

MEMO



DEC 07 2010

Senate of Pennsylvania

December 6, 2010

TO: ALL SENATORS
FROM: Stewart J. Greenleaf *Stewart*
SUBJECT: Cosponsorship -- **Megan's Law amendments**

I am introducing legislation amending the provisions of the Crimes Code, Title 18, and the Judicial Code, Title 42 of the Pennsylvania Consolidated Statutes, relating to the registration of sex offenders and commonly referred to as "Megan's Law." The bill requires out-of-state offenders subject to lifetime registration requirements to register when they move into Pennsylvania, and makes clear that offenders required to register under a previous statute are subject to the Crimes Code provisions for not registering. The bill makes changes relating to the powers and duties of the Pennsylvania State Police and Pennsylvania Board of Probation and Parole.

In a Superior Court case, Commonwealth v. Landing, No. 1510 MDA (Pa.Super. 2008), the question was raised whether an offender who was required to register under a former provision of Megan's Law could be charged for failing to register under the newer Crimes Code provisions. Provisions of the Crimes Code did not specifically cite the earlier provisions which had been repealed and replaced with other provisions requiring registration. The court ruled that the defendant was required to register until his ten-year period expires but he was not criminally liable for not registering. The bill amends provisions of the Crimes Code and the Judicial Code to clarify that the criminal penalties for failing to registry apply to offenders who were required to register under former 42 Pa.C.S. §9793.

In Commonwealth v. Arroyo, 991 A.2d 951 (Pa.Super. 2010), the Superior Court ruled that the criminal penalties for failing to register did not apply to out-of-state offenders who had to register for life because the Crimes Code provisions did not reference the applicable provision in Megan's Law. The bill amends the Crimes Code provisions to add the reference necessary to bring under those provisions out-of-state offenders who move to Pennsylvania and have lifetime registration requirements. In addition, failure of a sexually violent predator to comply with the counseling requirements is a criminal violation.

Under this legislation offenders and sexually violent predators shall inform the Pennsylvania State Police within 48 hours of entering, being released or transferred from a Federal, State, county, municipal or private correctional facility due to arrest, detainer, parole violation, probation violation, or sentence of incarceration, if the person's stay in the facility exceeds 48 hours.

Currently, there is no language in Megan's Law giving the Pennsylvania State Police standing when an offender contests his inclusion on the registry and there are no provisions giving the State Police authority to certify records under Megan's Law. Under the bill the State Police shall have standing and shall be a party to any proceeding brought by an individual to be removed from or contesting inclusion in the registry, and any proceeding to modify a court order concerning the terms of an individual's registration. The State Police may certify and send to an authorized user (district attorney, law enforcement) a certification of the record maintained by the State Police regarding the registration and verification history of an offender.

The bill authorizes the Pennsylvania State Police to develop a process which will allow members of the public to receive electronic notification when any registered offender moves into or out of a designated location. In addition, the State Police must upgrade the Megan's Law website by requiring multiple frontal view color photographs, the date when the photograph was taken and, for comparative purposes, the most current and the most recent previously posted photographs.

The current statute requires the "parole office" to pay the fees for counseling and there is no provision for the reassessment of a sexual violent predator's indigent status. If a sexually violent predator can prove to the court that his income and support is such that he cannot afford to pay for counseling sessions, the sexually violent predator still must attend the counseling sessions. The Pennsylvania Board of Probation and Parole shall pay the counseling fees for sexually violent offenders who are indigent. The parole board may request that the court review the sexually violent predator's indigent status to determine whether the individual remains eligible for funded counseling sessions.

The provisions of this bill are drawn from House Bill 1926 of last session. The provisions of House Bill 1926 which applied to transient sex offenders are not a part of this legislation. The House of Representatives and the Senate passed House Bill 1926. The Governor vetoed House Bill 1926 because of unrelated amendments expanding the Castle Doctrine. Those amendments are not included in this legislation.

If you are interested in cosponsoring this legislation, please contact Pat Snively of my office by e-mailing her at psnively@pasen.gov.