



Pennsylvania's Sexual Offense Laws 101



Almost no regulatory laws except SORNA

What Laws Doesn't PA Have?



Residency & Zoning Restrictions



Halloween Restrictions

- Porchlights out, curfew, meeting location, lawn signs



SVP Civil Commitment



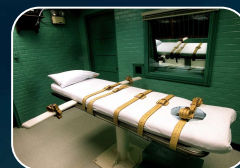
Chemical & Surgical Castration



Driver's License Designation



Mandatory GPS Monitoring



Death Penalty for Rape

Zoning Restrictions- restrict where PFRs can't work due to location; near schools, daycare centers, and other places where children are present.

GPS Monitors- may be a condition of probation or parole, see 42 Pa.C.S. § 9799.30. Not mandated for non-supervised individuals.

Pennsylvania has seen proposed legislation in several of these areas, none of these measures have been passed into law.



Before passing new laws, think:



One of the great mistakes is to judge policies and programs by their intentions rather than their results.

- Milton Friedman

Meaning: what might seem like a good idea with good intentions, may bring more unintended harmful consequences to the individuals, their families, and the communities.

It is important for policy makers to know that implementing policies that are inconsistent with empirical evidence and best practices runs the risk of creating a false sense of security that *something* constructive is being done.

Where to Find PA's Sexual Offense Laws?

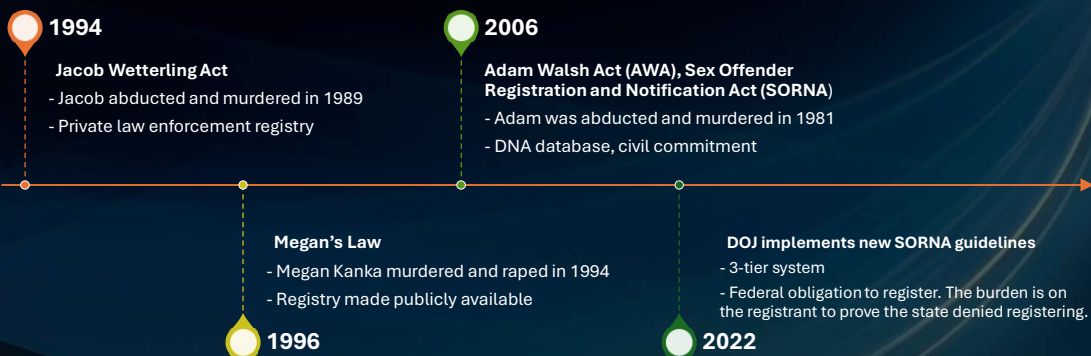
- Title 18 Crimes and Offenses
 - Chapter 29- Kidnapping
 - Chapter 30- Human Trafficking
 - Chapter 31- Sexual Offenses
 - § 4302(b) (relating to incest)
 - § 5902(b.1) (relating to prostitution and related offenses)
 - § 5903(a)(3)(ii), (4)(ii), (5)(ii) or (6) (relating to obscene and other sexual materials and performances)
 - Chapter 63- Minors
- Title 42 Judiciary and Judicial Procedure
 - § 9799.10 – 9799.42 PA's SORNA (Subch. H)
 - § 9799.51 – 9799.75 PA's SORNA (Subch. I)
 - § 6358. Assessment of delinquent children by the State Sexual Offenders Assessment Board
 - Chapter 64 Court-Ordered Involuntary Treatment of Certain Sexually Violent Persons

9799.14 & 9799.55 list State and Federal registerable offenses

Chapter 64 a.k.a Act 21- created for Sexually Violent Delinquent Child (SVDC)

Federal Registry

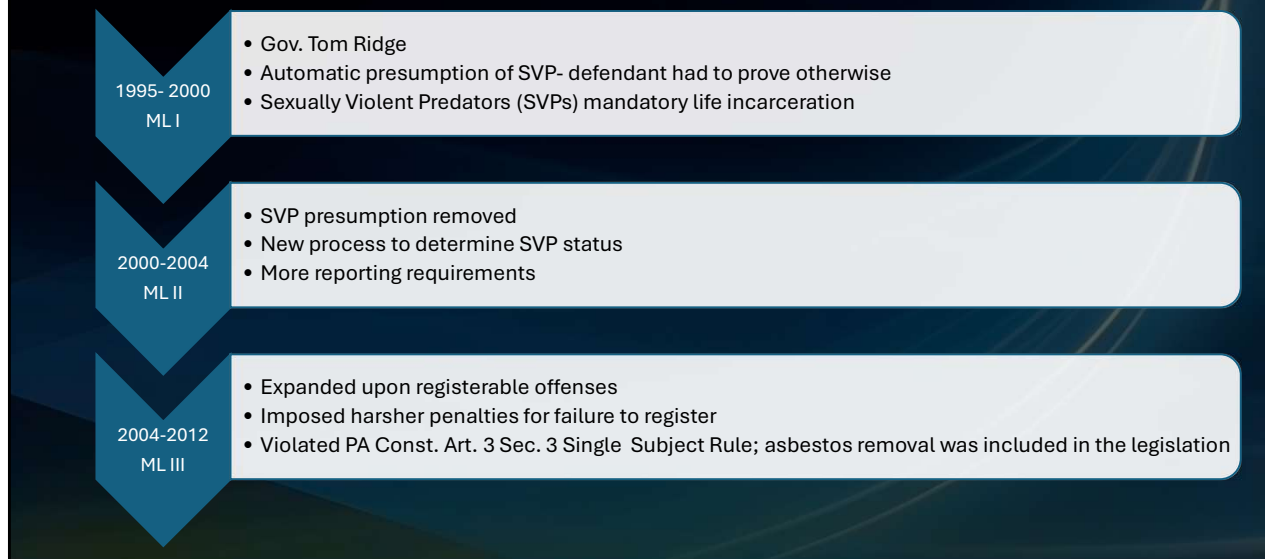
Federal SORNA's the foundational blueprints for state/territory registries.



Public safety will be enhanced by making information about registered PFRs publicly available

To establish a comprehensive national system for the registration and notification of PFRs.

History of Pennsylvania's Registry Laws



SVP presumption unconstitutional- burden of proof falls on the prosecution

Art. 3, Sec. 3: No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof.

History of Pennsylvania's Registry Laws

2012-2018
SORNA I

- PA's SORNA resulting from AWA
- Introduced a 3-tier system
- Ruled punitive in *Com. v. Muniz*- violated Ex Post Facto Clause

2018
SORNA II

- Addition of Subchapter I- offense occurred prior to 12/20/12
- Less reporting requirements
- New alt. reporting procedure for those who qualify
- Removal mechanism after 25 years to Subchapter H and I for those who qualify

Applicability

Residents of PA who have been convicted of a registerable offense.

A location where an individual resides or is domiciled or intends to be domiciled for 30 consecutive days or more during a calendar year. (includes visitors)

Individuals employed in PA who have been convicted of a registerable offense.

Students in PA who have been convicted of a registerable offense.

Transients in PA who have been convicted of a registerable offense.

Incarcerated individuals who were previously required to register under Megan's Law from another state.

Subchapter H

Offense occurred on or after 12/20/2012

Not an exhaustive list, full offense list in 42 Pa.C.S. § 9799.14

Tier 1- 15 years Annual Registration

- Unlawful Restraint
- False imprisonment
- Interference w/custody of children
- Luring a child
- Institutional Sexual Assault
- Corruption of Minors
- Invasion of Privacy
- Video Voyeurism
- Possession of Child Sexual Abuse Materials

Tier 2- 25 years Semi-annual Registration

- Statutory Sexual Assault
- Prostitution
- Unlawful Contact with Minor
- Sexual Exploitation of Children
- Creation & Distribution of Child Sexual Abuse Materials

Tier 3- Lifetime Quarterly Registration

- Kidnapping
- Involuntary Deviate Sexual Intercourse
- Statutory Sexual Assault
- Incest
- Two or more convictions of offenses listed as Tier I or Tier II sexual offenses.

Full offense list on 9799.14

Interference with custody of children), except in cases where the defendant is the child's parent, guardian or other lawful custodian.

First 4 tier 1 offenses- nonsexual in nature

Subchapter I

Offense occurred prior to
12/20/2012

Not an exhaustive list,
full offense list in 42
Pa.C.S. § 9799.55

10 Years Annual Registration

- Kidnapping
- Indecent Assault- M1 or Higher
- Incest- Between ages 12 & 18
- Prostitution of a minor
- Child Sexual Abuse Materials
- Unlawful Contact with a Minor

Lifetime Annual Registration

- Rape
- Involuntary Deviate Sexual Intercourse
- Sexual Assault
- Aggravated Indecent Assault

Resembles ML II

Full offense list on 9799.55

Subchapters H & I

Sexually Violent Predator (SVP)- Lifetime Quarterly Registration

- Assessment to determine whether an individual has a mental abnormality or personality disorder that predisposes them to re-offend.
- Mandatory lifetime monthly counseling
- Written notice is given to neighbors of SVP.

Sexually Violent Delinquent Child (SVDC)- Lifetime Quarterly Registration

- Assessment to determine whether an individual has a mental abnormality or personality disorder that predisposes them to re-offend.
- Mandatory lifetime monthly counseling
- Written notice is given to neighbors of SVDC.
- Civil Commitment- yearly evaluation

Transient/Homeless Monthly Registration

- Applicable in all tiers

Assessment done by a member of the Sexual Offenders Assessment Board (SOAB).
Court accepts or rejects the SOAB finding.

Chapter 64- Civil Commitment- ACT 21 of 2003- SVDC age out of the juvenile system
at age 21

Compliance and Enforcement

Tier 1 & 10-year

- Felony of 3rd degree, non-intentional
- F2 for 2nd violation or if knowingly doesn't provide accurate info
- See 18 Pa.C.S. § 4915.1(b)

Tier 2, 3 & Lifetime

- F2, non-intentional
- F1 for 2nd violation or if knowingly doesn't provide accurate info
- See 18 Pa.C.S. § 4915.1(c)

Failure to Attend Counseling

- M1
- See 18 Pa.C.S. § 4915.1(c.3)

State Police make home visits to verify home addresses

Latest Key Cases

- *Com. v. Muniz*, (Pa. 2017)- SORNA I was found to be punitive and in violation of the U.S. and P.A. *Ex Post Facto* Clauses to registrants whose offenses occurred prior to Dec. 20, 2012 (legislative enactment date).
- *Com. v. Butler*, (Pa. 2020) (Butler II)- SORNA's SVP Registration, Notification, and Counseling requirements do not constitute as punishment.
- *Com. v. Lacombe*, (Pa. 2020)- Subchapter I of SORNA II, 42 Pa.C.S. §9799.51 - §9799.75 does not constitute criminal punishment and does not violate the constitutional prohibition against *ex post facto* laws. SCOPA also declined to find the PCRA, or any other procedural mechanism, is the exclusive method for challenging registration statutes.

Latest Key Cases Cont.

- *Com. v. Torsilieri*, (Pa. 2024)- Subchapter H of SORNA II does not violate due process or constitute criminal punishment. The presumption of high recidivism among individuals who commit a sexual offense, as stated in the legislative findings, do not violate PA's Art. 1, Sec. 1 Right to Reputation as Mr. Torsilieri did not meet his high burden of proof.

Key Cases Cont.

- *Com. v. Santana*, (Pa. 2021) SORNA constituted a punitive regulatory scheme that, when imposed retroactively to individuals who committed their offenses prior to SORNA's enactment, amounted to an unconstitutional *ex post facto* law —applies with equal force to offenders whose triggering offenses occurred in another state.
- *Fross v. County of Allegheny*, (Pa. 2011)- Allegheny County residence restrictions upon Persons Forced to Register are preempted by State law under the doctrine of “conflict preemption.”
- *Lake Naomi Club, Inc. v. Rosado*, (Pa. Cmmw. Ct. 2022)- Commonwealth court ruled a private, planned community cannot adopt a restrictive covenant that prohibits Persons Forced to Register from residing within that community.

conflict preemption- When lower government law and higher government law conflict, higher law displaces, or preempts, lower law, due to the Supremacy Clause of the Constitution.

SCOPA and Commonwealth Court decided the enforcement of residency restrictions, in practice, contravenes the goals and purposes of SORNA and the Sentencing and Parole Codes.

FAQ's

Q: Can individuals convicted of sexual offenses or other felonies in Pennsylvania vote?

A: Yes, you may vote as long as you lived in Pennsylvania for 30 days prior to the election and are not physically incarcerated.

Q: Are there restrictions around living near or visiting schools, libraries, public parks, etc.?

A: No, however, probation and parole may implement said restrictions.

Resources

- Federal SORNA: <https://smart.ojp.gov/sorna>
- PA Megan's Law PSP Webpage: <https://www.meganslaw.psp.pa.gov/InformationalPages/Registration>
- Subchapter H see Title 42 § 9799.10 – 9799.42
- Subchapter I see Title 42 § 9799.51 – 9799.75
- Act 21 see Title 42 Ch. 64
 - DHS: <https://www.dhs.pa.gov/providers/Providers/Pages/Act-21.aspx>
- SOAB: <https://www.soab.pa.gov/Pages/default.aspx>
- <https://parsol.org/brochures-and-fact-cards/>

QUESTIONS





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