

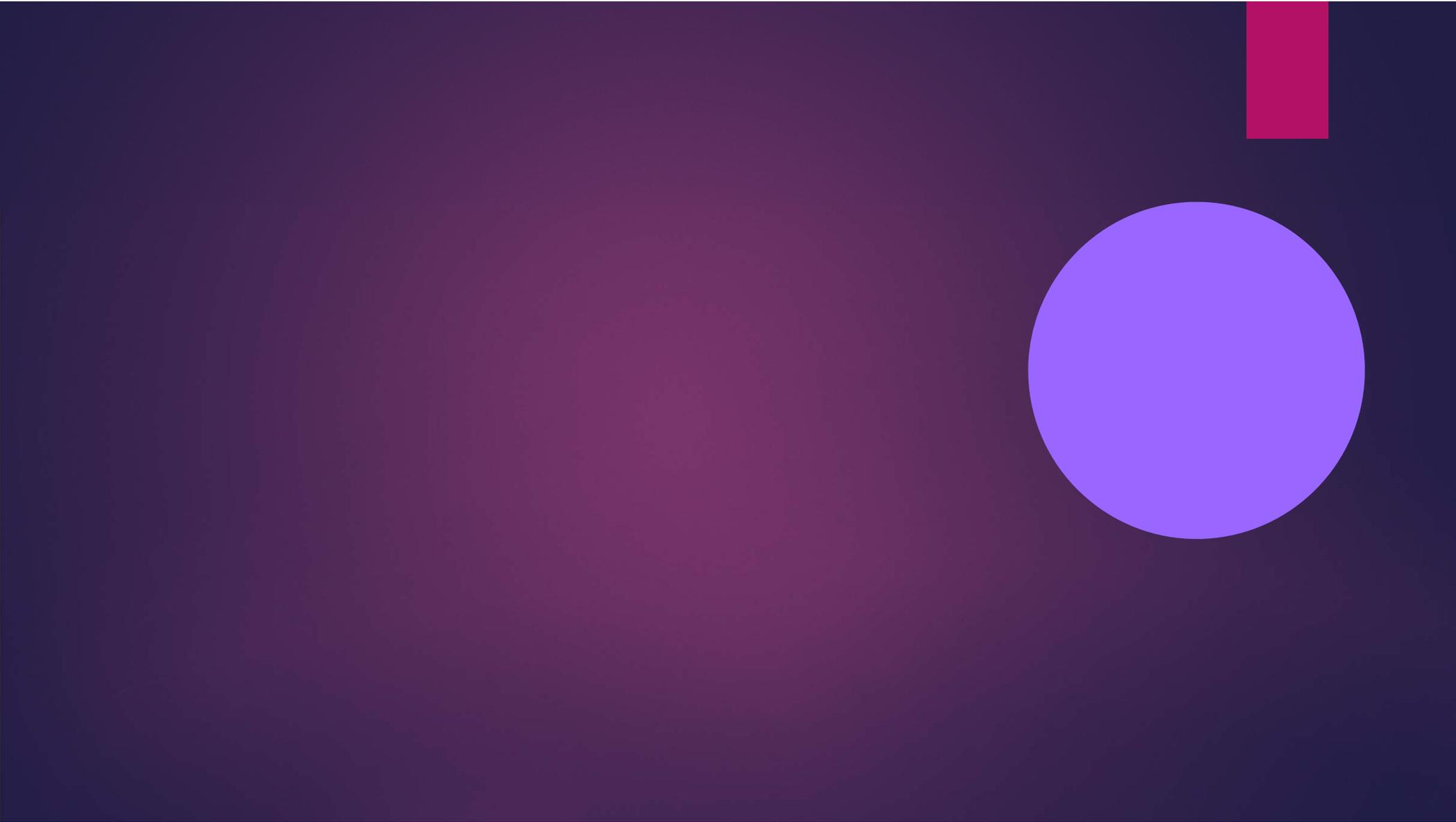
Navigating the Adam Walsh Act

42 PA.C.S. 9795 ET SEC

An Overview of PA Megan's Law

- ▶ The Pennsylvania General Assembly first enacted Megan's Law requiring the registration of sexual offenders on October 24, 1995.
- ▶ Pennsylvania, along with the other 49 states, the District of Columbia and the federal government quickly passed this legislation in the wake of the tragic murder and rape of 7 year old Megan Kanka of Hamilton, New Jersey, in 1994.
- ▶ That crime was committed by a neighbor, who, unbeknownst to the Kanka family, or the community, has been convicted twice previously of sexual offenses against young girls.
- ▶ Since its enactment, the General Assembly has made adjustments to Pennsylvania's original statute, "Megan's Law I", and its progeny.





See Act of Oct. 24, 1995, P.L. 1079

- ▶ Substantial portions of Megan's Law I were deemed unconstitutional. See *Commonwealth vs. Williams*, 733 A.2d. 593 (Pa.1999).
- ▶ In that case, the Defendant, who was convicted of involuntary deviate sexual intercourse, indecent assault, and corruption of minors, filed a motion for extraordinary relief challenging the constitutionality of sexually violent predator provisions of the Registration of Sexual Offenders Act.
- ▶ The Court of Common Pleas, Erie County, entered an order finding the law violated procedural due process, and commonwealth filed direct appeal.
- ▶ The Supreme Court, Nos. 84 W.D.Appeal Docket 1997, 14 W.D. Appeal Docket 1998, [Zappala](#), J., held that procedure for determining whether an offender is a sexually violent predator violated procedural due process.

Megan's Law I

- ▶ Megan's Law I mandated a procedure for adjudicating certain offenders, those that committed one or more of the offenses listed in the statute, as "sexually violent predators".
- ▶ The statutory procedure included a post-conviction, pre-sentence assessment by the Board, followed by a hearing at which the defendant was presumed to be a sexually violent predator and bore the burden of rebutting the presumption by clear and convincing evidence.
- ▶ If the offender was adjudicated a sexually violent predator, he/she was subject to an enhanced maximum sentence of life imprisonment for the predicate offense, as well as registration and community notification requirements.

Artway vs. Attorney General of New Jersey, 81 F.3d 1235 (3rd Cir.1996)

- ▶ The 3rd Circuit held that the registration aspects of New Jersey's sex-offender statute did not constitute punishment under the Bill of Attainder Clause, Ex Post Facto Clause, or Double Jeopardy Clause.

E.B. v. Verniero, 119 F.3d 1077
(3rd. Cir. 1997)

- ▶ The Third Circuit held that New Jersey's community notification provision did not inflict criminal punishment in violation of double jeopardy or ex post facto principles.

Commonwealth v. Williams

733 A.2d 593 (Pa. 1999)

- ▶ Pennsylvania's Supreme Court struck down the sexually violent predator provisions of Megan's Law I.
- ▶ The Court concluded that finding the offender a sexually violent predator should require a "separate, factual determination, the end of which is the imposition of criminal punishment", i.e. increasing the offender's maximum term of confinement.
- ▶ The Court held that the offender was entitled to the "full panoply of relevant protections which due process guarantees", including the presumption of innocence. *Id.* At 603.
- ▶ Because Megan's Law I placed the burden of proving he/she was not a sexually violent predator, it failed 14th Amendment scrutiny.

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

- Is a companion case to Williams I, in which Pennsylvania's Supreme Court utilized the Third Circuit's "Artway/Veniero Test" in holding that the registration requirements of Megan's Law I were not penal in nature, and thus, did not violate constitutional ex post facto provisions.
- The Artway/Veniero test has three elements:
 - (1) legislative (subjective) intent
 - (2) objective intent or purpose
 - (3) and effects

Megans Law II

42 Pa.C.S. 9795.4 (2006-2012)

- ▶ Two tiered system of predicate offenses
- ▶ Tier 1 was 10 year registry
- ▶ Tier 2 was lifetime
- ▶ Notice and hearing for SVP determination



Artway/Verniero Test

- ▶ Under the first element, the Court looks to whether the adverse effect on the offender results from the desire of the Legislature to “punish past conduct or is instead a by-product of a bona fide legislative effort to remedy a perceived societal problem. Verniero, 119 F.3d at 1093
- ▶ The second inquiry focuses on whether “analogous measures” have been regarded as punishment in the past. Under this prong, the challenged statute will be deemed punitive if any of several conditions is met:
 - ▶ (a) the measure’s adverse effects cannot be explained solely by its remedial purpose
 - ▶ (b) similar measures have historically been considered punitive
 - ▶ (c) if the legislature intended the measure to serve a mixture of deterrent and salutary purposes, the deterrent purpose is an unnecessary complement to, or overwhelms, the measure salutary operation, or the measure operates in an unusual manner inconsistent with its historically mixed purposes.

Artway/Verniero Test

- ▶ The third element examines whether the “sting of the measure is so harsh as a matter of degree” that it constitutes punishment.

Williams I/Gaffney

- ▶ At the time Williams I and Gaffney were decided, the United Supreme Court had not reviewed any matter in which Megan's Law legislation was challenged as constitutionally punitive.
- ▶ In 2003, however, the Supreme Court announced its decision in *Smith V. Doe I*, 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed. 2d 164 (2003), in which it used its traditional two-level inquiry (including the Mendoza-Martinez factors) to determine if Alaska's version of Megan's Law is non-punitive.

After Williams I

- ▶ The Court did not reach the question of whether the enhanced registration and notification requirements constituted criminal punishment.
- ▶ After Williams I, the General Assembly passed “Megan’s Law II”, which was signed into law in May of 2000.
- ▶ In Megan’s Law II, the General Assembly altered the manner in which an offender convicted of a predicate offense under the statute was adjudicated a sexually violent predator “SVP”.
- ▶ The offender was no longer presumed to be an SVP, rather, the Commonwealth bore the burden of proving such status by clear and convincing evidence. See 42 Pa.C.S. 9795.4(e)(3).

Megan's Law II

- ▶ Additionally, offenders so adjudicated were no longer subjected to an automatic increased maximum term of imprisonment.
- ▶ Instead, they were required under Megan's Law II to undergo lifetime registration, notification and counselling procedures.
- ▶ Further, failure to comply with such procedures was criminalized by a term of probation or imprisonment.

Assessment

- ▶ After conviction but before sentencing, a court shall order an individual convicted of a predicate offense to be assessed by the Board.
- ▶ Upon receipt of the court's order, the Board shall designate an administrative officer of the board to conduct an assessment of the individual to determine whether the offender should be classified as an SVP.
- ▶ The Board established the standard for assessment.
- ▶ The Board submits its determination to the Court, and, if the Commonwealth files a praecipe for a hearing, a hearing is held.

Assessment

- ▶ The offender must be given notice of the hearing, a copy of the Board report, and have the opportunity to be heard, call witnesses, including expert witnesses, the right to cross witnesses.
- ▶ The offender also has the right to counsel and the right to have a lawyer appointed if he/she cannot afford one.
- ▶ The Court determines whether the offender is an SVP.

Megan's Law II

- ▶ Any offender convicted of a predicate offense, whether he/she is determined to be an SVP or not, must
- ▶ (1) register his/her current residence or intended residence with the state police upon release from incarceration, parole from a correctional institution, or commencement of an intermediate punishment or probation.
- ▶ (2) register within 10 days with a new police agency after establishing a residence in another state.
- ▶ State officials then forwarded this data, together with fingerprints and the offender's photograph to the chief of police in the locality where the offender would reside.

Megan's Law II

- ▶ For SVPs, the police chief notified the offender's neighbors, day care operators and school officials.
- ▶ They would be given the offender's name, address, offense and photograph.
- ▶ They were also informed whether the offender was an SVP, or whether that determination has or has not been determined as of a date certain*
- ▶ This information was also sent to the victim.
- ▶ By legislative amendment in 2002, the General Assembly added requirements that the offender, whether SVP or not, supply employment and academic enrollment to the police.
- ▶ * the Court noted that this provision suggests a subsequent judicial review, but the statute did not have any affirmative means of invoking judicial review.

Commonwealth v. Williams, 832 A.2d 962 (Pa. 2003)

- ▶ In this case, the trial court struck down certain provisions of Megan's Law II.
- ▶ The Court considered specifically the statute's registration notification, and counselling requirements, applicable to SVPs, constituted criminal punishment.
- ▶ Using the U.S. Supreme Court's two-level formulate articulated in *Smith v. Doe I* in 2003, Pennsylvania's Supreme Court reversed the trial court.

Element 1: Legislative Intent

- ▶ The sole question is whether the General Assembly's intent was to punish.
- ▶ The Court held that the statute's own statement of purpose was to identify possible recidivists and avoid recidivism by providing awareness of particular risks to members of the public and treatment to offenders.

Element 2: Purpose and Effect

- ▶ The Court examined the list of factors identified by the Supreme Court in *Mendoza-Martinez*.
- ▶ “Although neither exhaustive nor dispositive”, the list of factors in these cases proved helpful in considering whether a civil remedial mechanism “nevertheless provides for sanctions so punitive as to transform what was clearly intended as a civil remedy into a criminal penalty. *U.S. v. Ward*, 448 U.S. at 249, 100 S.Ct. at 2641; *Commonwealth v. McGee*, 744 A.2d 754, 757 (Pa. 2000). “ stating that the *Mendoza-Martinez* factors are “useful guideposts” in determining whether prison disciplinary confinement constitutes criminal punishment.

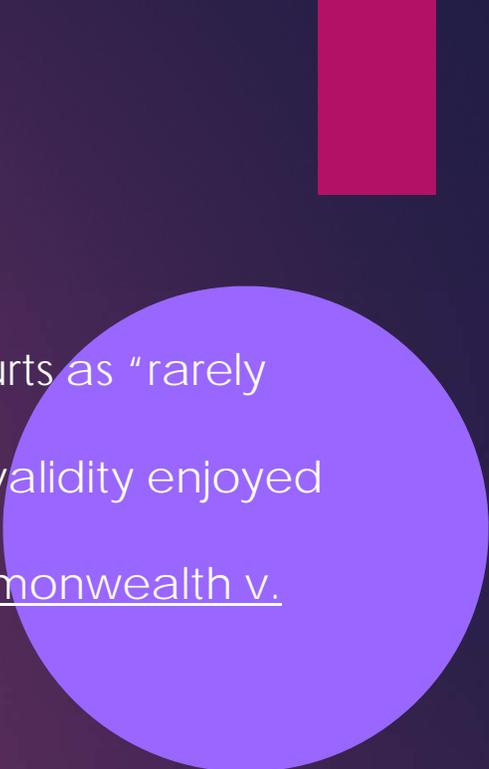
Commonwealth v. Wingait Farms, 690 A.2d 222 (Pa. 1997)

Applying the Mendoza-Martinez factors deeming civil forfeitures non-punitive.

The Mendoza-Martinez factors are

- (1) Whether the sanction involves an affirmative disability or restraint
- (2) Whether it has historically been regarded as punishment
- (3) Whether it some into play only on a finding of scienter
- (4) Whether its operation will promote the traditional aims of punishment-retribution and deterrence
- (5) Whether the behavior to which it applies is already a crime
- (6) Whether an alternative purpose to which it may rationally be connected is assignable for it
- (7) Whether it appears excessive in relation to the alternative purpose assigned.

In applying those factors, the Supreme Court has stated that only the "clearest proof" that a law is punitive in effect may overcome a legislative categorization to the contrary. *Selig v. Young*, 531 U.S. 250, 261, 121 S.Ct. 727, 734, 148 L.Ed.2d 734 (2001).



“Clearest Proof” has been defined by Pennsylvania Courts as “rarely articulated, but which mirrors the general presumption of validity enjoyed in Pennsylvania by all lawfully enacted legislation. Commonwealth v. Stern, 701 A.2d 568 (Pa. 1997).

Williams II

- ▶ 1. The sanctions of Megan's Law do not involve an "affirmative disability or restraint" because offenders "remain free to live where they choose, come and go as they please, and seek whatever employment they may desire".
- ▶ "Such liberty is tempered by the reality that registrants deemed SVPs may, as a consequence of public notification, be foreclosed from gaining certain employment, particularly those working with children, but....any such restriction is in direct furtherance of the government's compelling interest in keeping violent sexual predators away from children to the extent possible.
- ▶ The court cites cases on deprivation or restraint: termination of social security benefits of aliens deported on specific grounds; prohibition on payment of salaries of certain government employees charged with subversive beliefs and associations;

Exclusion from the Federal Bar for having borne arms against the United States, etc.

The court held that here, any disabilities imposed upon SVPs flow solely from the secondary effects of registration and notification, and thus, constitute a "potential collateral restraint" and such effects do not fall within the same category as incarceration or deprivation of citizenship.

2. Historical Treatment: the court followed Verniero, which defendant likened Megan's Law II registration and notification to the punishments of public shaming, humiliation and banishment as those practices used during colonial times. The Court rejected that analogy, reasoning that public dissemination of accurate public record was not punishment.

The Court reasoned that even if registration had a punitive effect in terms of shaming the offender, "such effect has not been demonstrated" to be sufficient in itself to render the challenged measures criminal punishment.

2. Historical Treatment

- ▶ The Court used the majority opinion in *Verniero*, which rejected the defendant's assertion that the registration and notification aspects of New Jersey's law were analogous to public shaming, humiliation and banishment as those practices were used during colonial times. The court held that public dissemination of accurate public record was not punishment.
- ▶ The dissent in *Verniero* criticized the majority, arguing that the cases relied on by them centered on private actors whereas Megan's Law required public officials to do that task. The dissent viewed this aspect a controlling, and stated that "shaming" punishments, because they were carried out by the authorities, did indeed provide analogy to Megan's Law notification

3. Scierter

- ▶ Because the requirement of registration, notification and counselling applied to an offender ONLY when he/she was convicted of a predicate offense, the Court held the Megan's Law provisions do not "come into play" only upon finding scienter for purposes of Mendoza-Martinez. They reached this conclusion because not all of the predicate offenses in the Megan's Law Statute required a finding of scienter, since some of the offenses did not require the defendant to be aware of certain facts that make his/her actions criminal.

4. Traditional punishment

- ▶ The provision requiring registration and notification do not operate primarily to deter, or exact retribution, therefore, any retributive effect of the challenged statute is ancillary to the results achieved in terms of societal awareness and self-protection, and rehabilitation of the offender.

5. Application to Criminal Behavior

- ▶ If the offender is determined to be an SVP, that status is based upon, not criminal activity, but a finding of a mental abnormality. “While it must be acknowledged that the procedures whereby the defendant is subjected to registration...are triggered only after conviction of predicate offense”, the U.S Supreme Court has little significance in evaluating whether Megan’s Law is punitive. *Smith*, 538 U.S. at 105, 123 S.Ct. at 1154.

6. Non-Punitive Purpose

- ▶ The Statute's rational connection to a non-punitive purpose was the most significant factor in the Court's determination.
- ▶ The Court held that the legislative findings were "consistent with the grave concerns over the high rate of recidivism among convicted sexual offenders."
- ▶ " the registration notification and counselling procedures do not appear designed to impose upon the sexually violent predator any gratuitous opprobrium* or hardship beyond what is reasonably necessary to effectuate the Legislature's remedial and regulatory purpose."

7. Excessiveness

- ▶ Registration, Notification and Counselling “appear reasonably designed to serve the government’s legitimate goal of enhancing public awareness.
- ▶ The Court reasoned that the effects of a measure must be “extremely onerous” to constitute punishment, and even the deprivation of one’s livelihood does not qualify.
- ▶ Since the statute does not “deprive” the offenders of their freedom or their citizenship, and the state has place no restrictions on the offender’s ability to live and work in a community, to move from place to place, to obtain a professional license or secure government benefits, the burden the statute creates for is not so great “that it justifies the adverse effects” it might have on them.

Void for Vague

- ▶ It was alleged that the statute was impermissibly vague, in that it fails to allow for a sufficiently precise understanding of who is or is not an SVP. The issue was remanded.
- ▶ The Court remanded to the trial court the remaining constitutional issues raised by Appellant dealing with Megan's Law II. In footnote 27 of *Commonwealth v. Williams*, 574 Pa. 487, 832 A.2d 962 (2003) ("*Williams II*"), the Court set forth exactly which constitutional issues remained and were to be considered by this court at this time. Those issues include [Appellant's and Peters's] claims that Megan's Law II: (1) is void for vagueness; (2) is violative of substantive due process guarantees; (3) is violative of the separation of powers doctrine; and (4) contains more than one subject in contravention of Article 3, § 3 of the Pennsylvania Constitution.

Conclusion

- ▶ In the “absence of competent and credible evidence” undermining the relevant legislative findings, Megan’s Law provisions constitute non-punitive, regulatory measures supporting a legitimate governmental interest.

Adam Walsh Act

December 2012

- ▶ The **Adam Walsh Child Protection and Safety Act** is a federal statute that was signed into law by President George W. Bush on July 27, 2006. The Walsh Act organizes sex offenders into three tiers and mandates that Tier 3 offenders (the most serious tier) update their whereabouts every three months with lifetime registration requirements. Tier 2 offenders must update their whereabouts every six months with 25 years of registration, and Tier 1 offenders must update their whereabouts every year with 15 years of registration. Failure to register and update information is a felony under the law.



Significant Changes

1. 3 tiered system, instead of 2 tiers
 2. Additional statutes included in the list for registration
 3. Juvenile registration
 4. Retroactive Application
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Federal Adam Walsh Act

- ▶ The Act also creates a national sex offender registry and instructs each state and territory to apply identical criteria for posting offender data on the Internet (i.e., offender's name, address, date of birth, place of employment, photograph, etc.). The Act was named for Adam Walsh, an American boy who was abducted from a Florida shopping mall and later found murdered.
- ▶ It also contains civil commitment provisions for sexually dangerous persons.



The Adam Walsh Act emerged from Congress following the passage of separate bills in the House and Senate (H.R. 3132 and S. 1086 respectively).

The Act is also known as the Sex Offender Registration and Notification Act (SORNA), the majority of the provisions of which were enacted as 42 U.S.C. §16911 et seq.

The act's provisions fall into four categories: a revised sex offender registration system, child and sex related amendments to federal criminal and procedure, child protective grant programs, and other initiatives designed to prevent and punish sex offenders and those who victimize children.



The sex offender registration provisions replace the Jacob Wetterling Act provisions with a statutory scheme under which states are required to modify their registration systems in accordance with federal requirements at the risk of losing 10% of their Byrne program law enforcement assistance funds.

The act seeks to close gaps in the prior system, provide more information on a wider range of offenders, and make the information more readily available to the public and law enforcement officials.

In the area of federal criminal law and procedure, the act enlarges the kidnapping statute, increases the number of federal capital offenses, enhances the mandatory minimum terms of imprisonment and other penalties that attend various federal sex offenses, establishes a civil commitment procedure for federal sex offenders, authorizes random searches as a condition for sex offender probation and supervised release, outlaws Internet date drug trafficking, permits the victims of state crimes to participate in related federal habeas corpus proceedings, and eliminates the statute of limitations for certain sex offenses and crimes committed against children.

Short List of Legal Issues

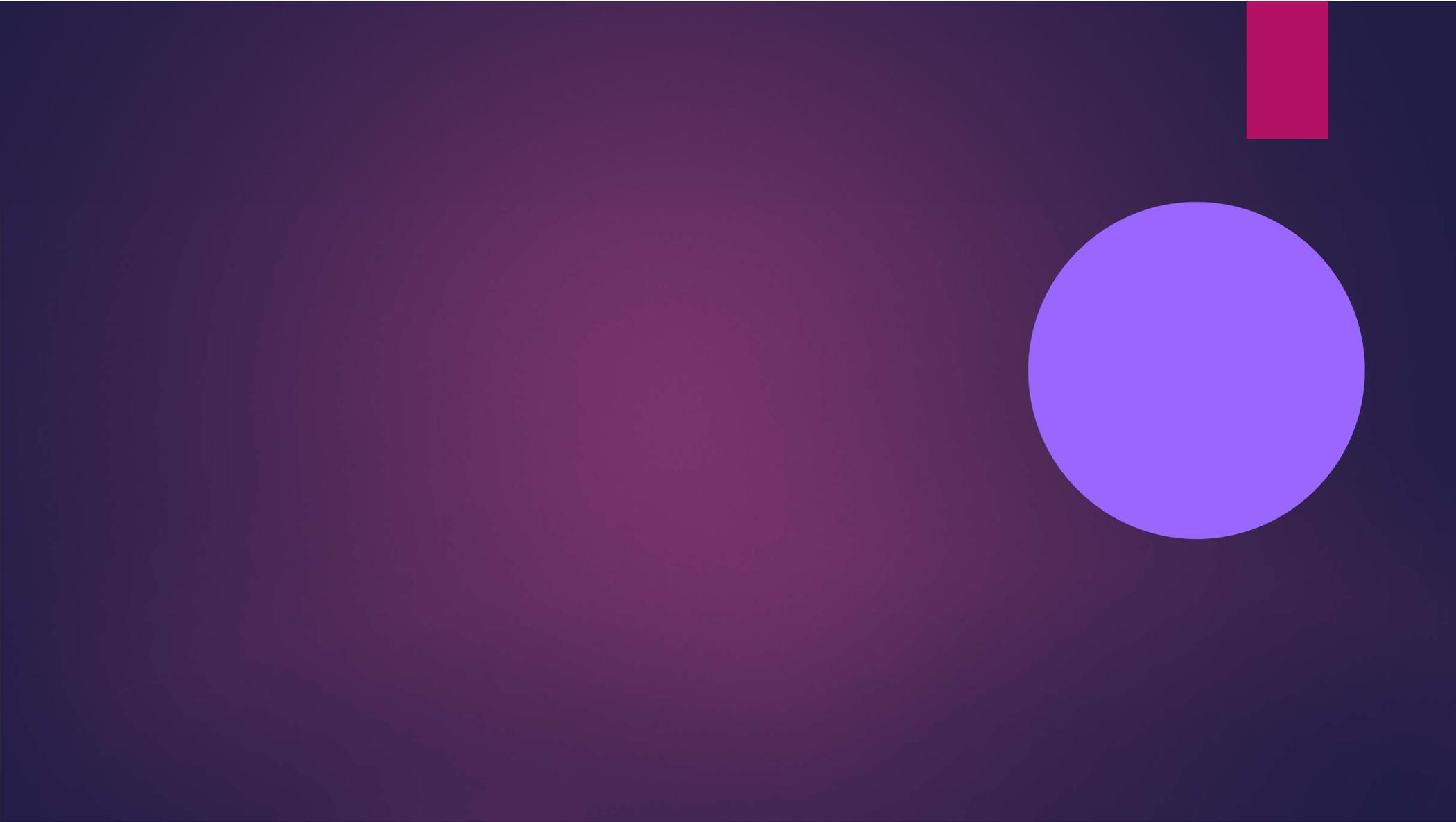
- ▶ Gives the U.S. Attorney General the authority to apply the law retroactively
- ▶ Gives a federal Judge the ability to civilly commit individuals who are in the custody of the federal prison system if it is proven that the individual (1) has engaged or attempted to engage in sexually violent conduct or child molestation; (2) suffers from a serious mental illness, abnormality, or disorder; and, (3) as a result, would have serious difficulty refraining from sexually violent conduct or child molestation if released. A hearing is available to the involuntarily committed individual every six months to reconsider their commitment status if requested by council or the person in the federal treatment program.
- ▶ Establishes a national database which will incorporate the use of DNA evidence collection and DNA registry and tracking of convicted sex offenders with Global Positioning System technology.
- ▶ The law defines and requires a three-tier classification system for sex offenders, based on offense committed, replacing the older system based on risk of re-offence.
- ▶ Tier 1 sex offenders are required to register for 10-15 years; tier 2 for 25 years and tier 3 offenders must register for life.
- ▶ Increases the mandatory minimum incarceration period of 25 years for kidnapping or maiming a child and 30 years for sex with a child younger than 12 or for sexually assaulting a child between 13 and 17 years old.
- ▶ Increases the penalties for sex trafficking of children and child prostitution.
- ▶ Widens federal funding to assist local law enforcement in tracking sexual exploitation of minors on the Internet.
- ▶ Creates a National Child Abuse Registry to protect children from being adopted by convicted child abusers.
- ▶ Limits the defense access to examine child exploitation material which is the subject of a charge, such that examination may only be conducted in a government building
- ▶ Applies to Juveniles



(a) Tier system established.--Sexual offenses shall be classified in a three-tiered system composed of Tier I sexual offenses, Tier II sexual offenses and Tier III sexual offenses.

(b) Tier I sexual offenses.--The following offenses shall be classified as Tier I sexual offenses:

- (1) 18 Pa.C.S. § 2902(b) (relating to unlawful restraint).
- (2) 18 Pa.C.S. § 2903(b) (relating to false imprisonment).
- (3) 18 Pa.C.S. § 2904 (relating to interference with custody of children).
- (4) 18 Pa.C.S. § 2910 (relating to luring a child into a motor vehicle or structure).
- (5) 18 Pa.C.S. § 3124.2(a) (relating to institutional sexual assault).
- (6) 18 Pa.C.S. § 3126(a)(1) (relating to indecent assault).
- (7) (Reserved).





(8) 18 Pa.C.S. § 6301(a)(1)(ii) (relating to corruption of minors).

(9) 18 Pa.C.S. § 6312(d) (relating to sexual abuse of children).

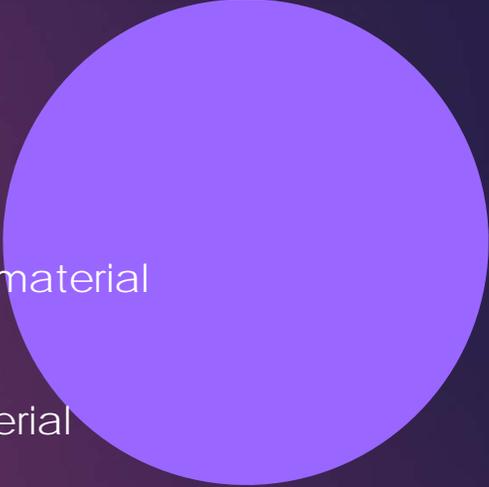
(10) 18 Pa.C.S. § 7507.1. (relating to invasion of privacy).

(11) 18 U.S.C. § 1801 (relating to video voyeurism).

(12) 18 U.S.C. § 2252(a)(4) (relating to certain activities relating to material involving the sexual exploitation of minors).

(13) 18 U.S.C. § 2252A (relating to certain activities relating to material constituting or containing child pornography).

(14) 18 U.S.C. § 2252B (relating to misleading domain names on the Internet).





(15) 18 U.S.C. § 2252C (relating to misleading words or digital images on the Internet).

(16) 18 U.S.C. § 2422(a) (relating to coercion and enticement).

(17) 18 U.S.C. § 2423(b) (relating to transportation of minors).

(18) 18 U.S.C. § 2423(c).

(19) 18 U.S.C. § 2424 (relating to filing factual statement about alien individual).

(20) 18 U.S.C. § 2425 (relating to use of interstate facilities to transmit information about a minor).

(21) A comparable military offense or similar offense under the laws of another jurisdiction or foreign country or under a former law of this Commonwealth.

(22) An attempt, conspiracy or solicitation to commit an offense listed in paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20) or (21).



(c) Tier II sexual offenses.--The following offenses shall be classified as Tier II sexual offenses:

(1) 18 Pa.C.S. § 3122.1(a)(2) (relating to statutory sexual assault).

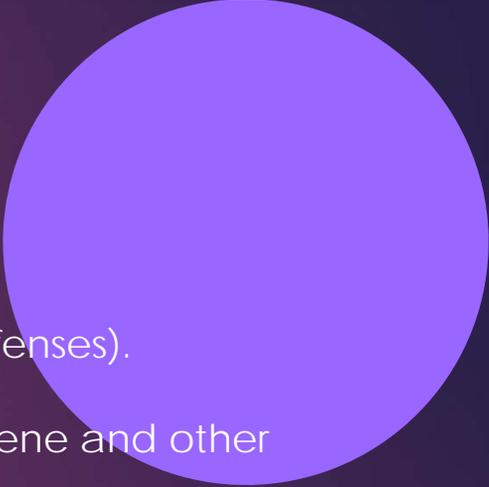
(1.1) 18 Pa.C.S. § 3124.2(a.2) and (a.3).

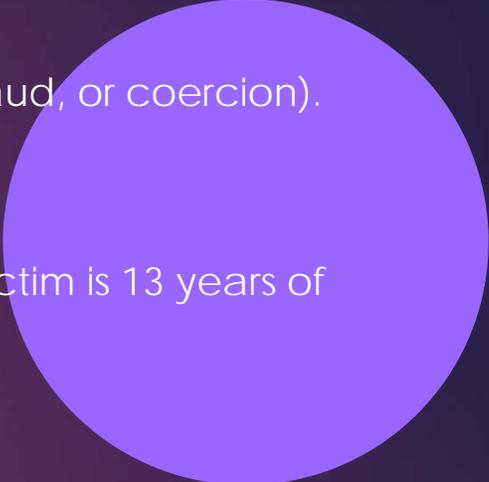
(1.2) 18 Pa.C.S. § 3126(a)(2), (3), (4), (5), (6) or (8).

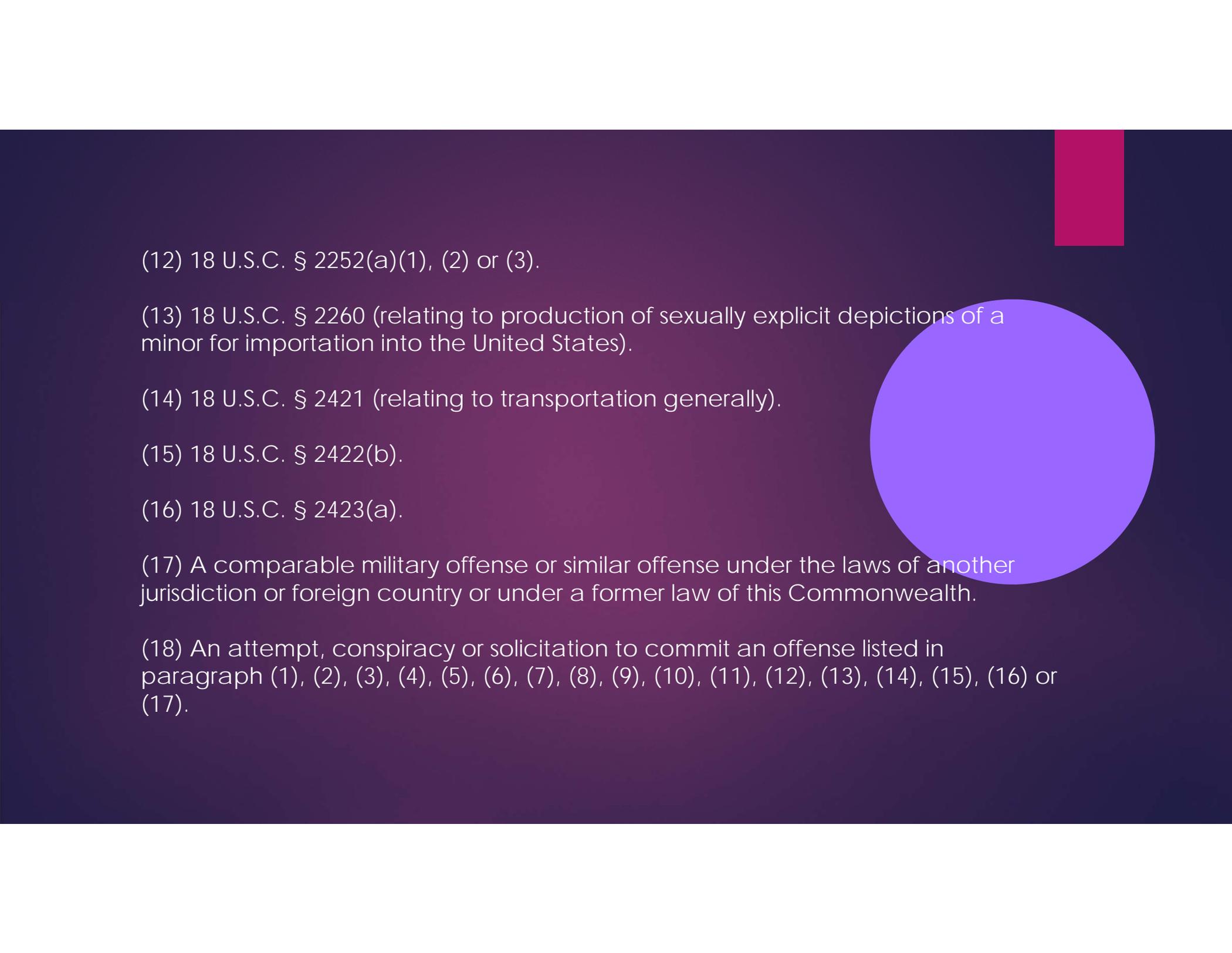
(2) 18 Pa.C.S. § 5902(b.1) (relating to prostitution and related offenses).

(3) 18 Pa.C.S. § 5903(a)(3)(ii), (4)(ii), (5)(ii) or (6) (relating to obscene and other sexual materials and performances).

(4) 18 Pa.C.S. § 6312(i) and (c).



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- (5) 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).
 - (6) 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).
 - (7) 18 U.S.C. § 1591 (relating to sex trafficking of children by force, fraud, or coercion).
 - (8) 18 U.S.C. § 2243 (relating to sexual abuse of a minor or ward).
 - (9) 18 U.S.C. § 2244 (relating to abusive sexual contact) where the victim is 13 years of age or older but under 18 years of age.
 - (10) 18 U.S.C. § 2251 (relating to sexual exploitation of children).
 - (11) 18 U.S.C. § 2251A (relating to selling or buying of children).



(12) 18 U.S.C. § 2252(a)(1), (2) or (3).

(13) 18 U.S.C. § 2260 (relating to production of sexually explicit depictions of a minor for importation into the United States).

(14) 18 U.S.C. § 2421 (relating to transportation generally).

(15) 18 U.S.C. § 2422(b).

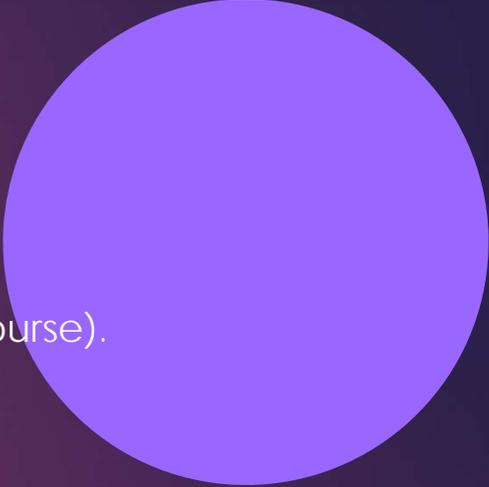
(16) 18 U.S.C. § 2423(a).

(17) A comparable military offense or similar offense under the laws of another jurisdiction or foreign country or under a former law of this Commonwealth.

(18) An attempt, conspiracy or solicitation to commit an offense listed in paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16) or (17).



Tier III sexual offenses.--The following offenses shall be classified as Tier III sexual offenses:

- (1) 18 Pa.C.S. § 2901(a.1) (relating to kidnapping).
 - (2) 18 Pa.C.S. § 3121 (relating to rape).
 - (3) 18 Pa.C.S. § 3122.1(b) (relating to statutory sexual assault).
 - (4) 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).
 - (5) 18 Pa.C.S. § 3124.1 (relating to sexual assault).
 - (6) 18 Pa.C.S. § 3124.2(a.1).
 - (7) 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).
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(8) [18 Pa.C.S. § 3126\(a\)\(7\)](#).

(9) [18 Pa.C.S. § 4302\(b\)](#) (relating to incest).

(10) [18 U.S.C. § 2241](#) (relating to aggravated sexual abuse).

(11) [18 U.S.C. § 2242](#) (relating to sexual abuse).

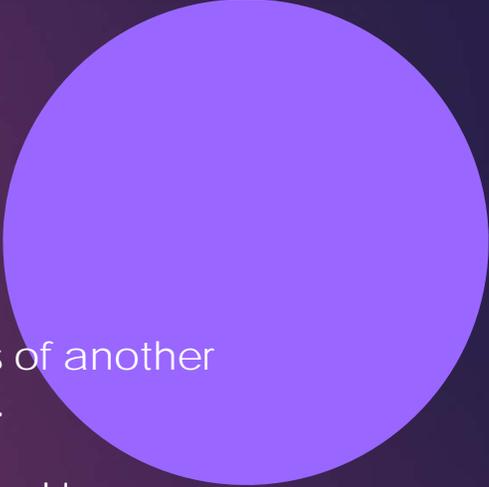
(12) [18 U.S.C. § 2244](#) where the victim is under 13 years of age.

(13) A comparable military offense or similar offense under the laws of another jurisdiction or country or under a former law of this Commonwealth.

(14) An attempt, conspiracy or solicitation to commit an offense listed in paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12) or (13).

(15) (Reserved).

(16) Two or more convictions of offenses listed as Tier I or Tier II sexual offenses.



§ 9799.15. Period of registration

(a) Period of registration.--Subject to subsection (c), an individual specified in section 9799.13 (relating to applicability) shall register with the Pennsylvania State Police as follows:

(1) An individual convicted of a Tier I sexual offense, except an offense set forth in section 9799.14(b)(23) (relating to sexual offenses and tier system), shall register for a period of 15 years.

(2) An individual convicted of a Tier II sexual offense shall register for a period of 25 years.

(3) An individual convicted of a Tier III sexual offense shall register for the life of the individual.



(4) A juvenile offender who was adjudicated delinquent in this Commonwealth, or who was adjudicated delinquent in another jurisdiction or foreign country as a consequence of having committed an offense similar to an offense which would require the individual to register if the offense was committed in this Commonwealth, shall register for the life of the individual.

(4.1) A juvenile offender who is required to register in a sexual offender registry in another jurisdiction or foreign country as a consequence of having been adjudicated delinquent for an offense similar to an offense which, if committed in this Commonwealth, would not require the individual to register shall register for a period of time equal to that required of the individual in the other jurisdiction or foreign country.

(5) A sexually violent delinquent child shall register for the life of the individual.

(6) A sexually violent predator shall register for the life of the individual.

(7) An individual subject to registration under [section 9799.13\(7.1\)](#) shall register for the period of time equal to the time for which the individual was required to register in another jurisdiction or foreign country.

(a) Juvenile offender.--An individual who is a juvenile offender, with the exception of a juvenile offender whose period of registration is determined by section 9799.15(a)(4.1) (relating to period of registration), shall have the requirement to register terminated if all of the following apply:

(1) At least 25 years have elapsed since the individual was:

(i) adjudicated delinquent for an offense which, if committed by an adult, would be classified as an offense under 18 Pa.C.S. § 3121 (relating to rape), 3123 (relating to involuntary deviate sexual intercourse) or 3125 (relating to aggravated indecent assault) or an attempt, solicitation or conspiracy to commit an offense under 18 Pa.C.S. § 3121, 3123 or 3125, excluding time spent under the supervision of the court, including commitment to an institution or facility set forth in section 6352(a)(3) (relating to deposition of delinquent child); or



(ii) adjudicated delinquent for an offense in another jurisdiction or foreign country which is similar to that which if committed by an adult in this Commonwealth would be classified as an offense under 18 Pa.C.S. § 3121, 3123 or 3125 or an attempt, solicitation or conspiracy to commit an offense under 18 Pa.C.S. § 3121, 3123 or 3125.

(2) For a period of 25 years prior to the filing of the petition, the individual has not been convicted of a subsequent sexually violent offense or a subsequent offense:

(i) graded as a misdemeanor of the second degree or higher; or

(ii) which is punishable by a term of imprisonment greater than one year.

(3) The individual successfully completed court-ordered supervision without revocation.



(4) The individual successfully completed a treatment program for sexual offenders recognized by the juvenile court in this Commonwealth or another jurisdiction or the United States Attorney General under section 115(b)(1) of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248, 42 U.S.C. § 16915(b)(1)).

9799.13 Applicability

The following individuals must register

- Anyone who, on or after the effective date, is convicted of a predicate offense and resides in the Commonwealth, or is a transient, or works or is a student on this Commonwealth.
- Anyone who, on or after the effective date, is, as a result of a conviction for a predicate offense, incarcerated in a state or county correctional facility, is on probation or parole for said offense.
- Anyone who is required to register in another state or territory
- Anyone who is required to register or was required to register and failed to register with the police prior to the effective date and who has not fulfilled the period of registration
- Anyone who is a juvenile offender who was adjudicated delinquent in this Commonwealth and who resides, works, or is a student, or lives anywhere else

Right to Appeal

42 Pa.C.S. 9799.17(d)

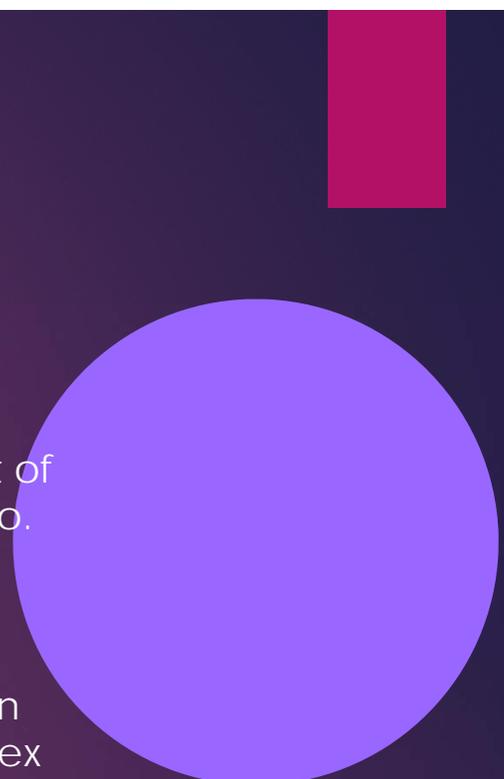
- ▶ Only applies to juveniles



Current arguments pending

- ▶ Retroactivity

- ▶ Commonwealth v. Hainesworth, 82 A.2d 444 (Pa. Super. 2013). In that case, the appellant entered a plea that did not carry the requirement to register and sentenced to probation. Prior to the enactment of SORNA, he filed to shorten his probationary period so that he would be not be required to register under SORNA, to be enacted the following December. Id. at 447. The trial court issued a ruling denying his petition to shorten his probationary period, and also issued an order that he would not be required to register under SORNA, specifically stating that to require him to register would violate due process of law and fundamental fairness. Id. The Superior Court agreed. Id. at 450. Furthermore, the Partee Court specifically found that Commonwealth v. Benner, 853 A.2d 1068 (Pa. Super. 2004) was not applicable, because Benner was required to register at his initial plea and sentencing. Id. at 450.



Commonwealth v. Perez, 82 A.2d 444

Synopsis

Background: Defendant pled nolo contendere in the Court of Common Pleas of Cumberland County, Criminal Division, No. CP-21-CR-0002975-2012, [Ebert](#), J., to indecent assault. Defendant appealed.

Holding: The Superior Court, No. 1410 MDA 2013, [Mundy](#), J., held that the ex post facto clause of the federal constitution did not prohibit the retroactive application of the 25-year sex offender registration requirement to defendant. Affirmed.



Other Constitutional Challenges

Commonwealth v. [Giannantonio](#), 114 A.3d 429 Pa. Super 2015
SORNA does not violate due process

Commonwealth v. McDonough, 96 A.3d 1067 Pa. Super 2014
SORNA is not punitive
SORNA is a collateral





Case Study

Defendant pled to Statutory Sexual Assault in 2007

At that time, the crime was 3122.1 (no subsections) where the defendant was four or more years older and the victim was under the age of 15, and they were not married.

The underlying facts of the case were that the defendant, at age 19, had sex with a 15 year old girl.

For some reason, the defendant and his lawyer agreed to register under Megan's Law II, even though 3122.1 was not a predicate offense. 10 years.

In December of 2011, the statute was amended to include subsections.



18 Pa.Ca .S. 3122.1 Statutory Sexual Assault

(a) Felony of the second degree.- a person commits felony of the 2nd degree when that person engages in sexual intercourse with a complainant to whom the person is not married who is under the age of 16 years and the person is

- (1) Four years older but less than eight years older than the complainant; or
- (2) Eight years older but less than 11 years older than the complainant.

(b) Felony of the 1st degree- a person commits a felony of the first degree when that person engages in sexual intercourse with a complainant under the age of 16 years and that person is 11 years or more older than the complainant and they are not married.

Only section (b) needs to register.



The General Assembly, in House bill 1985, which became law
In March, 2014, and was made retroactive to December 12, 2012,
Amended SORNA's Retroactivity as follows:

(B) Convictions under 18 Pa.C.S. 3126 (relating to indecent assault), where
The crime is graded as an M2, or where the conviction occurred between
January 22, 2006 and January 1, 2007, when the crime is graded as a F3

Are not required to register

To be continued...

