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## MEMORANDUM

**DATE:** January 6, 2011

**TO:** ALL HOUSE MEMBERS

**FROM:** KEVIN MURPHY, MEMBER  
113<sup>th</sup> Legislative District, Lackawanna County

**RE:** Co-Sponsorship of Legislation Re-Introduction: Closing a Megan's Law  
Loophole (**former HB 2417 of 2009-10 Session**)

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In the very near future it is my intention to re-introduce legislation that would close a particular loophole that currently exists within the State version of the Federal statute that is known as Megan's Law, which is found in Titles 42 (Judiciary & Judicial Procedure) and 18 (Crimes Code).

Megan's Law was enacted by authorization of the General Assembly in 2003. From there, it was amended by acts of the General Assembly in 2004 and 2006 (Act 154, SB 92 and Act 178, SB 944), to add additional groups of people required to register with the police and to provide for penalties for failing to register. In 2004, the legislature added the failure to register as a sex offender as a crime under Title 18 (Section 4915). In 2006, the legislature amended Title 42 (Section 9795.1) to require Pennsylvania residents convicted of sex crimes out of state to register in Pennsylvania. However, the crime of failure to register as a sex offender, as enacted by the legislature in 2004, was never amended to include this new group of sex offenders required to register under the 2006 law.

A recent Commonwealth Court case decision (Commonwealth v. Gilbert Arroyo, 2010 WL 986921) brought to light this loop hole in the crimes code: a person convicted of a sex crime out of state, but required to register in the Commonwealth could not be convicted of failure to register in Pennsylvania. This is because the failure to register clause/provision was only addressed in Title 42 (section 9795), and should have also been amended into Title 18, but wasn't, thus, the loop hole.

The backside of this memo has an excerpt of the Court's opinion via Judge Colville (Superior Court of Pennsylvania) in the above mentioned case from 2010 on the loophole that exists in the Crimes Code, but is included in the Judicial code. It is our duty to correct this huge oversight that exempts the most dangerous and serious sex offenders (child rapists). If you'd like to join me in this effort, please contact Stephanie in my office at [shardman@pahouse.net](mailto:shardman@pahouse.net).

Thank you. Please read the opinion on the reverse side—it truly shows the desperate need to close this loophole through an act of this legislative body.

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*"should the Court rule in favor of [Appellant's] appeal, it will call for an absurd result. Section 4915 of Pennsylvania's crimes code states that an out-of-state individual who is required to register for ten (10) years but fails to do so with the Pennsylvania State Police commits a felony of the second degree. Those individuals who are subject to the ten year registration are those convicted of "lesser" sex offenses such as: incident assault; luring a child into a motor vehicle; and unlawful contact with a minor.*

*However, when reading the statute on its face, Section 4915 appears to omit out-of-state individuals who have been convicted of the most serious of sex offenses, including: rape; involuntary deviate sexual intercourse; and aggravated indecent assault. Consequently, to read Section 4915 as [Appellant] suggests, one must determine that that the Pennsylvania Legislature intended to criminalize the failure to register of lower-level sex offenders while allowing the most heinous of sex offenders to roam freely about the Commonwealth. Such a result would clearly be absurd."*

--Commonwealth's Brief

