty of Department of Public Welfare .....	48
6.	Regulations .....	49
7.	Jurisdiction .....	49
8.	Immunity for Good Faith Conduct .....	49
<b>10.4</b>	<b>COMBINED DNA INDEX SYSTEM (CODIS) .....</b>	<b>49</b>
A.	CODIS .....	49
B.	Federal Legislation Governing CODIS .....	50
1.	Establishment of Index .....	50
2.	Information Allowed on the Index .....	50
3.	Failure to Comply .....	51
4.	Expungement of Records .....	51
	(a) By Director .....	51
	(b) By States .....	52
5.	Authority for Keyboard Searches .....	52
<b>10.5</b>	<b>DNA DATA AND TESTING .....</b>	<b>53</b>
A.	Definitions .....	53
B.	State DNA Identification System .....	54
1.	Responsibilities of State Police .....	54
2.	Compatibility .....	54
C.	State DNA Data Base .....	55

## Sex Offender Identification

---

D. When and From Whom DNA Sample Required .....	55
1. Occasion When Sample Required .....	55
2. Individuals Who Must Provide Samples .....	55
3. Mandatory Submission .....	56
E. Procedures for Withdrawal, Collection and Transmission of DNA Samples .....	56
F. DNA Data Base Exchange .....	57
G. Expungement .....	57
H. Prohibition on Disclosure .....	58
I. Criminal Penalties .....	58
<b>APPENDIX:</b> <b>MEGAN’S LAW AT A GLANCE .....</b>	<b>59</b>



### 10.1 CHAPTER OVERVIEW

This chapter focuses on statutes that are essentially designed to protect the public from sexual offenders. Section 11.2 details Pennsylvania's Sex Offender Registration Act, otherwise known as "Megan's Law". Section 11.3 discusses civil commitment of juvenile sex offenders. The final two sections, 11.4 and 11.5, outline the use of DNA samples in various databases, with section 11.4 concentrating on the federal level and CODIS, and section 11.5 focusing on Pennsylvania's DNA data testing statute.

### 10.2 SEX OFFENDER REGISTRATION ACT: MEGAN'S LAW

#### A. Legislative History

Megan's Law was initially enacted in Pennsylvania in 1995 (known as "Megan's Law I"), and became effective in April 1996.<sup>1</sup> The stated purpose of Megan's Law was to protect the safety and welfare of people of the Commonwealth by mandating that sexually violent predators register with the proper authorities and that this registration be disseminated to the community. *See* 42 PA.CONS.STAT.ANN. §§ 9791(b), **Legislative findings and declaration of policy.**<sup>2</sup>

In 1999, the Pennsylvania Supreme Court, in *Commonwealth v. Williams*, 557 Pa. 285, 733 A.2d 593 (1999), *cert. denied*, 528 U.S. 1077 (2000) ("Williams I"), struck down provisions of Megan's Law I relating to sexually violent predators. In response, Megan's Law was reenacted in 2000 and thereafter called Megan's Law II.<sup>3</sup>

Megan's Law II changed the manner in which an individual was classified as a sexually violent predator. Under Megan's Law II, 42 PA.CONS.STAT.ANN. §§ 9791-9799.9, the burden of proving by clear and convincing evidence that the defendant was a sexually violent predator was placed on the Commonwealth. The burden was no longer on the defendant to prove that he was not a sexually violent predator. Under the new law, instead of being subject to an automatic increased maximum term of imprisonment, sexually violent predators were required to undergo lifetime registration, notification and counseling

<sup>1</sup> Pennsylvania's version of Megan's Law, now commonly referred to as Megan's Law III, is currently codified at 42 PA.CONS.STAT.ANN. §§ 9791-9799.9.

<sup>2</sup> *Commonwealth v. Leddington*, 908 A.2d 328, 331 (Pa.Super. 2006).

<sup>3</sup> In *Commonwealth v. Mullins*, 905 A.2d 1009 (Pa.Super. 2006), the Superior Court of Pennsylvania rejected the constitutional challenges to Megan's Law II and affirming the judgment of sentence, was filed on August 10, 2006.

procedures. That same year, an amendment to the act added Sexual Exploitation of Children as a new registerable offense.

Later, the Pennsylvania Supreme Court, in ***Commonwealth v. Williams***, 574 Pa. 487, 832 A.2d 962 (Pa. 2003) (“Williams II”), held that in absence of “competent and credible evidence undermining the relevant legislative findings”, Megan’s Law registration, notification, and counseling provisions for sexually violent predators were “non-punitive, regulatory measures supporting a legitimate governmental purpose.” 574 Pa. at 528, 832 A.2d at 986. However, it further held that the penalty provisions for failing to register or verify residence were unconstitutionally punitive. The court severed those provisions from the remainder of the statute and remanded the case back to the trial court for consideration of the appellant’s remaining arguments: whether Megan’s Law was void for vagueness; was violative of substantive due process guarantees; was violative of the separation of powers doctrine; and contained more than one subject in contravention of *Article 3, § 3 of the Pennsylvania Constitution*. The trial court rejected appellant’s constitutional arguments without holding a hearing; an appeal followed. In remanding the case back to the trial court and ordering a hearing, the Superior Court held that the trial court should have held an evidentiary hearing and made an independent determination on appellant’s constitutional challenges.

***Commonwealth v. Williams***, 877 A.2d 471, 478 (Pa. Super. 2005), *appeal denied*, 586 Pa. 770, 895 A.2d 1261 (2006).

In ***Commonwealth v. Askew***, 907 A.2d 624 (Pa.Super. 2006), *appeal denied*, \_\_\_ Pa. \_\_\_, 919 A.2d 954 (2007), the Superior Court reiterated the Supreme Courts decisions in Williams I and Williams II that the registration, notification, and counseling requirements of Megan’s Law II, for persons deemed sexually violent predators, do not constitute punishment for purposes of Due Process Clause.

In the meantime, Megan’s Law II went through several statutory changes in 2004, and is now referred to as Megan’s Law III. The legislature deleted the penalty section of Megan’s Law II and added a charge to the crimes code for failing to comply with registration and verification procedures. It also added new definitions, registerable crimes, procedures and classifications for out-of-state or court martialled or juvenile offenders, exemptions from certain notifications, and an annual performance audit. Most notably, the new law added a section allowing registration information of all sexual offenders to be made available on the Internet. It also amended the statutes relating to verification of residence, community or “other” notification, immunity for good faith conduct and duties of the Pennsylvania State Police.

In 2005, the legislature declared that young children were highly vulnerable when walking to and from elementary school and that the Commonwealth had a compelling state interest in protecting them from sexually violent predators.

New sections were added, imposing limitations on residence for sexually violent predators and creating a new offense for sexually violent predators who violate the restrictions.

### B. Definitions

Under 42 PA. CONS. STAT. ANN. § 9792, the following definitions are provided in Megan's Law III:

**“Active notification”** Notification pursuant to section 9798 (relating to other notification) or any process whereby law enforcement, pursuant to the laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation, notifies persons in the community in which the individual resides, including any person identified in section 9798(b), of the residence, employment or school location of the individual.

**“Approved registration site”** A site in this Commonwealth approved by the Pennsylvania State Police as required by section 9799.1(2):

1. at which individuals subject to this subchapter may register, verify information or be fingerprinted or photographed as required by this subchapter;
2. which is capable of submitting fingerprints utilizing the Integrated Automated Fingerprint Identification System or in another manner and in such form as the Pennsylvania State Police shall require; and
3. which is capable of submitting photographs utilizing the Commonwealth Photo Imaging Network or in another manner and in such form as the Pennsylvania State Police shall require.

**“Board”** The State Sexual Offenders Assessment Board.

**“Common interest community”** Includes a cooperative, a condominium and a planned community where an individual by virtue of an ownership interest in any portion of real estate is or may become obligated by covenant, easement or agreement imposed upon the owner's interest to pay any amount for real property taxes, insurance, maintenance, repair, improvement, management, administration or regulation of any part of the real estate other than the portion or interest owned solely by the individual.

**“Commonwealth Photo Imaging Network”** The computer network administered by the Commonwealth and used to record and store digital photographs of an individual's face and any scars, marks, tattoos or other unique features of the individual.

**“Employed”** Includes a vocation or employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, pursuant to a contract or for the purpose of government or educational benefit.

**“Integrated Automated Fingerprint Identification System”** The national fingerprint and criminal history system maintained by the Federal Bureau of Investigation providing automated fingerprint search capabilities, latent searching capability, electronic image storage and electronic exchange of fingerprints and responses.

**“Mental Abnormality”** A congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of any other persons.

**“Minor”** As used in section 9795.1(relating to registration), is any individual under the age of 18 unless the age of the victim who is considered a minor is otherwise defined in section 9795.1.

**“Municipality”** A city, borough, incorporated town or township.

**“Offender”** An individual required to register under section 9795.1(a), (b)(1) or (2)(relating to registration).

**“Passive Notification”** Notification pursuant to section 9798.1 (relating to information made available on the Internet) or any process whereby persons, pursuant to the laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation, are able to access information pertaining to an individual as a result of the individual having been convicted or sentenced by a court for an offense similar to an offense listed in section 9795.1(relating to registration).

**“Penetration”** Includes any penetration, however slight, of the genitals or anus or mouth of another person with a part of the person’s body or a foreign object for any purpose other than good faith medical, hygienic or law enforcement procedures.

**“Predatory”** An act directed at a stranger or at a person with whom a relationship has been initiated, established, maintained or promoted, in whole or in part, in order to facilitate or support victimization.

**“Residence”** A location where an individual resides or is domiciled or intends to be domiciled for 30 consecutive days or more during a calendar year.

**“Sexually violent offense”** Any criminal offense specified in section 9795.1 (relating to registration).

**“Sexually violent predator”** A person who has been convicted of a sexually violent offense as set forth in section 9795.1 (relating to registration) and who is determined to be a sexually violent predator under section 9795.4 (relating to assessments) due to a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses. The term includes an individual determined to be a sexually violent predator where the determination occurred in the United States or one of its territories or

possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico, a foreign nation or by court martial.

**“Student”** A person who is enrolled on a full-time or part-time basis in any public or private educational institution, including any secondary school, trade or professional institution or institution of higher education.

### **C. Registration**

The registration provisions of Megan’s Law III are mandatory; defendants convicted of certain enumerated sex offenses must register, and there are enhanced registration provisions for convicted defendants found to be sexually violent predators.<sup>4</sup> 42 PA. CONS. STAT. ANN. § 9795.1. Offenders and Sexually Violent Predators must register with the Pennsylvania State Police upon release from (1) incarceration, (2) upon parole from a State or county correctional facility, or (3) upon the commencement of a probationary or intermediate punishment sentence.

An “offender” is classified according to his designation as a Sexually Violent Predator (SVP) or the nature of the predicate crime for which he/she was convicted. The classifications for registration, more specifically listed below, are as follows:

- (1) An SVP (lifetime reporting);
- (2) A Ten Year Reporter: an offender convicted of one or more of the offenses enumerated in 42 PA. CONS. STAT. ANN. § 9795.1(a)(1); or an attempt to commit any of the offenses under 42 PA. CONS. STAT. ANN. § 9795.1(a)(1) or 42 PA. CONS. STAT. ANN. § 9795.1(b)(2).
- (3) A Non-SVP Lifetime Reporter: an individual with two or more convictions of any of the offenses set forth in 42 PA. CONS. STAT. ANN. § 9795.1(a)(1); or an offender convicted of one or more of the offenses enumerated in 42 PA. CONS. STAT. ANN. § 9795.1(b)(2).

Failure to comply with the applicable registration requirements results in a separate criminal offense: (1) failure to comply with the ten-year reporting requirement constitutes a felony of the third degree, 42 PA. CONS. STAT. ANN. § 9795.2(d)(1); (2) failure to comply with the lifetime reporting requirements constitutes a felony of the first degree, 42 PA. CONS. STAT. ANN. § 9795.2(d)(2).

#### **1. Ten Year Registration**

42 PA. CONS. STAT. ANN. § 9795.1(a)

##### **(a) Specified Offenses**

42 PA. CONS. STAT. ANN. § 9795.1(a)(1)

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<sup>4</sup> *Commonwealth v. Coco*, 747 A.2d 1237, 1238-1239 (Pa.Super. 2000). *See also, Commonwealth v. Howe*, 842 A.2d 436, 446 (Pa.Super. 2004)(registration provisions applicable under Megan’s Law do not violate privacy rights: “the momentary inconvenience of disclosing the above-described information to police is greatly outweighed by the need to ensure public safety . . .”).

**Kidnapping** (where the victim is a minor)

18 PA.CONS.STAT.ANN. §2901

**Luring a Child into a Motor Vehicle**

18 PA.CONS.STAT.ANN. § 2910

**Institutional Sexual Assault**

18 PA.CONS.STAT.ANN. § 3124.2

**Indecent Assault** (where the offense is a misdemeanor of the first degree)

18 Pa.Cons.Stat.Ann. § 3126

**Incest** (where the victim is 12 years of age or older but under 18 years of age)

18 PA.CONS.STAT.ANN. § 4302

**Prostitution** (where the actor promotes the prostitution of a minor)

18 PA.CONS.STAT.ANN. § 5902(b)

**Obscene and Other Sexual Materials and Performances**

(where the victim is a minor)

18 PA.CONS.STAT.ANN. § 5903(a)(3), (4), (5) or (6)

**Sexual Abuse of Children**

18 PA.CONS.STAT.ANN. § 6312

**Unlawful Contact with Minor**

18 PA.CONS.STAT.ANN. § 6318

**Sexual Exploitation of Children**

18 PA.CONS.STAT.ANN. § 6320

**(b) Attempt**

42 PA.CONS.STAT.ANN. § 9795.1(a)(2)

Individuals convicted of an attempt to commit any of the offenses under 42 PA. CONS. STAT. ANN. § 9795.1(a)(1) or 42 PA.CONS.STAT. ANN. § 9795.1(b)(2). *See* 42 PA.CONS.STAT.ANN. § 9795.1(a)(2).

**(c) Tolling**

The ten-year period is tolled when an offender is recommitted for a parole violation or sentenced to an additional term of imprisonment.  
42 PA. CONS. STAT. ANN. § 9795. 2(a)(3)

**2. Lifetime Registration**

42 PA. CONS. STAT. ANN. § 9795.1(b)

**(a) Multiple Convictions**

An individual with two or more convictions of any of the offenses set forth in 42 PA. CONS. STAT. ANN. § 9795.1(a)(1).

(b) **Specified Offenses**

42 PA. CONS. STAT. ANN. § 9795.1(b)(2)

**Rape**

18 PA. CONS. STAT. ANN. § 3121

**Involuntary Deviate Sexual Intercourse**

18 PA. CONS. STAT. ANN. § 3123

**Sexual Assault**

18 PA. CONS. STAT. ANN. § 3124.1

**Aggravated Indecent Assault**

18 PA. CONS. STAT. ANN. § 3125

**Incest** (when the victim is under 12 years of age)

18 Pa. Cons. Stat. Ann. § 4302

(c) **Sexually Violent Predators**

A person who has been convicted of a sexually violent offense as set forth in 42 PA. CONS. STAT. ANN. § 9795.1 (relating to registration) and who is determined to be a sexually violent predator under section 42 PA. CONS. STAT. ANN. § 9795.4.

**3. Relevant Case Law**

(a) **No Ex-Post Facto Violation**

Registration requirements are remedial and not punitive. Therefore, no ex post facto violation occurs when a defendant commits a registerable offense prior to the effective date of Megan's Law and is subsequently required to comply with its registration requirements.

**Commonwealth v. Gaffney**, 733 A.2d 616, 622 (Pa. 1999);

**Commonwealth v. Fleming**, 801 A.2d 1234 (Pa. Super. 2002), *appeal denied*, 588 Pa. 776, 906 A.2d 539 (2006).

(b) **Plea Withdrawals**

The registration requirement is a collateral consequence to a guilty plea. Therefore, lack of awareness of the registration requirement at the time of the plea does not render the plea to be unknowing or involuntary. **Commonwealth v. Leidig**, 850 A.2d 743 (Pa. Super. 2004), *appeal granted*, \_\_\_ Pa. \_\_\_, 918 A.2d 743 (2007);

**Commonwealth v. Benner**, 853 A.2d 1068 (Pa. Super. 2004).

However, as indicated above, the Pennsylvania Supreme Court has accepted review of **Leidig**; no request for review by the Pennsylvania Supreme Court was filed in **Benner**.

Increase in length of registration period under Megan's Law II does not constitute punishment. Therefore, where a defendant pleads guilty to an offense that is subject to ten year registration under

Megan’s Law I and then Megan’s Law II gets enacted, requiring lifetime registration for that offense, this does not constitute a basis for plea withdrawal. **Commonwealth v. Fleming**, 801 A.2d 1234 (Pa. Super. 2002), appeal denied, *appeal denied*, 588 Pa. 776, 906 A.2d 539 (2006); **Commonwealth v. Benner**, 853 A.2d 1068 (Pa. Super. 2004).

**(c) Retroactive Application**

Date of offense, guilty plea or sentencing is not dispositive when determining whether Megan’s Law applies to a particular defendant. As long as the defendant remains in custody of correctional authorities serving any portion of his original sentence, Megan’s Law II registration requirements will apply to that defendant. **Commonwealth v. Benner**, 853 A.2d 1068, 1072 (Pa. Super. 2004)(where defendant continued to serve his sentence for the sex offense at issue after the enactment of Megan’s Law II, he is subject to registration rules of Megan’s Law II).

Megan’s Law II registration requirement applies to defendant who pleaded guilty in Hawaii prior to Megan’s Law II enactment and then moved to Pennsylvania after release from prison to complete “supervised release” under original sentence. **Commonwealth v. Miller**, 787 A.2d 1036 (Pa. Super. 2001), *appeal denied*, 568 Pa. 735, 798 A.2d 1288 (2002).

No retroactive application to those who have maxed out on their Megan’s Law offenses prior to the effective date of the Act. **Commonwealth v. Richardson**, 784 A.2d 126 (Pa. Super. 2001), *appeal denied*, 568 Pa. 630, 793 A.2d 907 (2002). (Megan’s Law I registration requirement does not apply to defendant who fully served his sentence for the sex offenses prior to effective date of Megan’s Law I and remained in prison on unrelated offenses.)

**D. Registration Procedures and Applicability**

The registration provisions of Megan’s Law III are contained in 42 PA. CONS. STAT. ANN. § 9795.2.

**1. Time for Mandatory Registration**

- i. Upon release from incarceration;
- ii. Upon parole from a State or county correctional institution; or
- iii. Upon the commencement of a sentence of intermediate punishment or probation. 42 PA. CONS. STAT. ANN. § 9795.2(a)(1).

**2. Information to be Provided**

- i. All current or intended residences;
- ii. All information concerning current or intended employment;

- iii. All information concerning current or intended enrollment as a student. 42 PA. CONS. STAT. ANN. § 9795.2(a)(1).

**3. Notification of Changes**

Offenders and sexually violent predators must inform the Pennsylvania State Police **within 10 days** of:

- i. Any change of residence or establishment of additional residence(s);
- ii. Any change of employer or employment location for a period of time that will exceed 14 days or for an aggregate period of time that will exceed 30 days during any calendar year, or termination of employment;
- iii. Any change of institution or location at which the person is enrolled as a student, or termination of enrollment; or
- iv. Becoming employed or enrolled as a student if the person has not previously provided that information to the Pennsylvania State Police. 42 PA. CONS. STAT. ANN. § 9795.2(a)(2).

**4. Registration in Another State**

Offenders and sexually violent predators must register with a new law enforcement agency no later than ten days after establishing residence in another state. 42 PA. CONS. STAT. ANN. § 9795.2(a)(2.1).

**5. Tolling**

The ten-year registration period is tolled when an offender is recommitted for a parole violation or sentenced to an additional term of imprisonment. Department of Corrections or county correctional facility must notify the Pennsylvania State Police of the admission of the offender. 42 PA. CONS. STAT. ANN. § 9795.2(a)(3).

**6. Collection of Registration Information**

**(a) Collection Responsibility**

For offenders or sexually violent predators

- (i) Granted parole by the Pennsylvania Board of Probation and Parole or the court, or
- (ii) Sentenced to probation or intermediate punishment the board or county office of probation and parole must collect registration information and forward that information to the Pennsylvania State Police. 42 PA. CONS. STAT. ANN. § 9795.2(a)(4)(i).

**(b) No Release Pending Verification**

The offender or sexually violent predator must not be released until there is verification from the Pennsylvania State Police that it has received the registration information. 42 PA. CONS. STAT. ANN. § 9795.2(4)(i).

**(c) Expiration of Incarceration**

Where release is scheduled because of the expiration of the maximum term of incarceration, the Department of Corrections or county correctional facility must collect registration information no later than 10 days prior to the maximum expiration date. 42 PA. CONS. STAT. ANN. § 9795.2(4)(i).

**(d) Refusal to Provide Necessary Registration Information**

If the offender or sexually violent predator refuses to provide the registration information, the Department of Corrections or county correctional facility must notify the Pennsylvania State Police or police department with jurisdiction over the facility of the failure to provide registration information and of the expected date, time and location of the release of said person. 42 PA. CONS. STAT. ANN. § 9795.2(a)(4)(ii).

**7. Out-of-State or Court Martialed Individuals**

Section 9795.2(b) of Pennsylvania’s Megan’s Law III is designed to require registration for out-of-state sex offenders who transfer supervision to Pennsylvania, as well as court martialed and other types of out-of-state offenders. 42 PA. CONS. STAT. ANN. § 9795.2(b).

**(a) Individuals Covered**

The “individuals” covered by this section are defined as follows:

**Adult Conviction or Court Marital:** An individual who resides, is employed or is a student in Pennsylvania:

- who has been convicted, sentenced, or court martialed for
  - a sexually violent offense, or
  - a similar offense under the laws of the United States, any state, the District of Columbia or any U.S. territory,<sup>5</sup> or
- who was required to register under a sexual offender statute in the other jurisdiction.

**Juvenile Adjudication:** An individual who resides, is employed or is a student in Pennsylvania:

- who is registered as a sex offender
  - under the laws of the United States, any state, the District of Columbia or any U.S. territory<sup>6</sup>
- as a result of a juvenile adjudication.

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<sup>5</sup> Includes determinations made in the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico, a foreign nation or by court martial.

<sup>6</sup> Includes determinations made in the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico, a foreign nation or by court martial.

**(b) Registration Requirements**

The “individuals” as defined above must register at an approved registration site within 48 hours of the individual’s arrival in Pennsylvania.

**(c) Lifetime Registration**

All out-of-state or court-martialed individuals are subject to lifetime registration in Pennsylvania if,

- i. they have been classified as a sexually violent predator;<sup>7</sup> or
- ii. they have been determined under the laws of the other jurisdiction or by reason of court martial to be subject to active notification and lifetime registration.<sup>8</sup>
- iii. they have been, by way of an out-of-state juvenile adjudication, (1) classified as a sexually violent predator required to register as a sex offender, or (2) determined under the laws of the other jurisdiction or by reason of court martial to be subject to active notification and lifetime registration.<sup>9</sup>
- iv. they have been convicted, sentenced, or court martialled for an offense listed in 42 PA. CONS. STAT. ANN. § 9795.1(b) or an equivalent offense:
  - An individual with two or more convictions of any of the offenses set forth in 42 PA. CONS. STAT. ANN. § 9795.1(a)(1);
  - Rape, 18 PA.CONS.STAT.ANN. § 3121;
  - Involuntary Deviate Sexual Intercourse, 18 PA.CONS.STAT.ANN. § 3123;
  - Sexual Assault, 18 PA.CONS.STAT.ANN. § 3124.1;
  - Aggravated Indecent Assault, 18 PA.CONS.STAT. ANN. § 3125;
  - Incest (when the victim is under 12 years of age), 18 PA.CONS.STAT.ANN. § 4302
- v. these individuals are also subject to other provisions of Megan’s Law, including:
  - Registration Procedures, 42 PA. CONS. STAT. ANN. § 9795.2;
  - Verification of Residence, 42 PA. CONS. STAT. ANN. § 9796;
  - Other Notifications, 42 PA. CONS. STAT. ANN. § 9798;<sup>10</sup>
  - Information made available on the Internet, 42 PA. CONS. STAT. ANN. § 9798.1(c)(1).

<sup>7</sup> 42 PA. CONS. STAT. ANN. § 9795.2(b)(4)(1).

<sup>8</sup> 42 PA. CONS. STAT. ANN. § 9795.2(b)(4)(1).

<sup>9</sup> 42 PA. CONS. STAT. ANN. § 9795.2(b)(5)(1).

<sup>10</sup> According to the statute, this section does not apply to juvenile adjudications, 42 PA. CONS. STAT. ANN. § 9795.2(b)(5)(i).

**(d) Ten Year Registration**

All out-of-state or court-martialed individuals are subject to registration for ten years (or period of time equal to the time for which the individual was required to register, whichever is greater, less any credit due to the individual as a result of prior compliance with registration requirements) in Pennsylvania, if

i. Has been convicted or sentenced by a court or court martial for an offense listed in section 9795.1(a) or an equivalent offense:

- Kidnapping (where the victim is a minor), 18 PA.CON.S.TAT.ANN. §2901;
- Luring a Child into a Motor Vehicle, 18 PA.CON.S.TAT.ANN. § 2910;
- Institutional Sexual Assault, 18 PA.CON.S.TAT. ANN. § 3124.2;
- Indecent Assault (where the offense is a misdemeanor of the first degree), 18 PA.CON.S.TAT.ANN. § 3126;
- Incest (where the victim is 12 years of age or older but under 18 years of age), 18 PA.CON.S.TAT.ANN. § 4302;
- Prostitution (where the actor promotes the prostitution of a minor), 18 PA.CON.S.TAT.ANN. § 5902(b);
- Obscene and Other Sexual Materials and Performances (where the victim is a minor), 18 PA.CON.S.TAT.ANN. § 5903(a)(3), (4), (5) or (6);
- Sexual Abuse of Children, 18 PA.CON.S.TAT.ANN. § 6312;
- Unlawful Contact with Minor, 18 Pa.Cons.Stat. Ann. § 6318;
- Sexual Exploitation of Children, 18 Pa.Cons. Stat.Ann. § 6320

ii. These individuals are also subject to other provisions of Megan’s Law, including:

- Registration Procedures, 42 PA. CONS. STAT. ANN. § 9795.2;
- Verification of Residence, 42 PA. CONS. STAT. ANN. § 9796;
- Information made available on the Internet, 42 PA. CONS. STAT. ANN. § 9798.1(c)(1).

**(e) Individuals Subject to Active Notification**

If an individual is subject to active notification in another jurisdiction or subject to active notification by way of court martial, the individual is considered an offender in Pennsylvania and subject to registration.

i. Subject to provisions of Megan’s Law including:

- Registration Procedures, 42 PA. CONS. STAT. ANN. § 9795.2;
- Other Notification, 42 PA. CONS. STAT. ANN. § 9798;
- Information made available on the Internet, 42 PA. CONS. STAT. ANN. § 9798.1(c)(1).

- ii. If the individual were convicted, sentenced, or court martialled for an offense listed in 42 PA. CONS. STAT. ANN. § 9795.1(b) or an equivalent offense, then the individual is subjected to Pennsylvania's Megan's Law for lifetime.
- iii. If the individual were convicted, sentenced, or court martialled for an offense listed in 42 PA. CONS. STAT. ANN. § 9795.1(a) or an equivalent offense, then the individual is subjected to Pennsylvania's Megan's Law for
  - Ten years or
  - Period of time equal to the time for which the individual was required to register in the other jurisdiction or required to register by reason of court martial, whichever is greater, less any credit due to the individual as a result of prior compliance with registration requirements.

If an individual is subject to active notification in another jurisdiction by way of a juvenile adjudication, the individual is considered an offender in Pennsylvania and subject to registration.

- i. Subject to provisions of Megan's Law including:
  - Registration Procedures, 42 PA. CONS. STAT. ANN. § 9795.2;
  - Other Notification, 42 PA. CONS. STAT. ANN. § 9798;
  - Information made available on the Internet, 42 PA. CONS. STAT. ANN. § 9798.1(c)(1).
- ii. Period of time equal to the time for which the individual was required to register in the other jurisdiction less any credit due to the individual as a result of prior compliance with registration requirements.

**(f) Passive Notification**

If an individual is subject to passive notification in another jurisdiction or subject to passive notification by way of court martial, the individual is considered an offender in Pennsylvania and subject to registration.

- i. Subject to provisions of Megan's Law including:
  - Registration Procedures, 42 PA. CONS. STAT. ANN. § 9795.2;
  - Other Notification, 42 PA. CONS. STAT. ANN. § 9796 (Verification);
  - Information made available on the Internet, 42 PA. CONS. STAT. ANN. § 9798.1(c)(1).
- ii. Period of time equal to the time for which the individual was required to register in the other jurisdiction or required to register by reason of court martial, less any credit due to the individual as a result of prior compliance with registration requirements.

If an individual is subject to passive notification in another jurisdiction by way of a juvenile adjudication, the individual is considered an offender in Pennsylvania and subject to registration.

- i. Subject to provisions of Megan’s Law including:
  - Registration Procedures, 42 PA. CONS. STAT. ANN. § 9795.2;
  - Other Notification, 42 PA. CONS. STAT. ANN. § 9796;
  - Information made available on the Internet, 42 PA. CONS. STAT. ANN. § 9798.1(c)(1).
- ii. Period of time equal to the time for which the individual was required to register in the other jurisdiction less any credit due to the individual as a result of prior compliance with registration requirements.

**(g) Relevant Case Law**

Imposition of community notification violates out-of-state defendant’s constitutional right to equal protection when the offender transfers supervision to Pennsylvania and would only have been subject to community notification in Pennsylvania after a hearing but did not receive a hearing in the other state. *Doe v. McVey*, 381 F.Supp.2d 443 (E.D.Pa. 2005) (Where defendant was convicted of a registerable crime in New Jersey but did not have an assessment hearing because he was returning to Pennsylvania, defendant does not have to submit to community notification in Pennsylvania. Had the defendant been convicted of the same offense in Pennsylvania, he would only have been subject to community notification after a hearing and he had been designated a sexually violent predator. Such disparate treatment violates the Equal Protection Clause.)

**8. Penalty for Failure to Register**

Individuals subject to registration under § 9795.1(a) or (b) who fail to register with the Pennsylvania State Police as required may be subject to prosecution under 18 PA. CONS. STAT. ANN. § 4915, Failure to Comply with Registration of Sexual Offenders Requirements. 42 PA. CONS. STAT. ANN. § 9795.2(d). In *Commonwealth v. Wilson*, 589 Pa. 559, 910 A.2d 10 (2006), the Pennsylvania Supreme Court held that the portions of Megan’s Law authorizing criminal prosecutions for failing to comply with the reporting requirements for non-SVPs, whether ten year or lifetime reporters, are constitutional.

**9. Registration Sites**

Individuals subject to § 9795.1 must register and submit to fingerprinting and photographing as required by this subchapter at approved registration sites. (See definition of approved registration site, § 9792.). 42 PA. CONS. STAT. ANN. § 9795.2(e).

**E. Sentencing Court Responsibilities**

The plain language of 42 PA. CONS. STAT. ANN. § 9795.3 outlines the sentencing court's duty, at the time of sentencing, to inform the offender or SVP about what is required of him to comply with Megan's Law. *Commonwealth v. Baird*, 856 A.2d 114, 116 (Pa.Super. 2004).

At the time of sentencing, the court must specifically inform offenders and sexually violent predators of the following:

- (a) Duty to register and provide the information required for each registration, including verification as required in section 9796(a).
- (b) Duty to inform the Pennsylvania State Police within ten days if there is
  - i. a change in residence
  - ii. an establishment of additional residence(s)
  - iii. a change in employer or employment location for a period of time that will exceed 14 days or for an aggregate period of time that will exceed 30 days during any calendar year
  - iv. a termination of employment
  - v. a change in institution or location at which the person is enrolled as a student, or
  - vi. a termination of enrollment
- (c) Duty to inform the Pennsylvania State Police within ten days of becoming employed or enrolled as a student if the person has not previously provided that information to the Pennsylvania State Police.
- (d) Duty to register with a new law enforcement agency if the person moves to another state no later than ten days after establishing residence in another state.
- (e) Duty to register with the appropriate authorities in any state in which the person is employed, carries on a vocation or is a student if the state requires such registration.
- (f) The court must also specifically inform a sexually violent predator concerning the limitations on residence imposed by section 9796.1.

The sentencing court must also:

- (a) Order the fingerprints and photograph of the offender or sexually violent predator to be provided to the Pennsylvania State Police upon sentencing and
- (b) Require the offender or sexually violent predator to read and sign a form stating that the duty to register under this subchapter has been explained.

- (c) Where the person is incapable of reading, the court must certify the duty to register was explained and that the person indicated an understanding of the duty.
- (d) Require the sexually violent predator to read and sign a form stating that the limitations on residence for sexually violent predator under section 9796.1 have been explained.
- (e) Where the sexually violent predator is incapable of reading, the court must certify that the limitations on residence were explained and that the person indicated an understanding of the limitations on residence.
  - Court must conduct assessment before sentencing: Sentencing court cannot legally sentence defendant to probation, immediately upon a guilty plea, without first determining whether defendant is a sexual offender or a sexually violent predator. This is because there are different obligations depending on the classification of the defendant and the trial court must inform the defendant of his reporting obligations at the time of sentencing. *Commonwealth v. Baird*, 856 A.2d 114, 115 (Pa. Super. 2004).

### **F. Assessments**

#### **1. Order for Assessment**

In accordance with 42 PA. CONS. STAT. ANN. § 9795.4(a), after conviction but before sentencing, a court must order an individual convicted of an offense specified in section 9795.1 to be assessed by the board.

This order must be sent to the administrative officer of the board within ten days of the date of conviction.

#### **2. Factors**

After the board receives the court's order for an assessment, a member of the board as designated by the administrative officer of the board must conduct an assessment of the individual to determine if the individual should be classified as a sexually violent predator. 42 PA. CONS. STAT. ANN. § 9795.4(b).

The assessments should include, but are not limited to, an examination of the following:

- (a) Facts of the current offense, including:
  - Whether the offense involved multiple victims;
  - Whether the individual exceeded the means necessary to achieve the offense;
  - The nature of the sexual contact with the victim;
  - Relationship of the individual to the victim;
  - Age of the victim;

- Whether the offense included a display of unusual cruelty by the individual during the commission of the crime
  - The mental capacity of the victim.
- (b) Prior offense history, including:
- The individual's prior criminal record;
  - Whether the individual completed any prior sentences;
  - Whether the individual participated in available programs for sexual offenders.
- (c) Characteristics of the individual, including:
- Age of the individual;
  - Use of illegal drugs by the individual;
  - Any mental illness, mental disability or mental abnormality;
  - Behavioral characteristics that contribute to the individual's conduct.
- (d) Factors that are supported in a sexual offender assessment field as criteria reasonably related to the risk of reoffense.

### 3. Release of Information

In accordance with 42 PA. CONS. STAT. ANN. § 9795.4(c), all State, county and local agencies, offices or entities in the Commonwealth, including juvenile probation officers, must provide copies of records and information as requested by the board in connection with the court-ordered assessment and the assessment requested by the Pennsylvania Board of Probation and Parole or the assessment of a delinquent child under section 6358 (relating to assessment of delinquent children by the State Sexual Offenders Assessment Board).

- This section should be construed as an exemption to Section 6307 of the Juvenile Act, which protects the confidentiality of records which fall under the Juvenile Act. *Commonwealth v. Kopicz*, 840 A.2d 342 (Pa. Super. 2003).

### 4. Submission of Report by Board

The board has 90 days from the date of conviction of the individual to submit a written report containing its assessment to the district attorney. 42 PA. CONS. STAT. ANN. § 9795.4(d).

### 5. Hearing

Hearings are scheduled and conducted in accordance with 42 PA. CONS. STAT. ANN. § 9795.4(e).

- (a) Hearing is scheduled upon filing of praecipe by the district attorney.

- (b) Upon filing a praecipe, the district attorney must serve a copy of praecipe and board report upon defense counsel.
- (c) The individual and district attorney are given notice of the hearing and opportunity to be heard, the right to call witnesses, the right to call expert witnesses and the right to cross-examine witnesses.
- (d) The individual has a right to counsel and have a lawyer appointed to represent him if he cannot afford one.
- (e) If the individual requests another expert assessment, he shall provide a copy of the expert assessment to the district attorney prior to the hearing.
- (f) At the hearing prior to sentencing, the court must determine whether the Commonwealth has proven by **clear and convincing evidence** that the individual is a sexually violent predator. *Commonwealth v. Hitner*, 910 A.2d 721, 729 (Pa.Super. 2006).
- (g) A copy of the order containing the determination of the court must be **immediately** submitted to the individual, district attorney, Pennsylvania Board of Probation and Parole, Department of Corrections, board and Pennsylvania State Police.

### 6. Presentence Investigation

Copies of the board assessment must be provided to the agency preparing the presentence investigation. 42 PA. CONS. STAT. ANN. § 9795.4(f).

### 7. Parole Assessment

The Pennsylvania Board of Probation and Parole may request the board conduct an assessment and submit a report to them prior to considering an offender or sexually violent predator for parole. 42 PA. CONS. STAT. ANN. § 9795.4(g).

### 8. Delinquency

In accordance with 42 PA. CONS. STAT. ANN. § 9795.4(h), with respect to delinquent children,<sup>11</sup> the probation officer must notify the board, as well as the facility where the child is placed, 90 days prior to the 20<sup>th</sup> birthday of the delinquent child of the status of the delinquent child who is committed to an institution or other facility pursuant to section 6352 (relating to disposition of delinquent child), after having been found delinquent for an act of sexual violence, which if committed by an adult would have been a violation of:

- i. 18 PA. CONS. STAT. ANN. § 3121 (Rape)
- ii. 18 PA. CONS. STAT. ANN. § 3123 (Involuntary Deviate Sexual Intercourse)
- iii. 18 PA. CONS. STAT. ANN. § 3124.1 (Sexual Assault)

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<sup>11</sup> Except where 42 PA. CONS. STAT. ANN. § 6358(b.1) (relating to assessment of delinquent children by the State Sexual Offenders Assessment Board) is applicable.

- iv. 18 PA.CON.S.TAT.ANN. § 3125 (Aggravated Indecent Assault)
- v. 18 PA.CON.S.TAT.ANN. § 3126 (Indecent Assault)
- vi. 18 PA.CON.S.TAT.ANN. § 4302 (Incest)

The board must conduct an assessment of the child, which must include the board's determination of whether or not the child is in need of commitment due to a mental abnormality as defined in section 6402 (relating to definitions) or a personality disorder, either of which results in serious difficulty in controlling sexually violent behavior and provide a report to the court within the time frames set in section 6358(c). The probation officer must assist the board in obtaining access to the child and any records or information as requested by the board in connection with the assessment.

### 9. Other Assessments

Upon receipt from the court of an order for an assessment under section 9795.5 (relating to exemption from certain notification), a member of the board as designated by the administrative officer of the board must conduct an assessment of the individual to determine if the relief sought, if granted, is likely to pose a threat to the safety of any other person. 42 PA. CONS. STAT. ANN. § 9795.4(i).

### 10. Pertinent Case Law

#### (a) Constitutionality

Definition of "Sexually Violent Predator" sufficiently clear and specific. *Commonwealth v. Rhoads*, 836 A.2d 159 (Pa. Super 2003).

Definition of "Mental Abnormality" is specifically defined and not vague. Undefined terms "personality disorder" and "likely to engage in" not vague on their face and are sufficiently definite.

*Commonwealth v. Howe*, 842 A.2d 436 (Pa. Super. 2004).

SVP determination does not constitute double jeopardy as one is not "charged" as an SVP. *Commonwealth v. Moody*, 843 A.2d 402, 405 n. 1 (Pa.Super.2004), *appeal denied*, 584 Pa. 693, 882 A.2d 477 (2005); *Commonwealth v. Davis*, 708 A.2d 116 (Pa.Super. 1998).

#### (b) Sufficiency of Evidence

SVP classification does not automatically apply to someone convicted of a sexual offense. *Commonwealth v. Krouse*, 799 A.2d 835 (Pa. Super. 2002), *appeal denied*, 573 Pa. 671, 821 A.2d 586 (2003).<sup>12</sup>

<sup>12</sup> Regarding the standard of appellate review, the Pennsylvania Supreme Court, in *Commonwealth v. Meals*, 590 Pa. 110, \_\_\_, 912 A.2d 213, 222-223 (2006), stated that the standard is one of review, i.e., whether the evidence and all reasonable inferences deducible therefrom, viewed in the light most favorable to the Commonwealth as the prevailing party, was sufficient to establish all of the elements of a sexually violent predator; and therefore disapproving of the broader standard utilized by the Superior Court in *Commonwealth v. Krouse*.

The Commonwealth must present clear and convincing evidence sufficient to enable the trial court to determine that each element required by the statute has been satisfied. **Commonwealth v. Hitner**, 910 A.2d 721, 729 (Pa.Super. 2006); **Commonwealth v. Plucinski**, 868 A.2d 20 (Pa. Super. 2005).

Clear and convincing standard requires evidence that is so clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. **Commonwealth v. Dixon**, 907 A.2d 533, 535 (Pa.Super. 2006), *appeal denied*, \_\_\_ Pa. \_\_\_, \_\_\_ A.2d \_\_\_, 2007 WL 906691 (Pa. Mar 27, 2007).

Salient inquiry in sexual violent predator classification matters is identification of the impetus behind the commission of the crime and the extent to which the offender is likely to reoffend. **Commonwealth v. Price**, 876 A.2d 988 (Pa. Super. 2005), *appeal denied*, 587 Pa. 706, 897 A.2d 1184 (2006), *cert. denied*, 127 S.Ct. 224, 166 L.Ed.2d 179, 75 USLW 3171 (2006).

### (c) Expert Testimony

Since predictors of future dangerousness, specifically mental illness, mental disability or mental abnormality, are factors that must be weighed heavily, expert testimony as to the presence of the defect/disorder is required. **Commonwealth v. Bey**, 841 A.2d 562 (Pa. Super. 2004).

Even though a trial court may find the testifying expert or Board member to be credible, that does not necessarily lead to the conclusion that the Commonwealth has proved by clear and convincing evidence all the elements of an SVP classification. **Commonwealth v. Lipphardt**, 841 A.2d 551 (Pa. Super. 2004)

Even though the witness was not a psychologist or psychiatrist, can be qualified as an expert. **Commonwealth v. Malseed**, 847 A.2d 112 (Pa. Super. 2004), *appeal denied*, 580 Pa. 712, 862 A.2d 1254 (2004). The following qualifications of the expert were considered by the Court:

- had master's degree in counseling and taken post-grad classes for the DSM and another for mental abnormalities and personality disorders of the type often seen in sexual offenders;
- was involved in treatment and assessment of sexual offenders for 10 years and had assessed and treated over 300 individuals, 60 or 65 in the context of SVP assessments;
- became member of Board 4 years prior and was required to perform at least 2,000 hours of treatment to offenders prior to joining;

- took sexual offender evaluation and treatment training for 8 years in a row;
- had certification from Virginia in field of sexual offender treatment and assessment (no such certification existed in Pennsylvania);
- qualified as an expert 12 to 14 times in various counties;
- had specific training in diagnosis of conditions under relevant diagnostic manuals

Defendant's due process right were violated when trial court refused to appoint an expert when defendant could not afford to hire an expert to assist in preparing for his SVP hearing or testify on his behalf at the hearing. Need for expert assistance is compelling in SVP hearings where "a defendant's mental condition and likelihood of future dangerousness are the central issues." ***Commonwealth v. Curnette***, 871 A.2d 839, 843 (Pa. Super. 2005); ***Commonwealth v. McWilliams***, 887 A.2d 784 (Pa. Super. 2005).

(d) **SVP Classification – Evidence Sufficient**

***Commonwealth v. Hitner***, 910 A.2d 721 (Pa. Super. 2006):

- Commonwealth expert opined that offender had an antisocial personality disorder: "characterized by a lifetime history of failure to conform one's conduct to the norms of society, a callous disregard for other's feelings, and no remorse for one's crimes."
- Commonwealth expert opined that offender suffered from a mental abnormality of sexual sadism.

***Commonwealth v. Price***, 876 A.2d 988 (Pa. Super. 2005), *appeal denied*, 587 Pa. 706, 897 A.2d 1184 (2006), *cert. denied*, 127 S.Ct. 224, 166 L.Ed.2d 179, 75 USLW 3171 (2006):

- Commonwealth expert opined a contributing impetus behind defendant's crimes (homosexual pedophilic interest in boys) and cited research that homosexual pedophiles are twice as likely to reoffend vs. heterosexual pedophiles;
- After interviewing defendant, Commonwealth expert conducted an evaluation taking into account all of the factors listed in Megan's Law [II];
- Defendant's expert only used some factors in making determination that defendant was not an SVP, did not use all of the criteria, and did not make his determination using definition provided by the statute.

***Commonwealth v. Sanford***, 863 A.2d 428 (Pa. 2004):

- Expert opined that defendant had an antisocial personality disorder and deemed defendant an SVP. Opinion was based on police reports, criminal complaints, prior evidence gathering, past criminal behavior and past behavioral history;
- Trial Court determined defendant was an SVP, also noting that defendant's own expert said defendant was on the borderline of being an SVP. Superior Court reversed saying that expert relied on facts that had not been proven at the guilty plea and not stipulated to by defendant. Supreme Court reversed Superior Court holding that it was improper for the Superior Court to eliminate from consideration any evidence which it deemed inadmissible;
- Trial courts can and should examine all the evidence presented by the Commonwealth without regard as to the admissibility of that evidence.

***Commonwealth v. Snyder***, 870 A.2d 336 (Pa. Super. 2005):

- Expert testified that defendant had the mental abnormality of pedophilia;
- Many of the statutory factors weighed strongly in favor of classifying defendant as an SVP:
  - One victim over long period of time
  - Age differential between defendant and victim (7 years old)
  - Extensive and significant deviant sexual contact (urinating on victim, multiple sexual partners)
  - Mental capacity of victim (borderline retarded)
  - Defendant's record for violent assaults
  - Unusual cruelty in forcing victim to have sexual relations with her own mother and other sexual acts with defendant.

***Commonwealth v. Dengler***, 843 A.2d 1241 (Pa. Super. 2004), *aff'd*, 586 Pa. 54, 890 A.2d 372 (2005):

- Expert opined that defendant had a mental abnormality in the form of deviant sexual arousal toward young females;
- Expert testified that defendant probably also met the criteria for a personality disorder, although none specified;
- Other factors:
  - Multiple victims and history of recurring behavior

- Defendant was arrested for one sexual offense and then for another similar offense three months later
- Defendant had history of drug and alcohol abuse
- Maladjustment to criminal supervision (defendant violated probation and parole on his prior sexual charges)
- Defendant refused sexual offender treatment

***Commonwealth v. Moody***, 843 A.2d 402 (Pa. Super. 2004), *appeal denied*, 584 Pa. 693, 882 A.2d 477 (2005):

- Trial court satisfied with board member's testimony that defendant groomed his victims (step-daughter and neighboring child) and that defendant was not only a pedophile but was compulsive and had an addiction to sex;
- Board member changed her initial report after receiving additional information from the victims' family. Defendant's expert could not reach a definite conclusion because he would also need to analyze the additional information Board member relied on.

***Commonwealth v. Haughwout***, 837 A.2d 480 (Pa. Super. 2003):

- Following factors supported SVP classification:
  - Multiple victims (daughter and family friend)
  - Defendant admitted to 13 year abnormal contact with minors, beginning with his 15 year old sister-in-law
  - Defendant had history of alcohol and painkiller abuse
  - Nature of counseling for the offenses unclear
  - Expert's conclusion that defendant's substance abuse lowered defendant's inhibitions, defendant promoted a relationship with his daughter to sexually abuse her, abuse of family member increased defendant's risk of reoffending

(e) **SVP Classification – Evidence Insufficient**

***Commonwealth v. Krouse***, 799 A.2d 835 (Pa. Super. 2002), *appeal denied*, 573 Pa. 671, 821 A.2d 586 (2003):

- Board member assessed defendant solely on the basis of published studies;
- Did not interview defendant and therefore unable to offer a diagnosis (*although court qualified and stated that it was not suggesting that elements of SVP classification can't be met where defendant refuses to be interviewed by the Board*);

- Conclusions deemed most significant by expert not supported by necessary proof;
- Even if expert's testimony was taken as true, still lacking several statutory factors, such as: defendant's first sexual offense, prior criminal conviction involved only substance abuse, no evidence of force or unusual cruelty, no prior incidents of deviant sexual behavior or mental health issue.<sup>13</sup>

***Commonwealth v. Bey***, 841 A.2d 562 (Pa. Super. 2004):

- Board had determined that the defendant was not an SVP. Only witness at the hearing was the defendant and the Commonwealth did not call any other witnesses. There was no proof of a mental defect or personality disorder that would make it more likely for defendant to reoffend. Trial court rejected Board member's conclusion and deemed defendant an SVP. Superior Court reversed trial court decision.

***Commonwealth v. Lipphardt***, 841 A.2d 551 (Pa. Super. 2004):

- Following dictates of ***Krouse***, trial court declined to classify defendant as a sexually violent predator (and Superior Court upholds) based solely on his conviction in the instant case. Defendant had significant criminal history but was all non-sexual except the instant offense;
- Trial court considered other factors (e.g. defendant's age, victim was a stranger), but
  - One victim, not multiple
  - Victim was not a child (25 yrs old)
  - Defendant did not exceed means necessary to achieve offense
  - Did not display unusual cruelty
  - Did not have a history of abusing drugs
- Defendant was diagnosed with anti-social personality disorder, but Commonwealth failed to prove by clear and convincing evidence that defendant had a mental abnormality or personality disorder that made him likely to engage in predatory sexually violent offenses.

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<sup>13</sup> Although an appeal to the Supreme Court was denied in ***Krouse***, in relation to the standard of appellate review, the Pennsylvania Supreme Court, in ***Commonwealth v. Meals***, 590 Pa. 110, \_\_\_, 912 A.2d 213, 222-223 (2006), stated that the standard is one of review, i.e., whether the evidence and all reasonable inferences deducible therefrom, viewed in the light most favorable to the Commonwealth as the prevailing party, was sufficient to establish all of the elements of a sexually violent predator; and therefore disapproved of the broader standard utilized by the Superior Court in ***Commonwealth v. Krouse***.

***Commonwealth v. Plucinski***, 868 A.2d 20 (Pa. Super. 2005):

- Commonwealth expert failed to establish accuracy of information contained in unidentified documents relied upon to reach his diagnosis of hebephilia;
- Statutory factors weighed against SVP classification
  - One victim
  - No unnecessary means, threats or unusual cruelty
  - Defendant's first sexual offense
  - No history of failed treatment
  - Defendant's age suggested decreased likelihood to reoffend

**(f) Court Findings**

Trial court should include on the record its reasons for finding the defendant to be a sexually violent predator in relation to the statutory factors. ***Commonwealth v. Krouse***, 799 A.2d 835, 843 (Pa. Super. 2002) *appeal denied*, 573 Pa. 671, 821 A.2d 586 (2003).

**(g) Self Incrimination**

Fifth Amendment privilege only applies when evidence is needed to prosecute. At the assessment phase, defendant is no longer subject to prosecution as his guilt has already been determined. Any statements a defendant makes during his assessment proceedings can not be used to "incriminate him". ***Commonwealth v. Kopicz***, 840 A.2d 342 (Pa. Super. 2003).

Purpose of an evaluation before the Board is not criminal or punitive in nature. Since the assessment is not criminal punishment, there is no danger of incriminating oneself to a crime during the evaluation by the Board. ***Commonwealth v. Howe***, 842 A.2d 436, 445 (Pa. Super. 2004); ***Commonwealth v. Moody***, 843 A.2d 402 (Pa. Super. 2004), *appeal denied*, 882 A.2d 477, 2005 Pa. LEXIS 1921 (2005).

**(h) Privilege**

Board's use of prior sexuality evaluations or psychiatric records of defendant does not violate defendant's psychologist/patient privilege as the evaluations were distinct from treatment records. The privilege only protects statements made by defendant during the course of treatment. ***Commonwealth v. Kopicz***, 840 A.2d 342 (Pa. Super. 2003); ***Commonwealth v. Moody***, 843 A.2d 402 (Pa. Super. 2004) *appeal denied*, 882 A.2d 477, 2005 Pa. LEXIS 1921 (2005).

Opinions, observations, diagnosis and treatment alternatives outlined by professionals who interviewed defendant during juvenile detention are not privileged. ***Commonwealth v. Carter***, 821 A.2d 601 (Pa. Super. 2003)

**(i) Juvenile Records and Confidentiality**

Even without leave of court, the Board may inspect juvenile psychiatric evaluations and summaries. The Board must have all relevant information in order to assess whether the defendant has any mental illness, disability or abnormality and behavioral characteristics which make him an SVP. ***Commonwealth v. Carter***, 821 A.2d 601 (Pa. Super. 2003)

**(j) SVP Assessments and *Frye***

Psychological or psychiatric testimony of an expert and an SVP proceeding is not “novel” scientific evidence subject to the ***Frye*** standard of admissibility. ***Frye*** applies to novel devices or processes, not to psychiatrists’ or psychologists’ predictions of future dangerousness, diagnoses of mental illness, or assessments of mental deviances or abnormalities. ***Commonwealth v. Dengler***, 586 Pa. 54, 890 A.2d 372 (2005).

**G. Verification of Residence**

The Pennsylvania State Police must verify the residence and compliance with counseling of sexually violent predators every 90 days through the use of a nonforwardable verification form to the offender’s last reported address. 42 PA. CONS. STAT. ANN. § 9796(a). The form must be returned by the offender within 10 days. 42 PA. CONS. STAT. ANN. § 9796(d).

**1. Verification**

**(a) Annual Verification of Residence for Offenders**

Effective until 1/1/06: Pennsylvania State Police must verify the residence of offenders through a nonforwardable verification form. For the period of registration required, the offender must appear within ten days of receipt of the form at any Pennsylvania State Police station to complete the verification form and to be photographed. 42 PA. CONS. STAT. ANN. § 9796(b).

Effective 1/1/06: For the period of registration required, offender is to appear within ten days before each anniversary date of the offender’s initial registration at an approved registration site to complete a verification form and to be photographed. 42 PA. CONS. STAT. ANN. § 9796(b).

**(b) Quarterly Verification of Residence, Compliance with Counseling and Compliance with Limitations on Residence for Sexually Violent Predators**

Effective until 1/1/06: The Pennsylvania State Police to verify residence and compliance of sexually violent predators every 90 days through use nonforwardable verification form to the last reported residence. For the period of registration required, the sexually

violent predator must appear within 10 days of receipt of form at any Pennsylvania State Police station to complete verification form and be photographed. 42 PA. CONS. STAT. ANN. § 9796(a).

*Effective 1/1/06:* The Pennsylvania State Police to verify residence and compliance of sexually violent predators every 90 days through use nonforwardable verification form to the last reported residence. For the period of registration required, the sexually violent predator must appear quarterly, for life, between January 5 and January 15, April 5 and April 15, July 5 and July 15, and October 5 and October 15 of each calendar year at an approved registration site to complete verification form and be photographed. 42 PA. CONS. STAT. ANN. § 9796(a).

### **2. Pennsylvania State Police Responsibilities**

Send notice by first class United States mail to all registered offenders and sexually violent predators at their last reported residence addresses. 42 PA. CONS. STAT. ANN. §§ 9796(a.1) and (b.1).

Send no more than 30 days nor less than 15 days prior to each of the quarterly verification periods for sexually violent predators and not more than 30 days nor less than 15 days prior to each offender's annual anniversary date. 42 PA. CONS. STAT. ANN. §§ 9796(a.1) and (b.1).

Notice must remind sexually violent predators of their quarterly verification requirement and offenders of their annual verification requirement and provide them with list of approved registration sites. 42 PA. CONS. STAT. ANN. § 9796(a.1)(1).

Provide verification and compliance forms at each approved registration site (additionally, not less than 10 days before each of the quarterly verification periods for sexually violent predators.). 42 PA. CONS. STAT. ANN. § 9796(a.1)(2).

### **3. Effect of Notice**

Failure of the Pennsylvania State Police or failure of the offender or sexually violent predator to receive any notice or information under subsections (a.1) or (b.1) will not relieve the offender or sexually violent predator from verification requirements. 42 PA. CONS. STAT. ANN. § 9796(f).

### **4. Change of Residence**

Should be immediately reported by Pennsylvania State Police to law enforcement agency having jurisdiction over offender's or sexually violent predator's new place of residence. The law enforcement agency having jurisdiction of the sexually violent predator's new place of residence must verify compliance with limitations on residence imposed by section 9796.1. 42 PA. CONS. STAT. ANN. § 9796(c).

If the registrant moves out of state, Pennsylvania State Police must notify law enforcement agency with which offender or sexually violent predator must register in the new state. 42 PA. CONS. STAT. ANN. § 9796(c).

**5. Failure to Provide Verification**

Where the offender or sexually violent predator fails to verify within the ten day period, the Pennsylvania State Police must immediately notify the municipal police department of their last verified address and local municipal police must locate and arrest the registrant. Where no municipal police jurisdiction exists, the Pennsylvania State Police must locate and arrest the registrant. 42 PA. CONS. STAT. ANN. § 9796(d).

Violators are subject to prosecution under 18 PA. CONS. STAT. ANN. § 4915, Failure to Comply with Registration of Sexual Offenders Requirements:

**18 PA. CONS. STAT. ANN. § 4915. Failure to comply with registration of sexual offenders requirements**

**(a) Offense defined.**—An individual who is subject to registration under 42 Pa.C.S. § 9795.1(a) (relating to registration) or an individual who is subject to registration under 42 Pa.C.S. § 9795.1(b)(1), (2) or (3) commits an offense if he knowingly fails to:

- (1) register with the Pennsylvania State Police as required under 42 Pa.C.S. § 9795.2 (relating to registration procedures and applicability);
- (2) verify his address or be photographed as required under 42 Pa.C.S. § 9796 (relating to verification of residence); or
- (3) provide accurate information when registering under 42 Pa.C.S. § 9795.2 or verifying an address under 42 Pa.C.S. § 9796.

**(b) Grading for offenders who must register for ten years.**—

- (1) Deleted by 2006, Nov. 29, P.L. 1567, No. 178, § 3, effective Jan. 1, 2007.
- (2) Except as set forth in paragraph (3), an individual subject to registration under 42 Pa.C.S. § 9795.1 who commits a violation of subsection (a)(1) or (2) commits a felony of the third degree.
- (3) An individual subject to registration under 42 Pa.C.S. § 9795.1(a) who commits a violation of subsection (a)(1) or (2) and who has previously been convicted of an offense under subsection (a) (1) or (2) or a similar offense commits a felony of the second degree.
- (4) An individual subject to registration under 42 Pa.C.S. § 9795.1(a) who violates subsection (a)(3) commits a felony of the second degree.

**(c) Grading for sexually violent predators and others with lifetime registration.—**

(1) Deleted by 2006, Nov. 29, P.L. 1567, No. 178, § 3, effective Jan. 1, 2007.

(2) Except as set forth in paragraph (3), an individual subject to registration under 42 Pa.C.S. § 9795.1(b)(1),(2) or (3) who commits a violation of subsection (a)(1) or (2) commits a felony of the second degree.

(3) An individual subject to registration under 42 Pa.C.S. § 9795.1(b)(1),(2) or (3) who commits a violation of subsection (a)(1) or (2) and who has previously been convicted of an offense under subsection (a)(1) or (2) or a similar offense commits a felony of the first degree.

(4) An individual subject to registration under 42 Pa.C.S. § 9795.1(b)(1), (2) or (3) who violates subsection (a)(3) commits a felony of the first degree.

**(d) Effect of notice.—**Neither failure on the part of the Pennsylvania State Police to send nor failure of a sexually violent predator or offender to receive any notice or information pursuant to 42 Pa.C.S. § 9796(a.1) or (b.1) shall be a defense to a prosecution commenced against an individual arising from a violation of this section. The provisions of 42 Pa.C.S. § 9796(a.1) and (b.1) are not an element of an offense under this section.

**(e) Arrests for violation.—**

(1) A police officer shall have the same right of arrest without a warrant as in a felony whenever the police office has probable cause to believe an individual has committed a violation of this section regardless of whether the violation occurred in the presence of the police officer.

(2) An individual arrested for a violation of this section shall be afforded a preliminary arraignment by the proper issuing authority without unnecessary delay. In no case may the individual be released from custody without first having appeared before the issuing authority.

(3) Prior to admitting an individual arrested for a violation of this section to bail, the issuing authority shall require all of the following:

(i) The individual must be fingerprinted and photographed in the manner required by 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders).

(ii) The individual must provide the Pennsylvania State Police with all current or intended residences, all information concerning current or intended employment, including all

employment locations, and all information concerning current or intended enrollment as a student.

(iii) Law enforcement must make reasonable attempts to verify the information provided by the individual.

**(f) Definition.**—As used in this section, the term “a similar offense” means an offense similar to an offense under either subsection (a)(1) or (2) under the laws of this Commonwealth, the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation.

## **H. Victim Notification**

Once an offender is determined to be a sexually violent predator, the local municipal police department or the Pennsylvania State Police must give written notice to the victim when the sexually violent predator initially registers and when he notifies the Pennsylvania State Police of any change of residence. 42 PA. CONS. STAT. ANN. § 9797

- Notice to be given 72 hours after the sexually violent predator registers or notifies the Pennsylvania State Police of a change of address.
- Notice to contain the sexually violent predator’s name and address(es) where he resides. 42 PA. CONS. STAT. ANN. § 9797(a)(1).
- Victim may terminate duty to inform by providing written statement releasing agency from duty. 42 PA. CONS. STAT. ANN. § 9797(a)(2).

For offenders not classified as a sexually violent predator, victim to be notified in accordance with the Crime Victims Act, 18 PA. CONS. STAT. ANN. § 11.201.

## **I. Other Notification (“Community Notification”)**

### **1. Notification of SVP’s Residence**

Under Megan’s Law III, the State Police must notify neighbors, as well as day care centers and school officials within the municipality, of an SVP’s presence in the community. Pursuant to 42 PA. CONS. STAT. ANN. § 9798, written notification of the sexually violent predator’s residence to be provided to certain individuals and entities in the municipality where the SVP lives.

Notice to contain the following:

- Name of sexually violent predator;
- Address(es) of sexually violent predator;
- Offense for which he was convicted, sentenced by a court, adjudicated delinquent or court martialled;

## Sex Offender Identification

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- Statement that he has been determined by a court to be a sexually violent predator;
- Photograph, if available;
- Proviso: Not to contain any information that might reveal the victim's name, identity, residence.

Notice to be provided to:

- Neighbors. (*Where the sexually violent predator lives in a common interest community, neighbors include unit owners' association and residents of the common interest community.*) 42 PA. CONS. STAT. ANN. § 9798(b)(1);
- Director of county children and youth service agency of county where SVP resides. 42 PA. CONS. STAT. ANN. § 9798(b)(2);
- Superintendent of each school district and equivalent official for private and parochial schools enrolling students up through grade 12 in the municipality where SVP resides. 42 PA. CONS. STAT. ANN. § 9798(b)(3);
- Superintendent of each school district and equivalent official for each private and parochial school located within a one-mile radius of where the SVP resides. 42 PA. CONS. STAT. ANN. § 9798(b)(3.1);
- Licensee of each certified day care center and licensed preschool program and owner/operator of each registered family day care home in the municipality where the SVP resides. 42 PA. CONS. STAT. ANN. § 9798(b)(4);
- President of each college, university and community college located within 1,000 feet of a SVP's residence. 42 PA. CONS. STAT. ANN. § 9798(b)(5).

Time for Notice:

- **Neighbors - within 5 days** after information of the sexually violent predator's release date and residence has been received by chief law enforcement officer. 42 PA. CONS. STAT. ANN. § 9798(c)(1). Verbal notification may be used if written notification would delay meeting time requirement. 42 PA. CONS. STAT. ANN. § 9798(c)(1);
- **All others – within 7 days** after information of the sexually violent predator's release date and residence has been received by chief law enforcement officer. 42 PA. CONS. STAT. ANN. § 9798(c)(2).

All information must be available upon request to general public.

Information may be provided by electronic means. 42 PA. CONS. STAT. ANN. § 9798(d).

Interstate Transfers – duties of police departments under this section also applies to individuals transferred to Pennsylvania pursuant to the Interstate Compact for Supervision of Adult Offenders or the Interstate Compact for Juveniles. 42 PA. CONS. STAT. ANN. § 9798(e).

**2. Exemption**

Under 42 PA. CONS. STAT. ANN. § 9799.7, *Exemption from notification for certain licensees and their employees* – there is no duty imposed upon a person licensed under the Real Estate Licensing and Registration Act, or an employee thereof, to disclose any information regarding:

- A sexually violent predator, or
- An individual who is transferred to Pennsylvania pursuant to the Interstate Compact for the Supervision of Adult Offenders or the Interstate Compact for Juveniles. 42 PA. CONS. STAT. ANN. § 9799.7.

**J. Exemptions from Certain Notifications**

**1. Non SVP**

Pursuant to 42 PA. CONS. STAT. ANN. § 9795.5, under specified conditions a non SVP may be exempt from the notification provisions:

- Non-sexually violent predator lifetime registrants can petition the sentencing court to be exempt from section 9798.1 (Information Made Available on the Internet) and sexually violent predators can petition to be exempt from section 9798 (Other Notification) if no less than 20 years have passed since (whichever is later):
  - the individual has been convicted in this or any other jurisdiction of any offense punishable by imprisonment for more than one year, or
  - the individual's release from custody following the individual's most recent conviction for any such offense. 42 PA. CONS. STAT. ANN. § 9795.5(a)(1) & (b)(1).
- The court must order an assessment by the board, which must be sent to the board within ten days of its entry. No more than 90 days following receipt of the order, the board must submit a written report containing its assessment to the sentencing court, district attorney and attorney for the petitioner. 42 PA. CONS. STAT. ANN. § 9795.5(a)(2) & (b)(2).
- Within 120 days of the filing of a petition, a hearing must be held. Both petitioner and district attorney must be given notice of the hearing and an opportunity to be heard, the right to call witnesses, the right to call expert witnesses and the right to cross-examine witnesses. The petitioner has a right to counsel and have a lawyer appointed if he cannot afford one. 42 PA. CONS. STAT. ANN. § 9795.5(a)(3) & (b)(3).
- Standard at exemption hearing is clear and convincing evidence that the petitioner is not likely to pose a threat to the safety of any other person. 42 PA. CONS. STAT. ANN. § 9795.5(a)(4) & (b)(4).
- If the court grants relief to the petitioner, the court must notify the Pennsylvania State Police in writing within ten days from the date such relief is granted. 42 PA. CONS. STAT. ANN. § 9795.5(c).

- Both petitioner and Commonwealth have the right to appellate review. An appeal by the Commonwealth stays the order of the sentencing court. 42 PA. CONS. STAT. ANN. § 9795.5(d).
- If an individual is exempt from the application of either section 9798 or 9798.1 and is subsequently convicted of any offense relating to failure to comply with registration requirements, under 18 PA. CONS. STAT. ANN. § 4915, any relief granted will be void and he will automatically and immediately be subject to all applicable provisions of Megan's Law. 42 PA. CONS. STAT. ANN. § 9795.5(e).

### **K. Information Made Available on the Internet**

In 2004, the General Assembly found that public service would be enhanced by making information regarding the identities of SVPs available on the Internet. It was decided that public access was solely intended as a means of public protection and not to be punitive in nature. 42 PA. CONS. STAT. ANN. § 9798.1(a).

#### **1. Information to be Provided**

- (a) The following information, regarding Sexually Violent Predators, 42 PA. CONS. STAT. ANN. § 9798.1(c)(1), and Lifetime Registrants and other Offenders, 42 PA. CONS. STAT. ANN. § 9798.1(c)(2), is to be disclosed:
  - (i) name and any aliases;
  - (ii) year of birth;
  - (iii) street address, city, county and zip code of any institution or location at which the person is enrolled as a student;
  - (iv) city, county and zip code of any employment location;
  - (v) a photograph of the registrant, which must be updated not less than annually;
  - (vi) description of the offense or offenses which triggered the application of this subchapter;
  - (vii) date of the offense and conviction.
- (b) Duration of Internet Posting:
  - (i) Lifetime for SVP, 42 PA. CONS. STAT. ANN. § 9798.1(d);
  - (ii) Lifetime for lifetime registrant unless he is granted relief under section 42 PA. CONS. STAT. ANN. § 9795.5 (Exemption from Certain Notifications).
- (c) For an offender, the period during which he is required to register, including any extension of this period pursuant to 42 PA. CONS. STAT. ANN. § 9795.2(a)(3).

#### **2. Duties of Pennsylvania State Police**

Duties of the Pennsylvania State Police, in the manner and form directed by the Governor, 42 PA. CONS. STAT. ANN. § 9798.1(b), include:

- (i) Develop and maintain a system for making the information publicly available via an Internet website;

- (ii) Ensure that the website has warnings that any person who uses the information to threaten, intimidate or harass another or otherwise misuses the information may be criminally prosecuted;
- (iii) Ensure that the website contains explanation of limitations, including:
  - that a positive identification of a registrant whose record has been made available may be confirmed only by fingerprints;
  - that some information contained on the website may be outdated or inaccurate; and
  - that the website is not a comprehensive listing of every person who has ever committed a sex offense in Pennsylvania;
- (iv) Strive to ensure the information is accurate and that the data is revised and updated in a timely and efficient manner;
- (v) Provide general information to the public about sex offenders, sexually violent predators and the operation of Megan's Law, pertinent and appropriate information concerning crime prevention and personal safety, with appropriate links to other relevant Internet websites operated by the Commonwealth of Pennsylvania.

### **L. Immunity for Good Faith Conduct**

Pursuant to 42 PA. CONS. STAT. ANN. § 9799, the following are immune from liability for good faith conduct:

- (1) Pennsylvania State Police and local law enforcement law enforcement agencies and employees of law enforcement agencies;
- (2) District Attorneys and their agents and employees;
- (3) Superintendents, administrators, teachers, employees and volunteers engaged in the supervision of children of any public, private, or parochial school;
- (4) Directors and employees of county children and youth agencies;
- (5) Presidents or similar officers of universities and colleges, including community colleges;
- (6) Pennsylvania Board of Probation and Parole and its agents and employees;
- (7) County probation and parole offices and their agents and employees;
- (8) Licensees of certified day care centers and directors of licensed preschool programs and owners/operators of registered family day care homes, and their agents and employees;
- (9) Pennsylvania Department of Corrections and its agents and employees;
- (10) County correctional facilities and their agents and employees;
- (11) Members of the Sexual Offenders Assessment Board and its agents and employees;
- (12) Unit owners' association of a common interest community and its agents and employees as it relates to distributing information regarding sexually violent predators obtained pursuant to 42 PA. CONS. STAT. ANN. § 9798(b)(1).

**M. Counseling of Sexually Violent Predators**

A sexually violent predator is required to attend at least monthly counseling sessions in a program approved by the board and be financially responsible for all fees. 42 PA. CONS. STAT. ANN. § 9799.4.

- The counseling sessions last for the period of registration. 42 PA. CONS. STAT. ANN. § 9795.1(b). Unless the SVP can prove to the satisfaction of the court that he cannot afford to pay for them, the cost in on the SVP; otherwise, the SVP must still attend counseling sessions but the parole office shall pay the fees.
- The board must monitor compliance.

**N. Annual Performance Audit**

Pursuant to 42 PA. CONS. STAT. ANN. § 9799.8, the Attorney General is required to perform an annual audit to determine compliance with requirements of Megan’s Law and prepare an annual report of its findings.

**O. Photographs and Fingerprinting**

Pursuant to 42 PA. CONS. STAT. ANN. § 9799.9, an individual subject to registration must submit to fingerprinting and photographing at approved registration sites.

- Fingerprinting – to be full set of fingerprints;
- Photographing – to include photographs of the face, scars, marks, tattoos or other unique features of the individual.

**P. Noncompliance Laws**

**1. Failure to Comply with Registration Requirements**

Failure to comply with registration of sexual offender requirements could result in the filing of criminal charges, 18 PA. CONS. STAT. ANN. § 4915:

**(a) Offense Defined**

An individual who is subject to registration under 42 PA. CONS. STAT. ANN. § 9795.1(a) or an individual who is subject to registration under 42 PA. CONS. STAT. ANN. § 9795.1(b)(1), (2), or (3), commits an offense if he knowingly fails to:

- Register with the Pennsylvania State Police as required under 42 PA. CONS. STAT. ANN. § 9795.2 (18 PA. CONS. STAT. ANN. § 4915(a)(1));
- Verify his address or be photographed as required under 42 PA. CONS. STAT. ANN. § 9796 (18 PA. CONS. STAT. ANN. § 4915 (a)(2));  
or
- Provide accurate information when registering under 42 PA. CONS. STAT. ANN. § 9795.2 or verifying an address under 42 PA. CONS. STAT. ANN. § 9796 (18 PA. CONS. STAT. ANN. § 4915(a)(3)).

**(b) Grading**

**Grading for Offenders who must register for ten years.**

- i. Misdemeanor of the Third Degree – commits a violation of 18 PA.CONS.STAT.ANN. §§ 4915 (a)(1) or (a)(2).
- ii. Misdemeanor of the Second Degree – commits a violation of 18 PA.CONS.STAT.ANN. §§ 4915 (a)(1) or (a)(2) and has previously been convicted of an offense under subsection (a)(1) or (2) or a similar offense.
- iii. Felony of the Third Degree - commits a violation of 18 PA.CONS.STAT.ANN. §§ 4915 (a)(1) or (2) and has previously been convicted of two or more offenses under subsection (a)(1) or (2) or a similar offense.
- iv. Felony of the Third Degree - commits a violation of 18 PA.CONS.STAT.ANN. § 4915 (a)(3).

**Grading for Sexually Violent Predators and Others with Lifetime Registration**

- i. Misdemeanor of the Second Degree - an individual subject to registration under 42 PA.CONS.STAT.ANN. §§ 9795.1(b)(1), (2) or (3) who violates 18 PA.CONS.STAT.ANN. §§ 4915 (a)(1) or (2).
- ii. Misdemeanor of the First Degree - an individual subject to registration under 42 PA.CONS.STAT.ANN. §§ 9795.1(b)(1), (2) or (3) who commits a violation of 18 PA.CONS.STAT.ANN. §§ 4915 (a)(1) or (2) and has previously been convicted of an offense under 18 PA.CONS.STAT.ANN. §§ 4915 (a)(1) or (2) or a similar offense.
- iii. Felony of the Third Degree - an individual subject to registration under 42 PA.CONS.STAT.ANN. §§ 9795.1(b)(1), (2) or (3) who commits a violation of 18 PA.CONS.STAT.ANN. §§ 4915 (a)(1) or (2) and has previously been convicted of two or more offenses under 18 PA.CONS.STAT.ANN. §§ 4915 (a)(1) or (2) or a similar offense.
- iv. Felony of the Third Degree - an individual subject to registration under 42 PA.CONS.STAT.ANN. §§ 9795.1(b)(1), (2) or (3) who violates 18 PA.CONS.STAT.ANN. § 4915 (a)(3).

**(c) Effect of Notice**

Neither failure on the part of the Pennsylvania State Police to Send, nor failure of a Sexually Violent Predator or Offender to receive any notice or information pursuant to 42 PA.CONS.STAT.ANN. §§ 9796(a.1) or (b.1) will be a defense to a prosecution commenced against an individual arising from a violation of this section. The provisions of

42 PA.CON.S.TAT.ANN. §§ 9796(a.1) and (b.1) are not an element of an offense under this section.

**(d) Arrests for Violation**

A police officer has the same right of arrest without a warrant as in a felony whenever the police officer has probable cause to believe an individual has committed a violation of this section, regardless of whether the violation occurred in the presence of the police officer.

An individual arrested for a violation of this section will be afforded a preliminary arraignment by the proper issuing authority without unnecessary delay. The individual may not be released from custody without first having appeared before the issuing authority.

Prior to admitting an individual arrested for a violation of this section to bail, the issuing authority must require all of the following:

- (a) The individual must be fingerprinted and photographed in the manner required by 42 PA.CON.S.TAT.ANN. Ch. 97 Subch H (relating to registration of sexual offenders).
- (b) The individual must provide the Pennsylvania State Police with all current or intended residences, all information concerning current or intended employment, including all employment locations, and all information concerning current or intended enrollment as a student.
- (c) Law enforcement must make reasonable attempts to verify the information provided by the individual.

As used in this section, the term “**a similar offense**” means an offense similar to an offense under either subsection (a)(1) or (2) under the laws of the Commonwealth, the United States or one of its territories of possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation.

### 10.3 CIVIL COMMITMENT OF JUVENILE SEX OFFENDERS

#### A. Assessment of Delinquent Children by the State Sexual Offenders Assessment Board, 42 PA. CONS. STAT. ANN. § 6358

##### 1. General Rule

A child found to be delinquent for committing any of the following:

- i. Rape, 18 PA.CON.S.TAT.ANN. § 3121;
- ii. Involuntary Deviate Sexual Intercourse, 18 PA.CON.S.TAT.ANN. § 3123;
- iii. Sexual Assault, 18 PA.CON.S.TAT.ANN. § 3124.1;

- iv. Aggravated Indecent Assault, 18 PA.CONS.STAT.ANN. § 3125;
- v. Indecent Assault, 18 PA.CONS.STAT.ANN. § 3126; or
- vi. Incest, 18 PA.CONS.STAT.ANN. § 4302.

who is committed to an institution or other facility pursuant to 42 PA. CONS. STAT. ANN. § 6352 (Disposition of Delinquent Child) and who remains in the facility upon turning 20 years of age, is subject to an assessment by the board. 42 PA. CONS. STAT. ANN. § 6358(a).

**2. Duty of Probation Officer**

Must notify board of child’s status and facility where child is committed and must assist the board in obtaining access to the child and any information required by the board for the assessment. 42 PA. CONS. STAT. ANN. § 6358(b).

Notification must be 90 days prior to the child’s 20<sup>th</sup> birthday. 42 PA. CONS. STAT. ANN. § 6358(b).

Must notify board of any child whose age precludes compliance with this subsection provided child has not yet attained 21 years of age (must be within 5 days of effective date of this subsection). 42 PA. CONS. STAT. ANN. § 6358(b.1).

**3. Assessment**

(a) Board must determine whether or not child is in need of commitment for involuntary treatment due to

- i. mental abnormality (as defined in 42 PA.CONS.STAT.ANN. § 6402) or
- ii. personality disorder

either of which results in “serious difficulty in controlling sexually violent behavior”. 42 PA.CONS.STAT.ANN. § 6358(c).

(b) Board must provide completed assessment to the court

- i. no later than 90 days after child’s 20<sup>th</sup> birthday
- ii. unless notification was delayed under subsection b.1, the assessment must be filed no later than 180 days after child’s 20<sup>th</sup> birthday. 42 PA. CONS. STAT. ANN. § 6358(c).

iii. Court must provide assessment to probation officer, district attorney, county solicitor or designee and child’s attorney. 42 PA. CONS. STAT. ANN. § 6358(d).

**4. Dispositional Review Hearing**

Where the board concludes that the child is in need of involuntary treatment, pursuant to Ch. 64, the court must conduct a hearing. 42 PA. CONS. STAT. ANN. § 6358(e).

- (a) County solicitor or designee, probation officer and child's attorney must be present;
- (b) Court to consider assessment, treatment information and any other relevant information regarding delinquent child;
- (c) Hearing to be held no later than 180 days before child's 21<sup>st</sup> birthday
  - i. Unless submission of report was delayed pursuant to subsection c.1 in which case the hearing must be held no later than 90 days before the child's 21<sup>st</sup> birthday.
- (d) If court finds prima facie case that child is in need of involuntary treatment under provisions of Ch. 64, court must direct county solicitor or designee to file a petition to initiate proceedings under Ch. 64 provisions.

**B. Court-Ordered Involuntary Treatment Of Certain Sexually Violent Persons, 42 PA. CONS. STAT. ANN. Chapter 64**

**1. Definitions - 42 PA. CONS. STAT. ANN. § 6402**

“Act of Sexual Violence”

- (a) Rape, 18 PA.CONS.STAT.ANN. § 3121;
- (b) Involuntary Deviate Sexual Intercourse, 18 PA.CONS.STAT.ANN. § 3123;
- (c) Sexual Assault, 18 PA.CONS.STAT.ANN. § 3124.1;
- (d) Aggravated Indecent Assault, 18 PA.CONS.STAT.ANN. § 3125;
- (e) Indecent Assault, 18 PA.CONS.STAT.ANN. § 3126;
- (f) Incest, 18 PA.CONS.STAT.ANN. § 4302.

“**Board.**” As defined in section 6302 (the State Sexual Offenders Assessment Board).

“**County Solicitor.**” Solicitor appointed by county commissioners or similar body in home rule counties.

“**Department.**” Department of Public Welfare of the Commonwealth.

“**Mental Abnormality.**” A congenital or acquired condition of a person affecting the person's emotional or volitional capacity.

“**Sexually Violent Delinquent Child.**” Person found delinquent for an act of sexual violence and who has been determined to be in need of commitment for involuntary treatment under this chapter.

**2. Court-Ordered Involuntary Treatment - 42 PA. CONS. STAT. ANN. § 6403**

**(a) Individuals Subject to Involuntary Treatment**

- i. Has been adjudicated delinquent for an act of sexual violence, if committed by an adult, would be a violation of crimes listed in definition of “act of sexual violence” (Rape, Deviate Sexual

Intercourse, Sexual Assault, Aggravated Indecent Assault, Indecent Assault, Incest). 42 PA.CONS.STAT.ANN. § 6403(a)(1).

- ii. Has been committed to an institution or other facility pursuant to 42 PA.CONS.STAT.ANN. § 6352 (Disposition of Delinquent Child) and remains in the institution or other facility upon turning 20 years old. 42 PA.CONS.STAT.ANN. § 6403(a)(2).
- iii. Is in need of involuntary treatment due to a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes the person likely to engage in an act of sexual violence. 42 PA.CONS.STAT.ANN. § 6403(a)(3).

### **(b) Procedures for Initiating Involuntary Commitment**

- i. If court determines prima facie case has been presented that the child is in need of involuntary treatment, court must order that a petition be filed by the county solicitor or a designee before the court having jurisdiction of the person pursuant to Chapter 63 (Juvenile Matters). 42 PA.CONS.STAT.ANN. § 6403(b)(1).
- ii. Petition must
  - be in writing (in form adopted by the department);
  - set forth facts constituting reasonable grounds to believe individual is within criteria for court-ordered involuntary treatment as set forth in 42 PA.CONS.STAT.ANN. § 6403(a);
  - include board assessment as required in section 6358. 42 PA.CONS.STAT.ANN. § 6403(b)(2).
- iii. Court must
  - Set date for hearing, which must be held within 30 days of filing of petition;
  - Serve a copy of the petition and notice of hearing upon the individual, the attorney who represented the individual at the most recent dispositional review hearing, and the county solicitor or designee;
  - Provide written notice to the individual and his attorney advising that the individual has the right to counsel and if he cannot afford one, counsel will be appointed for him. 42 PA.CONS.STAT.ANN. § 6403(b)(3).
- iv. Individual must be informed of right to be assisted in proceedings by an independent expert in the field of sexually violent behavior. If the individual cannot afford such an expert, court must allow a reasonable fee for that purpose. 42 PA.CONS.STAT.ANN. § 6403(b)(4).

### **(c) Hearing - 42 PA.CONS.STAT.ANN. § 6403(c)(1-6)**

- i. Individual may not be called as a witness without his consent;
- ii. Individual has the right to confront and cross-examine all witnesses and present evidence on his own behalf;

- iii. Hearing shall be public;
- iv. Stenographic or other sufficient record must be made;
- v. Hearing must be conducted by the court;
- vi. Court must render decision within five days after the conclusion of the hearing;

**(d) Determination and Order - 42 PA.CONS.STAT.ANN. § 6403(d)**

- i. Standard is clear and convincing evidence that person has a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes the individual likely to engage in an act of sexual violence.
- ii. Upon such a finding, court must enter an order directing immediate commitment of the individual for inpatient involuntary treatment to a facility designated by the department.
- iii. Order must be in writing and be consistent with protection of public safety and appropriate control, care and treatment of the person.
- iv. An appeal does not stay the execution of the order.

**3. Duration of Commitment and Review - 42 PA.CONS.STAT.ANN. § 6404**

- (a) Initial period of commitment - subject to inpatient treatment for one year. 42 PA.CONS.STAT.ANN. § 6404(a).
- (b) Annual Review 42 PA.CONS.STAT.ANN. § 6404(b) – court to schedule review hearing:
  - i. Hearing to be conducted pursuant to 42 PA.CONS.STAT.ANN. § 6403(c)(court-ordered involuntary treatment);
  - ii. No later than 30 days after receipt of both evaluation and assessment;
  - iii. Notice to be provided to individual, attorney who represented him at previous hearing, district attorney and county solicitor or a designee;
  - iv. Written notice to be provided to the individual and his attorney advising that he has the right to counsel and that if he cannot afford one, counsel will be appointed;
  - v. Clear and convincing evidence standard;
  - vi. If determined that the individual continues to have serious difficulty controlling sexually violent behavior due to a mental abnormality or personality disorder that makes him more likely to engage in an act of sexual violence, court to order an additional period of involuntary treatment of one year;
  - vii. If no such determination, court to order discharge of the individual;

viii. Order to be in writing and consistent with the protection of public safety and appropriate control, care and treatment of the individual.

(c) Discharge - 42 PA.CON.S.TAT.ANN. § 6404(c)

- i. At any time the director or a designee of the facility concludes the individual no longer has serious difficulty in controlling sexually violent behavior, director to petition the court for a hearing;
- ii. Notice of hearing to be provided to the individual, attorney who represented him at previous hearing, the board, district attorney and county solicitor;
- iii. Written notice to be provided to the individual and his attorney regarding his right to counsel and appointment of counsel if he cannot afford one;
- iv. Board to conduct a new assessment within 30 days and provide assessment to the court;
- v. Court must hold a hearing within 15 days of receiving the new assessment, pursuant to 42 PA.CON.S.TAT.ANN. 6404(c)(3);
- vi. Court Determination: If the court determines by clear and convincing evidence that the individual continues to have serious difficulty controlling sexually violent behavior due to a mental abnormality or personality disorder that makes him likely to engage in an act of sexual violence, court to order that the individual be subject to the remainder of the period of commitment. Otherwise, court to order the individual's discharge. 42 PA.CON.S.TAT.ANN. 6404(c)(3).
- vii. Department is to provide the individual with notice of his right to petition the court for discharge over the objection of the department. Court may schedule a hearing, pursuant to section 6403(c), after reviewing the petition. 42 PA.CON.S.TAT.ANN. 6404(c)(4).

**4. Right to Counsel - 42 PA.CON.S.TAT.ANN. § 6405**

Individual who is the subject of the hearing has the right to assistance of counsel at each proceeding conducted pursuant to this chapter.

**5. Duty of Department of Public Welfare - 42 PA.CON.S.TAT.ANN. § 6406**

- (a) Department has duty to provide separate, secure State-owned facility or unit utilized solely for the control, care and treatment of individuals committed pursuant to this chapter.
- (b) Department is responsible for all costs relating to the above.
- (c) Department may designate a State-owned facility or unit which receives delinquent children committed under Chapter 63 to receive individuals committed under this chapter as long as those individuals are segregated

at all times from the other delinquent children. (This subsection expires July 1, 2006.)

- (d) Department is to develop policies and procedures for providing individualized treatment and discharge plans based on clinical guidelines and professional standards in the fields of sexual offender treatment and mental health. Department is to consult with the Juvenile Court Judges' Commission and the board in developing the policies.

**6. Regulations - 42 PA.CONS.STAT.ANN. § 6407**

Department is to adopt, in consultation with the Juvenile Court Judges' Commission and the board, regulations necessary to effectuate provisions of this chapter.

**7. Jurisdiction - 42 PA.CONS.STAT.ANN. § 6408**

Court of common pleas for the county which entered the order for commitment has jurisdiction for proceedings under this chapter, including subsequent proceedings.

**8. Immunity for Good Faith Conduct - - 42 PA.CONS.STAT.ANN. § 6409**

The following are immune from liability for good faith conduct:

- Members of the board and its agents and employees;
- Department and its agents and employees;
- County probation departments and their agents and employees.

## **10.4 COMBINED DNA INDEX SYSTEM (CODIS)**

### **A. CODIS**

CODIS is the software and DNA indexing system created in 1994 by the DNA Identification Act. It stands for Combined DNA Index System, an electronic database that allows nationwide access to DNA profiles. It operates under a three-tiered DNA Index System – Local (LDIS), State (SDIS) and National (NDIS). DNA profiles are uploaded in this hierarchical sequence: local index to state index to national index. The NDIS contains DNA profiles collected from the states and federal government; the SDIS contains DNA profiles collected from the state; and the LDIS is the local repository for DNA profiles. Each local laboratory that participates in CODIS has its own local index and each state has one state index. The Federal Bureau of Investigation maintains the national index.

DNA profiles are collected from two different sources and uploaded into the index systems. The two databases are the Offender Index and the Forensic Index. The offender database comprises of DNA samples taken from convicted offenders who are required to submit a DNA sample. Each state dictates which crimes require submission of DNA samples. The forensic database consists of DNA samples taken from crime scenes and profiles of unknown origin.

Information contained in the databanks is compared, which may then generate a “hit” or match. Two types of matches or “hits” can occur: evidence-to-evidence (or forensic) matches and evidence-to-offender (or offender) matches.

CODIS has been an effective investigative tool in solving crimes, linking previously unrelated crimes together or an unsolved crime to a particular individual. 50 states now participate in CODIS, including Pennsylvania. According to the FBI CODIS website, as of September 2005, Pennsylvania has 54,126 offender profiles, 2,893 forensic samples, 4 CODIS laboratories, 4 NDIS participating laboratories, and 681 aided investigations. See [www.fbu.gov/hq/lab/codis/pa.htm](http://www.fbu.gov/hq/lab/codis/pa.htm). See also FBI CODIS website [www.fbi.gov/hq/lab/codis/index1.htm](http://www.fbi.gov/hq/lab/codis/index1.htm) for additional information on CODIS.

### **B. Federal Legislation Governing CODIS - 42 U.S.C. § 14132**

#### **1. Establishment of Index - 42 U.S.C. § 14132(a)**

This section authorizes an index of:

- (a) DNA identification records of
  - i. persons convicted of crimes;
  - ii. persons who have been charged in an indictment or information with a crime;
  - iii. other persons whose DNA samples are collected under applicable legal authorities (however, DNA profiles from arrestees who have not been charged in an indictment or information with a crime and DNA samples that are voluntarily submitted solely for elimination purposes must not be included in the National DNA Index System);
- (b) Analyses of DNA samples recovered from crime scenes;
- (c) Analyses of DNA samples recovered from unidentified human remains; and
- (d) Analyses of DNA samples voluntarily contributed from relatives of missing persons.

#### **2. Information Allowed on the Index - 42 U.S.C. § 14132(b)**

CODIS index shall only include information on DNA identification records and profiles that are:

- (a) based on analyses performed by or on behalf of:
  - i. A criminal justice agency; or
  - ii. The Secretary of Defense in accordance with section 1565 of Title 10, United States Code; and
  - iii. Must be in accordance with publicly available standards that satisfy or exceed the guidelines for a quality assurance program for DNA analysis, issued by the Director of the FBI under section 210303, 42 U.S.C. § 14131;

- (b) prepared by laboratories that:
- i. Not later than 2 years after the date of enactment of the DNA Sexual Assault Justice Act of 2004 [enacted October 30, 2004], have been accredited by a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic science community; and
  - ii. Undergo external audits, not less than once every 2 years, that demonstrate compliance with standards established by the FBI Director; and
  - iii. Maintained by the Federal, State, and local criminal justice agencies (or the Secretary of Defense) pursuant to rules that allow disclosure of stored DNA samples and DNA analyses only
    - to criminal justice agencies for law enforcement identification purposes;
    - in judicial proceedings, if otherwise admissible pursuant to applicable statutes or rules;
    - for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which the defendant is charged; or
    - if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

### **3. Failure to Comply - 42 U.S.C. § 14132(c)**

Access to the index is subject to cancellation if the quality control and privacy requirements in § 14132(b) are not met.

### **4. Expungement of Records - 42 U.S.C. § 14132(d)**

#### **(a) By Director**

The Director of the FBI must promptly expunge from the index the DNA analysis:

- i. of a person included in the index on the basis of a qualifying Federal offense or
- ii. a qualifying District of Columbia offense (as determined under sections 3 and 4 of the DNA Analysis Backlog Elimination Act of 2000, 42 U.S.C. §§ 14135 a, 14135b respectively).
- iii. If the Director receives, for each conviction of the person of the qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned.
- iv. “Final”: A court order is not “final” if time remains for an appeal or application for discretionary review with respect to the order.

- v. “Qualifying offense” means any of the following offenses:
- A qualifying Federal offense, as determined under section 3 of the DNA Analysis Backlog Elimination Act of 2000, 42 U.S.C. § 14135a;
  - A qualifying District of Columbia offense, as determined under section 4 of the DNA Analysis Backlog Elimination Act of 2000, 42 U.S.C. § 14135b;
  - A qualifying military offense, as determined under section 1565 of Title 10, United States Code.

**(b) By States**

As a condition of access to the index, a State shall promptly expunge from the index the DNA analysis of a person included in the index by the State if:

- i. The State receives a certified copy of a final order establishing that the conviction was overturned for each conviction of the person of the offense on the basis of which that analysis was or could have been included in the index; or
- ii. The person has not been convicted of an offense on the basis of which that analysis was or could have been included in the index, and all charges for which the analysis was or could have been included in the index have been dismissed or resulted in acquittal.

**5. Authority for Keyboard Searches - 42 U.S.C. § 14132(e)**

- (a) Definition of “Keyboard Search”: a search under which information obtained from a DNA sample is compared with information in the index without resulting in the information obtained from a DNA sample being included in the index.
- (b) Authority: Director must ensure that any person who is authorized to access the index for purposes of including information on DNA identification records or DNA analyses in that index may also access that index for purposes of carrying out a one-time keyboard search on information obtained from any DNA sample lawfully collected for a criminal justice purpose except for a DNA sample voluntarily submitted solely for elimination purposes.
- (c) This subsection is not to be construed to preempt State law.

## 10.5 DNA DATA AND TESTING

On November 30, 2004, effective January 31, 2005, Pennsylvania enacted the DNA Act, 44 PA.CONS.STAT.ANN. §§ 2301 – 2336, to provide “for DNA detection of sexual offenders and other offenders.” 44 Pa.Cons.Stat.Ann. § 2301.<sup>14</sup>

### A. Definitions - 44 PA.CONS.STAT.ANN. § 2303

“**ARD**” Accelerated Rehabilitative Disposition.

“**CODIS**” The term is derived from Combined DNA Index System, the Federal Bureau of Investigation’s national DNA identification index system that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories.

“**Commissioner**” The Commissioner of the Pennsylvania State Police.

“**Criminal Justice Agency**” A criminal justice agency as defined in 18 Pa.Cons.Stat.Ann. § 9102 (relating to definitions).

“**DNA**” Deoxyribonucleic acid. DNA is located in the cells and provides an individuals’ personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

“**DNA Record**” DNA identification information stored in the State DNA Data Base or the Combined DNA Index System for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The term includes nuclear and mitochondrial typing. The DNA record is the result obtained from the DNA typing tests. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification tests on an individual’s DNA sample are also collectively referred to as the DNA profile of an individual.

“**FBI**” The Federal Bureau of Investigation.

“**Felony Sex Offense**” A felony offense or an attempt, conspiracy or solicitation to commit a felony offense under any of the following:

- Sexual Offenses, 18 PA.CONS.STAT.ANN. Ch. 31;
- Incest, 18 PA.CONS.STAT.ANN. § 4302;
- Prostitution and related offenses, 18 PA.C.S.A. § 5902(c)(1)(iii) and (iv);
- Obscene and Other Sexual Materials and Performances, where the offense constitutes a felony, 18 PA.CONS.STAT.ANN. § 5903(a);

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<sup>14</sup> These requirements were originally enacted as the Act of May 28, 1995, 1st Sp. Sess., P.L. 1009, No. 14, 35 PA.CONS.STAT.ANN. §§ 7651.101 – 7651.1102, repealed by Section 5 of the Act of June 19, 2002, P.L. 394, and continued in the DNA Data and Testing Act, 42 PA.CONS.STAT.ANN. §§ 4701 – 4741. The 1995 statute required the collection of DNA samples from inmates convicted of felony sex and other specified offenses, even if they were convicted prior to the effective date of the Act. The 2002 codification expanded this list of specified crimes. See *Luckett v. Blaine*, 850 A.2d 811, 814 n.2 (Pa.Cmwlth. 2004). 42 PA.CONS.STAT.ANN. §§ 4701 – 4741. were renumbered into chapter 44 in 2004.

- Sexual Abuse of Children, 18 PA.CON.S.TAT.ANN. § 6312;
- Unlawful Contact with Minor, where the most serious underlying offense for which the defendant contacted the minor is graded as a felony, 18 PA.CON.S.TAT.ANN. § 6318;
- Sexual Exploitation of Children, 18 PA.CON.S.TAT.ANN. § 6320.

**“Former DNA Act”** The former act of May 28, 1995 (1<sup>st</sup> Sp.Sess., P.L. 1009, No. 14) known as the DNA Detection of Sexual and Violent Offenders Act.

**“Fund”** The DNA Detection Fund reestablished in section 2335 (relating to DNA Detection Fund).

**“Other Specified Offense”** A felony offense or an offense under 18 Pa.C.S. § 2910 (Luring a Child into a Motor Vehicle) or 3126 (Indecent Assault) or an attempt to commit such an offense.

**“State Police”** Pennsylvania State Police.

### B. State DNA Identification System

#### 1. Responsibilities of State Police

- (a) the policy management and administration of the State DNA identification record system;
- (b) promulgating rules and regulations to carry out the provisions of this chapter;
- (c) providing or liaison with the FBI and other criminal justice agencies for Pennsylvania’s participation in CODIS or in a DNA data base designated by the State Police. 44 PA.CON.S.TAT.ANN. § 2311;
- (d) State Police can recommend to the General Assembly inclusion of additional offenses for which DNA samples will be taken. 44 PA.CON.S.TAT.ANN. § 2314;
- (e) State Police is to prescribe procedures to be used in the collection, submission, identification, analysis, storage and disposition of DNA samples and typing results of DNA samples submitted. 44 PA.CON.S.TAT.ANN. § 2318(a);
- (f) State Police is authorized to contract with third parties for purposes of this chapter. 44 PA.CON.S.TAT.ANN. § 2318(b);
- (g) State Police is authorized, for good cause shown, to revoke or suspend the right of a forensic DNA laboratory within the Commonwealth to access or exchange DNA identification records with criminal justice agencies. 44 PA.CON.S.TAT.ANN. § 2320.

#### 2. Compatibility

DNA identification system must be compatible with the procedures specified by the FBI, including use of comparable test procedures, laboratory equipment, supplies and computer software. **44 Pa.Cons.Stat.Ann. § 2315.**

**C. State DNA Data Base – 44 PA.CON.S.TAT.ANN. § 2312**

State DNA Data Base is to be administered by the State Police and provide DNA records to the FBI for storage and maintenance by CODIS.

State DNA Data Base shall have the capability provided by computer software and procedures administered by the State Police to store and maintain DNA records related to:

- i. forensic casework;
- ii. convicted offenders required to provide a DNA sample under this chapter;  
and
- iii. anonymous DNA records used for research or quality control.

**D. When and From Whom DNA Sample Required**

**1. Occasion When Sample Required**

DNA sample is required upon conviction, delinquency, adjudication, and certain ARD cases. 44 PA.CON.S.TAT.ANN. § 2316.

This chapter applies to incarcerated persons convicted or adjudicated delinquent for a felony sex offense prior to June 19, 2002.

Also applies to incarcerated persons and persons on probation or parole who were convicted or adjudicated delinquent for other specified offenses prior to the effective date of this paragraph.

Acceptance into ARD as a result of a criminal charge for a felony sex offense or other specified offense filed after June 18, 2002, may be conditioned upon the giving of a DNA sample.

“Release” means any release, parole, furlough, work release, prerelease or release in any other manner from a prison, jail, juvenile detention facility or any other place of confinement.

**2. Individuals Who Must Provide Samples**

(a) DNA samples are to be drawn:

- From a person convicted or adjudicated delinquent for a felony sex offense or other specified offense; or
- From a person who is or remains incarcerated for a felony sex offense or other specified offense;
- Upon intake to a prison, jail, juvenile detention facility or any other detention facility or institution.

(b) If already confined at the time of sentencing or adjudication, DNA sample shall be drawn immediately after sentencing or adjudication (or if not timely drawn, at any time thereafter by the prison, jail, juvenile detention facility, detention facility or institution.).

- (c) DNA sample will be drawn even if disposition does not involve intake into prison, jail, juvenile detention facility or any other detention facility or institution.
- (d) Under no circumstances shall a person who is convicted or adjudicated delinquent for an offense covered by this chapter be released in any manner until a DNA sample has been withdrawn.
- (e) Condition of Release, Probation or Parole:
  - Person who has been convicted or adjudicated delinquent for a felony sex offense or otherwise specified offense and who serves a term of confinement in connection therewith after June 18, 2002, must not be released in any manner unless and until a DNA sample has been withdrawn.

**3. Mandatory Submission – 44 PA.CON.S.TAT.ANN. § 2316(D.1)**

- (a) Requirements of this chapter apply regardless of whether a court advises a person that a DNA sample must be provided to the State DNA Data Base and State DNA Data Bank as a result of a conviction or adjudication or delinquency.
- (b) Person sentenced to death or life imprisonment without the possibility of parole NOT exempt.
- (c) Any person subject to this chapter who has not provided a DNA sample for any reason, including because of an oversight or error, must provide a DNA sample for inclusion in the State DNA Data Base and State DNA Data Bank after being notified by authorized law enforcement or corrections personnel.
- (d) If a DNA sample is not adequate for any reason, the person must provide another DNA sample for inclusion in the State DNA Data Base and State DNA Data Bank after being notified by authorized law enforcement or corrections personnel.

**E. Procedures for Withdrawal, Collection, and Transmission of DNA Samples - 44 PA.CON.S.TAT.ANN. § 2317**

- 1. DNA samples from those incarcerated or confined will be drawn at the place of incarceration or confinement.
- 2. DNA samples from those who are not sentenced to a term of confinement will be drawn at a prison, jail unit, juvenile facility or other facility to be specified by the court.
- 3. DNA samples to be drawn only by individuals qualified to draw DNA samples in a medically approved manner.
- 4. Drawn DNA samples and full set of fingerprints from same person must be delivered to the State Police within 48 hours of drawing the DNA sample.

5. Persons authorized to draw DNA samples are not criminally liable for withdrawing the sample and transmitting test results if they perform these activities in good faith.
6. Persons authorized to draw DNA samples are not civilly liable for such activities when the person acted in a reasonable manner according to generally accepted medical and other professional practices.
7. Reasonable use of force allowed where an individual refuses to submit to DNA testing authorized under this chapter.
  - (a) No civil or criminal liability for use of reasonable force.

**F. DNA Data Base Exchange - 44 PA.CON.S.TAT.ANN. § 2319**

1. State Police has the duty to receive DNA samples, to store, to perform analysis or to contract for DNA typing analysis with a qualified DNA laboratory to classify and file the DNA record of identification characteristic profiles of DNA samples submitted under the former DNA Act, former 42 PA.CON.S.TAT.ANN. Ch. 47, or this chapter, and to make such information available as provided in this section.
2. State Police may contract out the storage of DNA typing analysis and may contract out DNA typing analysis to a qualified DNA laboratory.
3. Results of DNA profile of individuals in the State DNA Data Base shall be made available:
  - (a) to criminal justice agencies or approved crime laboratories which serve these agencies; or
  - (b) Upon written or electronic request and in furtherance of an official investigation of a criminal offense or offender or suspected offender.
4. Population Data Base - State Police may establish a separate population data base comprised of DNA samples obtained under this chapter after all personal identification is removed. State Police may share or disseminate it with other criminal justice agencies or crime laboratories that serve to assist the State Police with statistical data bases. May be made available to and searched by other agencies participating in the CODIS system.

**G. Expungement - 44 PA.CON.S.TAT.ANN. § 2321**

1. Person whose DNA record has been included in the data bank may request expungement on the grounds that
  - (a) the conviction or delinquency adjudication has been reversed and the case dismissed, or
  - (b) that the DNA sample, record or profile was included in the State DNA Data Bank or State DNA Data Base by mistake.

2. State Police must receive a written request for expungement and certified copy of the final court order reversing and dismissing the conviction or clear and convincing proof that the sample record or profile was included by mistake before purging all records and identifiable information in the State Data Bank and State Data Base and destroying each sample, record and profile from the person.
3. An incarcerated or previously incarcerated person may not seek expungement of a DNA sample, record or profile on the grounds that he was convicted or adjudicated delinquent
  - (a) for a felony sex offense prior to July 27, 1995, or
  - (b) for one of the other specified offenses prior to the effective date of the former DNA Act or this chapter

**H. Prohibition on Disclosure - 44 Pa.Cons.Stat. Ann. § 2331**

Information in the State DNA Data Bank or State DNA Data Base shall not be disclosed in any manner to any person or agency not authorized to receive it knowing that such person or agency is not authorized to receive it.

No person can obtain individually identifiable DNA information from the State Data Base or the State DNA Data Bank without authorization to do so.

**I. Criminal Penalties – 44 Pa.Cons.Stat. Ann. § 2332**

Any person who by virtue of employment or official position or any person contracting to carry out any functions under this chapter, who has possession of or access to individually identifiable DNA information contained in the State DNA Data Base or in the State DNA Data Bank and who for pecuniary gain for such person or for any other person discloses it in any manner to any person or agency not authorized to receive it commits a misdemeanor of the first degree.

Any person who knowingly obtains information in violation of section 2331(b) commits a misdemeanor of the first degree.

Registration

OFFENDERS	LIFETIME REGISTRATION	SVP'S
<p>10 year registration for a conviction for the following:</p> <ol style="list-style-type: none"> <li>1. Kidnapping where V is minor (§ 2901)</li> <li>2. Luring a Child Into a Motor Vehicle (§ 2910)</li> <li>3. Institutional Sexual Assault (§ 3124.2)</li> <li>4. Indecent Assault where offense is Misd. 1 (§ 3126)</li> <li>5. Incest where V is 12 yrs or older but under 18 yrs (§ 4302)</li> <li>6. Prostitution where actor promotes prostitution of a minor (§ 5902(b))</li> <li>7. Obscene and other sexual materials and performances (§ 5903(a)(3), (4), (5) or (6))</li> <li>8. Sexual Abuse of Children (§ 6312)</li> <li>9. Unlawful Contact with Minor (§ 6318)</li> <li>10. Sexual Exploitation of Children (§ 6320)</li> <li>11. Conviction for an <b>attempt</b> to commit any of the above offenses or in the Lifetime Reg. Column<sup>42</sup> <i>P.A.CON.S.STAT.ANN.</i> § 9795.1(A)</li> </ol> <p>* 10 year period gets tolled when offender is recommitted for parole violation or SN to additional term of imprisonment.</p> <p><sup>42</sup> <i>P.A.CON.S.STAT.ANN</i> § 9795.2(A)(3)</p>	<p>Lifetime registration for the following:</p> <ol style="list-style-type: none"> <li>1. 2 or more convictions of any offenses in 10 year registration column</li> </ol> <p>or a conviction for:</p> <ol style="list-style-type: none"> <li>2. Rape (§ 3121)</li> <li>3. Involuntary Deviate Sexual Intercourse (§ 3123)</li> <li>4. Sexual Assault (§ 3124.1)</li> <li>5. Aggravated Indecent Assault (§ 3125)</li> <li>6. Incest where the V is under 12 yrs (§ 4302)</li> </ol> <p><sup>42</sup> <i>P.A.CON.S.STAT.ANN</i> § 9795.1(b)</p>	<p>Lifetime Registration Definition of SVP:</p> <p>Person who has been convicted of a sexually violent offense (any offense listed in Offender and Lifetime Registrants columns) and who is determined to be a sexually violent predator under section 9795.4 (relating to assessments) due to a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses. The term includes an individual determined to be a sexually violent predator where the determination occurred in the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico, a foreign nation or by court martial.</p> <p><sup>42</sup> <i>P.A.CON.S.STAT.ANN</i> § 9792</p>

*Duties and Responsibilities*

*Applies to Offenders, Lifetime Registrants & SVP's*

REGISTRATION	INFORMATION TO BE PROVIDED	NOTIFICATION OF CHANGES
<p>Must register with the PA State Police</p> <ol style="list-style-type: none"> <li>1. Upon release from incarceration</li> <li>2. Upon parole from State or county correctional institution</li> <li>3. Upon the commencement of a sentence of intermediate punishment or probation</li> </ol> <p><i>42 P.A. CONS. STAT. ANN. § 9795(2)(a)(1)</i></p> <p><b>Registration in Another State:</b></p> <p>Must register with a new law enforcement agency no later than 10 days after establishing residence in another state</p> <p><i>42 P.A. CONS. STAT. ANN. §</i></p>	<ol style="list-style-type: none"> <li>1. All current or intended residences</li> <li>2. All information concerning current or intended employment</li> <li>3. All information concerning current or intended enrollment as a student.</li> </ol> <p><i>42 P.A. CONS. STAT. ANN. § 9795.2(A)(1)</i></p>	<p>Must inform the PA State Police within 10 days of:</p> <ol style="list-style-type: none"> <li>1. Any change of residences or estab. of additional residence(s)</li> <li>2. Any change of employer or employment location for a period of time that will exceed 14 days or for an aggregate period of time that will exceed 30 days during any calendar year, or termination of employment</li> <li>3. Any change of institution or location at which the person is enrolled as a student or termination of enrollment</li> <li>4. Becoming employed or enrolled as a student if the person has not previously provided that information to the PA State Police</li> </ol> <p><i>42 P.A. CONS. STAT. ANN. § 9795.2(a)(2)</i></p>

*Out-of-State or Court Martialed Registrants*

<b>Who Must Register</b>	<b>Classification</b>
<ol style="list-style-type: none"> <li>1. If convicted or SN by Ct or ct-martialed for sexually violent offense or similar offense</li> <li>2. If required to register under sex offender statute in jurisdiction where convicted, SN or ct-martialed</li> <li>3. If required to register as a sex offender as a result of a juvenile adjudication in another jurisdiction</li> <li>4. Includes determination made in US, one of its territories/possessions, another state, D.C., Puerto Rico, foreign nation, or by ct-martial</li> </ol> <p>Mu.st register within 10 days of arrival in PA</p> <p><i>42 PA.CON.S.STAT.ANN. § 9795.2(b)</i></p>	<ol style="list-style-type: none"> <li>1. If classified SVP or subject to active notification &amp; lifetime registration elsewhere = SVP &amp; subject lifetime registration in PA               <ol style="list-style-type: none"> <li>a. also subj to verification of residence, community notific., info on Internet</li> <li>b. NOT counseling unless required by other jurisdiction or by ct-martial</li> <li>c. applies to out-of-state juvenile adjudications</li> </ol> </li> <li>2. If convicted or SN or ct-martialed for offense in § 9795.1(b) or equiv. offense = offender and subject to lifetime registration</li> <li>3. If convicted or SN or ct-martialed for offense in § 9795.1(a) or equiv. offense = offender and subject to: 10 years registration <b>OR</b> for period of time equal to time required to register in other jurisd., whichever is greater, minus any credit due as result of prior compliance of registration requirements</li> <li>4. If subject to active notification in other jurisdiction = offender and subject to verification, community notification, and info on Internet               <ol style="list-style-type: none"> <li>a. if convicted in other jurisd for offense in 9795.1(b) or equiv = lifetime notification</li> <li>b. if convicted in other jurisd for offense in 9795.1(a) or equiv = 10 yr notification <b>OR</b> period of time equal to time required to register in other jurisd., whichever is greater, minus any credit due as result of prior compliance of registration requirements</li> <li>c. if juvenile adjudication = active notification for period of time equal to time required to register in other jurisd., whichever is greater, minus any credit due as result of prior compliance of registration requirements</li> </ol> </li> <li>5. If subject to passive notification in other jurisd = offender and subject to verification and info on Internet for period of time equal to time required to register in other jurisd., whichever is greater, minus any credit due as result of prior compliance of registration requirements               <ol style="list-style-type: none"> <li>a. same applies to juvenile adjudications</li> </ol> </li> </ol>

*Verification*

OFFENDERS & LIFETIME REGISTRANTS	SVP'S
<p><b><u>Annual Verification</u></b></p> <p><b>Old Law, effective until 1/1/06:</b></p> <p>Pa State Police to verify residence by mailing nonforwardable verification form.</p> <p>For period of registration required, offender to appear within 10 days of receipt of form at any PA State Police station to:</p> <ol style="list-style-type: none"> <li>1. complete verification form</li> <li>2. be photographed</li> </ol> <p><b>New Law, effective 1/1/06:</b></p> <p>For period of registration required, offender to appear within 10 days before each annual anniversary date of the offender's initial registration at an approved registration site to:</p> <ol style="list-style-type: none"> <li>1. complete verification form</li> <li>2. be photographed</li> </ol> <p><i>42 PA.CONS.STAT.ANN. § 9796(b)</i></p> <p><i>[Failure on part of PA State Police to send or failure of an offender to receive any notice reminder of offender's verification requirement or information on approved registration sites, does not relieve offender from verification requirements. 42 PA.CONS.STAT.ANN. § 9796(f)]</i></p>	<p><b><u>Quarterly Verification</u></b></p> <p><b>Old Law, effective until 1/1/06:</b></p> <p>PA State Police to verify residence, compliance with counseling and compliance with residence limitation, every 90 days, by mailing nonforwardable verification form to last reported residence, and</p> <p>SVP to appear at any PA State Police station, within 10 days of receipt of nonforwardable verification form to:</p> <ol style="list-style-type: none"> <li>1. complete verification form</li> <li>2. be photographed</li> </ol> <p><b>New Law, effective 1/1/06:</b></p> <p>SVP to appear quarterly, for life, between Jan 5 and Jan 15, April 5 and April 15, July 5 and July 15, and Oct. 5 and Oct. 15 of each calendar year at approved registration site to:</p> <ol style="list-style-type: none"> <li>1. complete verification form</li> <li>2. be photographed</li> </ol> <p><i>42 PA.CONS.STAT.ANN. § 9796(a)</i></p> <p><i>[Failure on part of PA State Police to send nor failure of an SVP to receive any notice reminder of SVP's verification requirement or information on approved registration sites, does not relieve offender from verification requirements. 42 PA.CONS.STAT.ANN. § 9796(f)]</i></p>

*Notification*

OFFENDERS & LIFETIME REGISTRANTS
<b>None</b>
<b>SVP'S</b>
<p><b>Victim Notification:</b></p> <ol style="list-style-type: none"> <li>1. Victim to get written notification when SVP registers initially and when SVP notifies of any change of residence</li> <li>2. Notice to be given 72 hours after SVP registers or notifies of change of address</li> <li>3. Notice to contain SVP's name and address(es) where he resides <i>42 PA.CONS.STAT.ANN. § 9797</i></li> </ol> <p><b>Community (or "ACTIVE") Notification:</b></p> <p><u>Notice to contain:</u></p> <ol style="list-style-type: none"> <li>1. SVP name</li> <li>2. SVP address(es)</li> <li>3. Offense for which SVP convicted, SN by a court, adjudicated delinquent or court martialled</li> <li>4. Statement that he has been determined SVP by a court</li> <li>5. Photo of SVP, if available</li> <li>6. Not to contain any info re: victim's name, identity, residence</li> </ol> <p><u>Notice sent to:</u></p> <ol style="list-style-type: none"> <li>1. <u>SVP neighbors</u> (includes unit owner's association and residents of common interest community) (must be provided <u>within 5 days</u> after law enforcement receives info of SVP's release date and residence.)</li> <li>2. <u>Within 7 days</u> after law enforcement receives info of SVP's release date and residence, to:             <ol style="list-style-type: none"> <li>a. Director of county children and youth service agency of county where SVP resides</li> <li>b. Superintendent of each school district &amp; equivalent official for private and parochial schools enrolling students up through grade 12 in the municipality where SVP resides</li> <li>c. Superintendent of each school district &amp; equivalent official for private and parochial schools within 1-mile radius of where SVP resides</li> <li>d. Licensee of each certified day care center and licensed preschool program and owner/operator of each registered family day care home in the municipality SVP resides</li> <li>e. President of each college, university and community college within 1000 feet of SVP's residence <i>42 PA.CONS.STAT.ANN. § 9798</i></li> </ol> </li> </ol>

*Information on Internet: "Passive Notification"*

***Applies to Offenders, Lifetime Registrants & SVP's***

<p><b>INFORMATION PERMITTED TO BE DISCLOSED</b></p>	<p><b>DURATION OF INTERNET POSTING</b></p>
<p>1. Name and any aliases</p> <p>2. Year of birth</p> <p>3. Street address, city, county and zip code of any institution or location at which the person is enrolled as a student</p> <p>4. City, county and zip code of any employment location</p> <p>5. Photograph, which must be updated not less than annually</p> <p>6. Description of the offense(s) which triggered registration</p> <p>7. Date of offense and conviction</p> <p><i>42 PA.CON.S.TAT.ANN. § 9798.1(c)</i></p>	<p>1. SVP – lifetime</p> <p>2. Lifetime Registrant – lifetime unless granted relief under § 9795.5 (Exemption from Certain Notifications)</p> <p>3. Offender – period during which he is required to register, including any extension of the period pursuant to § 9795.2(a)(3) (tolling of 10 year period)</p> <p><i>42 PA.CON.S.TAT.ANN. § 9798.1(d)</i></p>

*Penalties*

**18 PA.CON.S.TAT.ANN. § 4915  
FAILURE TO COMPLY WITH REGISTRATION OF  
SEXUAL OFFENDERS REQUIREMENTS**

An individual subject to registration commits an offense if he knowingly fails to:

- § 4915(a)(1) - Register with the PA State Police
- § 4915(a)(2) - Verify his address or be photographed
- § 4915(a)(3) - Provide accurate information when registering or verifying an address

<b>OFFENDERS</b>	<b>LIFETIME REGISTRANTS &amp; SVP'S</b>
Misd 3 – if violates subsection (a)(1) or (2)	Misd 2 - if violates subsection (a)(1) or (2)
Misd 2 – if violates subsection (a)(1) or (2) and has been previously been convicted of an offense under subsection (a)(1) or (2)	Misd 1 - if violates subsection (a)(1) or (2) and has been previously been convicted of an offense under subsection (a)(1) or (2)
Felony 3 – if violates subsection (a)(1) or (2) and has two or more convictions under subsection (a)(1) or (2) or a similar offense <b>OR</b> - if violates subsection (a)(3)	Felony 3 - if violates subsection (a)(1) or (2) and has two or more convictions under subsection (a)(1) or (2) or a similar offense <b>OR</b> - if violates subsection (a)(3)

**18 PA.CON.S.TAT.ANN. § 5518  
SEXUALLY VIOLENT PREDATORS RESIDING NEAR SCHOOLS**

<b>OFFENSE DEFINED</b>	<b>GRADING</b>
An SVP who establishes residence in violation of 42 PA.CON.S.TAT.ANN. § 9796.1 (Limitations on Residence for Sexually Violent Predators)	Misd 2 - 1st Offense Misd 1 - Violates § 5518 and previously convicted of § 5518 or similar offense Felony 3 – Violates § 5518 and previously convicted of 2 or more offenses of § 5518 or similar offense

\* Before deciding on the issue of bail for either charge above, the issuing authority must require:

- 1.The defendant be fingerprinted and photographed;
- 2.The defendant provide PSP with all current or intended residences, all info concerning current or intended employment, including all employment locations and all info concerning current or intended enrollment as a student;
- 3.law enforcement officers to make reasonable attempts to verify info provided by defendant.

*Sexually Violent Predators*

**ASSESSMENTS**

**Order for Assessment:**

1. Ct to order, after conviction (for any offense specified in § 9795.1) but before SN, an assessment by the Board
2. Order to be sent to Board within 10 days of conviction

**Factors to be considered in Assessment** (include but not limited to):

1. Facts of current offense: multiple V's, exceeded means necessary to achieve offense, nature of sexual contact, relationship to V, age of V, unusual cruelty, mental capacity of V
2. Prior Offense History: D's prior crim. record, whether D completed prior sentences, whether D participated in avail. programs for sex offenders
3. Characteristics of D: age, use of illegal drugs, any mental illness, mental disability or mental abnormality, behavioral characteristics that contribute to D's conduct
4. Factors supported in sex offender assessment field as criteria reasonably related to risk of reoffense

**Board Report:**

Board to submit written assessment to DA 90 days from date of conviction

**Hearing:**

1. Scheduled upon filing praecipe by DA
2. DA must serve copy assessment upon D/C
3. D and DA given notice of hrg, opport to be heard, right to call W, call expert W and right to cross W
4. D right to counsel, appointed if can't afford
5. If D request another expert assess., must provide copy to DA prior to hrg
6. DA must prove by clear & convincing evidence D = SVP
7. Determ. by Ct. immed. submitted to D, DA, PA Prob & Parole, DOCS, PSP

*42 PA.CON.S.TAT.ANN. § 9795.4*

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## RESIDENCE LIMITATION

1. SVP who has committed any offense in § 9795.1
2. Against victim under 14 yrs at time of offense
3. May not estab residence w/in 1 and ½ miles, by nearest public highway
4. By any public, private or parochial school (grade K through elementary)

[However, SVP not required to sell or otherwise dispose of any real estate or home acquired/owned prior to SVP determination OR vacate any real estate or home leased prior to SVP determination.]

### **Waiver for Cause:**

1. SVP can, for good cause, petition court for waiver from limitations
2. Good cause includes but limited to medical necessity or court determination that transportation by school sufficient to protect safety of children
3. Order allowing waiver may include additional restrictions limiting SVP's contact with children walking to and from an elementary school.

**Penalty:** subject to prosecution under 18 PA.CON.S.TAT.ANN. § 5518.

*42 PA.CON.S.TAT.ANN. § 9796.1*

## COUNSELING

1. Required to attend at least monthly counseling sessions in a program approved by the board
2. Be financially responsible for fees, unless can prove to satisfaction of the court he cannot afford to pay for them. Parole office must then pay the fees and SVP must continue with counseling
3. Board must monitor compliance

*42 PA.CON.S.TAT.ANN. § 9799.4*

