

JUDICIARY AND JUDICIAL PROCEDURE (42 PA.C.S.) - OMNIBUS
AMENDMENTS

Act of May. 22, 1996, P.L. 300, No. 46

Cl. 42

Session of 1996

No. 1996-46

HB 814

AN ACT

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for law enforcement records, for juvenile history record information, for registration and assessment of sexual offenders, for certain notifications, for immunity for good faith conduct, for duties of the Pennsylvania State Police, for duties of the Pennsylvania Board of Probation and Parole and for the composition and compensation of the State Board to Assess Sexually Violent Predators; and providing for applicability.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 6308(d)(1)(iii) and 6309(a) of Title 42 of the Pennsylvania Consolidated Statutes are amended to read:

§ 6308. Law enforcement records.

* * *

(d) Pennsylvania State Police registry.--

(1) The contents of law enforcement records and files concerning a child shall not be disclosed to the public except if the child is 14 years of age or older at the time of the alleged conduct and if any of the following apply:

* * *

[(iii) The child is a dangerous juvenile offender.]

§ 6309. Juvenile history record information.

(a) Applicability of Criminal History Record Information Act.--Except for 18 Pa.C.S. §§ 9105 (relating to other criminal justice information), 9112(a) and (b) (relating to mandatory fingerprinting) [and], 9113 (relating to disposition reporting by criminal justice agencies) **and 9121(b) (relating to general regulations)**, the remaining provisions of 18 Pa.C.S. Ch. 91 (relating to criminal history record information) shall apply to all alleged delinquents whose fingerprints and photographs are taken pursuant to section 6308(c) (relating to law enforcement records) and to any juvenile justice agency which collects, maintains, disseminates or receives juvenile history record information. **The disclosure to the public of the contents of law enforcement records and files concerning a child shall be governed by section 6308(b).**

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Section 2. Sections 9793, 9794(a), (c), (d) and (e), 9795, 9798(a), 9799, 9799.1, 9799.2, 9799.3(a), (b) and (d) and 9799.4 of Title 42, added October 24, 1995 (1st Sp.Sess., P.L.1079, No.24), are amended to read:

§ 9793. Registration of certain offenders for ten years.

(a) Registration.--A person convicted of any of the offenses set forth in subsection (b) shall be required to register a current address with the Pennsylvania State Police upon release

from incarceration, upon parole from a State or county correctional institution [or], upon the commencement of a sentence of intermediate punishment or probation[.] **or where the offender is under the supervision of the Pennsylvania Board of Probation and Parole at the time of enactment of this section, within 30 days of the date of enactment of this section. Where the offender has been granted parole by the Pennsylvania Board of Probation and Parole, the board shall collect registration information from the offender and forward that registration information to the Pennsylvania State Police. The Department of Corrections shall not release the offender until it receives verification from the Pennsylvania State Police that it has received the registration information. Where the offender is scheduled to be released from a State correctional facility due to the expiration of the maximum term of incarceration, the Department of Corrections shall collect the information from the offender no later than ten days prior to the maximum expiration date. The Department of Corrections shall forward the registration information to the Pennsylvania State Police. Where the offender scheduled to be released due to the maximum expiration date refuses to provide the registration information, the Department of Corrections shall notify the Pennsylvania State Police of the failure to provide registration information and of the expected date, time and location of the release of the offender. The chief county probation and parole official in cooperation with a county correctional facility shall, in accordance with established guidelines, obtain the required information contained in section 9799.2(2) (relating to duties of Pennsylvania Board of Probation and Parole) regarding offenders released from a county sentence and to submit the information to the Pennsylvania Board of Probation and Parole and the Pennsylvania State Police. The offender in a county correctional facility shall not be released from incarceration or released to a sentence of probation or intermediate punishment until the information has been obtained and submitted as required. The offender shall inform the Pennsylvania State Police within ten days if the offender changes residence. The offender shall register with a new law enforcement agency no later than ten days after establishing residence in another state. The period of registration shall be ten years.**

(b) Persons required to register.--

(1) Persons convicted of any of the following offenses that are classified as a felony and involve a victim who is a minor:

18 Pa.C.S. § 2901 (relating to kidnapping) except by a parent.

18 Pa.C.S. § 3121 (relating to rape).

18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

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

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

(2) Persons convicted of any of the following offenses regardless of the age of the victim:

18 Pa.C.S. § 3121.

18 Pa.C.S. § 3123.

18 Pa.C.S. § 3125.

18 Pa.C.S. § 3128(a) and (b) (relating to spousal sexual assault).

(3) Persons convicted of 18 Pa.C.S. § 3126 (relating to indecent assault) when the offense is a misdemeanor of the first degree.

(c) Registration information.--The Pennsylvania State Police shall provide the information obtained under this section and sections 9795 (relating to registration of offenders) and 9796 (relating to verification of residence) to the chief law enforcement officer of the police department of the municipality in which the offender will reside. In addition, the Pennsylvania State Police shall provide this officer with the address at which the offender will reside following his release from incarceration, parole or probation.

(d) Out-of-State offenders.--A person who is convicted of an offense equivalent to any of the offenses listed in subsection (b) in any other state or territory or the District of Columbia, or in any Federal court, and who, within ten years of his release or parole from incarceration, makes his residence in Pennsylvania shall be required to register a current address with the Pennsylvania State Police and shall be subject to the other provisions of this subchapter relating to registration. The period of registration shall be for ten years from the offender's release or parole from incarceration.

(e) Penalty.--Any offender who fails to register with the Pennsylvania State Police as required in this section commits a felony of the third degree.

§ 9794. Designation of sexually violent predators.

(a) Order for assessment.--After conviction, but before sentencing, a court shall order a person convicted of a sexually violent offense specified in section 9793(b) (relating to registration of certain offenders for ten years) to be assessed by the board. **The order for an assessment shall be sent to the administrative officer of the board within ten days of the date of conviction.**

* * *

(c) Assessment.--[The] **Upon receipt from the court of an order for an assessment, two members of the board as designated by the administrative officer of the board shall conduct an assessment of the offender to determine if the offender is a sexually violent predator. Such an assessment shall include, but not be limited to, such factors as:**

- (1) Age of the offender.
- (2) Offender's prior criminal record, sexual offenses as well as other offenses.
- (3) Age of the victim.
- (4) Whether the offense involved multiple victims.
- (5) Use of illegal drugs by the offender.
- (6) Whether the offender completed any prior sentence and whether the offender participated in available programs for sexual offenders.
- (7) Any mental illness or mental disability of the offender.
- (8) The nature of the sexual contact with the victim and whether the sexual contact was part of a demonstrated pattern of abuse.
- (9) Whether the offense included a display of unusual cruelty by the offender during the commission of the crime.
- (10) Any behavioral characteristics that contribute to the offender's conduct.

All State, county and local agencies shall cooperate in providing the necessary information as requested by the board in connection with the required assessment.

(d) Submission of report by board.--The board shall submit a written report containing its assessment to the court no later than [30] **60** days from the date of conviction of the defendant. **Where the board members disagree on the assessment of the offender, both members shall submit a written report to the court.**

(e) Court review of findings.--Upon receipt of the board's report, the court shall determine if the offender is a sexually violent predator. This determination shall be made based on evidence presented at a hearing held prior to sentencing and before the trial judge. The offender and district attorney shall 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. In addition, the offender shall have the right to counsel and to have a lawyer appointed to represent him if he cannot afford one. After a review of all evidence presented at this hearing, the court may determine whether the presumption arising under subsection (b) has been rebutted **and shall set forth this determination on the sentencing order. A copy of the sentencing order containing the determination shall be submitted to the Pennsylvania Board of Probation and Parole and the Department of Corrections.**

* * *

§ 9795. Registration of offenders.

(a) Registration of sexually violent predators.--A sexually violent predator shall be required to register all current addresses with the Pennsylvania State Police upon release from incarceration, upon parole from a State or county correctional institution or upon the commencement of a sentence of intermediate punishment or probation. **The offender shall inform the Pennsylvania State Police within ten days if the offender changes residence. The offender shall register with a new law enforcement agency no later than ten days after establishing residence in another state.** The registration shall continue unless the court determines the person is no longer a sexually violent predator as provided in section 9794(f) (relating to designation of sexually violent predators). **Where the offender has been granted parole by the Pennsylvania Board of Probation and Parole, the board shall collect registration information from the offender and forward that registration information to the Pennsylvania State Police. The Department of Corrections shall not release the offender until it receives verification from the Pennsylvania State Police that it has received the registration information. Where the offender is scheduled to be released from a State correctional facility due to the expiration of the maximum term of incarceration, the Department of Corrections shall collect the information from the offender no later than ten days prior to the maximum expiration date. The Department of Corrections shall forward the registration information to the Pennsylvania State Police. Where the offender scheduled to be released due to the maximum expiration date refuses to provide the registration information, the Department of Corrections shall notify the Pennsylvania State Police of the failure to provide registration information and of the expected date, time and location of the release of the offender. The chief county probation and parole official in cooperation with a county correctional facility shall, in accordance with established guidelines, obtain the required information**

contained in section 9799.2(2) (relating to duties of Pennsylvania Board of Probation and Parole) regarding offenders released from a county sentence and to submit the information to the Pennsylvania Board of Probation and Parole and the Pennsylvania State Police. The offender in a county correctional facility shall not be released from incarceration or released to a sentence of probation or intermediate punishment until the information has been obtained and submitted as required.

(b) Court information for all offenders.--The sentencing court shall inform offenders designated in section 9793 (relating to registration of certain offenders for ten years) and sexually violent predators designated in subsection (a) at the time of sentencing of the provisions of this subchapter. The court shall:

(1) Specifically inform the offender of the duty to register and obtain the information required for each registration.

(2) Specifically inform the offender of the duty to inform the Pennsylvania State Police within ten days if the offender changes residence.

(3) Specifically inform the offender of the duty to register with a new law enforcement agency if the offender moves to another state no later than ten days after establishing residence in another state.

(4) Order the fingerprints and photograph of the person to be provided to the Pennsylvania State Police upon sentencing.

(5) Require the offender to read and sign a form stating that the duty to register under this subchapter has been explained. Where the offender is incapable of reading, the court shall certify the duty to register was explained to the offender and the offender indicated an understanding of the duty.

(c) [Notice by correctional facility and paroling authorities.--When the offender is to be released from incarceration or paroled from a State or county correctional facility, the prison official of the State or county correctional facility shall no later than ten days prior to the release or parole of the offender again provide the offender with notice of the duty to register with the Pennsylvania State Police under this subchapter.] **Offenders from other states.--As a condition of obtaining residency in Pennsylvania under the interstate compact for the supervision of parolees and probationers, sexual offenders from other states shall be required to register and abide by the requirements of this subchapter and, where the Pennsylvania Board of Probation and Parole determines it is necessary to protect the public, shall submit to public notification as provided in section 9798 (relating to other notification).**

(d) Penalty.--Any offender who fails to register with the Pennsylvania State Police as required in this section commits a felony of the third degree.
§ 9798. Other notification.

(a) By municipality's chief law enforcement officer.--[The] **Notwithstanding any of the provisions of 18 Pa.C.S. Ch. 91 (relating to criminal history record information),** the chief law enforcement officer of the police department of the municipality where a sexually violent predator lives shall be responsible for providing written notice as required under this section.

(1) The notice shall contain:

- (i) The name of the convicted sexually violent predator.
- (ii) The address or addresses at which he resides.
- (iii) The offense for which he was convicted.
- (iv) A statement that he has been designated by court order as a sexually violent predator, which designation has or has not been terminated as of a date certain.

(v) A photograph of the sexually violent predator, if available.

(2) The notice shall not include any information that might reveal the victim's name, identity and residence.

* * *

§ 9799. Immunity for good faith conduct.

The following entities shall be immune from liability for good faith conduct under this section:

- (1) The Pennsylvania State Police and local law enforcement agencies and employees of law enforcement agencies.
- (2) District attorneys and their agents and employees.
- (3) Superintendents, administrators, teachers [and], 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) The Pennsylvania Board of Probation and Parole and its agents and employees.
- (7) Directors of licensed day care centers and directors of licensed preschool programs.

§ 9799.1. Duties of Pennsylvania State Police.

The Pennsylvania State Police shall:

- (1) Create and maintain a State registry of offenders pursuant to section 9793 (relating to registration of certain offenders for ten years).
- (2) In consultation with the Office of Attorney General and the Pennsylvania Board of Probation and Parole, promulgate guidelines necessary for the general administration of this subchapter.
- (3) Write regulations regarding neighbor notification of the current address of sexually violent predators.
- (4) Notify, within 72 hours of receiving the offender's registration, the chief law enforcement officer of the police department having primary jurisdiction of the municipality in which an offender resides of the fact that the offender has been registered with the Pennsylvania State Police pursuant to sections 9795 (relating to registration of offenders) and 9796 (relating to verification of residence).
- (5) In consultation with the Department of Education and the Pennsylvania Board of Probation and Parole, promulgate guidelines directing licensed day-care centers, licensed preschool programs, schools, universities and colleges, including community colleges, on the proper use and administration of information received under [section 9797 (relating to victim notification)] **section 9798 (relating to other notification).**
- (6) Immediately transfer the information received from the Pennsylvania Board of Probation and Parole under section 9799.2(2) and (3) (relating to duties of Pennsylvania Board of Probation and Parole) and the fingerprints of the sexually violent predator to the Federal Bureau of Investigation.

All guidelines and regulations promulgated under this section shall be published in the Pennsylvania Bulletin no later than January 1, 1996.

§ 9799.2. Duties of Pennsylvania Board of Probation and Parole.

The Pennsylvania Board of Probation and Parole shall:

(1) Create a notification form which will inform State and county prison and probation and parole personnel how to inform offenders required to register under this subchapter of their duty under the law.

(2) [Obtain] **In cooperation with the Department of Corrections and other Commonwealth agencies, obtain** the following information regarding offenders:

(i) Name, including any aliases.

(ii) Identifying factors.

(iii) Anticipated future residence.

(iv) Offense history.

(v) Documentation of any treatment received for the mental abnormality or personality disorder.

(vi) Photograph of the offender.

(3) Immediately transmit the information in paragraph (2) to the Pennsylvania State Police for immediate entry into the State registry of sexual offenders and the criminal history record of the offender as provided in 18 Pa.C.S. Ch. 91 (relating to criminal history record information).

§ 9799.3. Board.

(a) Composition.--The State Board to Assess Sexually Violent Predators shall be composed of [three persons, one psychiatrist, one psychologist and one criminal justice expert] **psychiatrists, psychologists and criminal justice experts**, each of whom [has a minimum of ten years of experience and specialized training in] **is an expert in the field of** the behavior and treatment of [sex] **sexual** offenders.

(b) Appointment.--The Governor shall appoint the [psychiatrist and psychologist] board members. [The Attorney General shall appoint the criminal justice expert. All appointments shall be made within 30 days of the effective date of this section.]

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(d) Compensation.--The members of the board shall be compensated at a rate of [\$125 per day] **\$200 per assessment** and receive reimbursement for their actual and necessary expenses while performing the business of the board. The chairman shall receive \$500 additional compensation per annum.

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§ 9799.4. Sexually violent predators.

[(a) Lifetime parole; counseling.--Notwithstanding **any other provision of law to the contrary, a person designated as a sexually violent predator under this subchapter shall remain on lifetime parole when released from a State or county correctional facility unless the court determines the person is no longer a sexually violent predator under section 9794(f) (relating to designation of sexually violent predators). The sexually violent predator shall be required to attend at least monthly counseling sessions in a program approved by the board and be financially responsible for all fees assessed from such counseling sessions. If the sexually violent predator can prove to the satisfaction of the court that that person cannot afford to pay for the counseling sessions, that person shall still attend the counseling sessions and the parole office shall pay the requisite fees.]**

(a) Increased mandatory maximum sentence.--Upon the court's finding that the offender is a sexually violent predator, the offender's maximum term of confinement for any offense or conviction specified in section 9793(b) (relating to registration of certain offenders for ten years) shall be increased to the offender's lifetime notwithstanding lesser statutory maximum penalties for these offenses.

(b) Counseling.--The sexually violent predator shall be required to attend at least monthly counseling sessions in a program approved by the board and be financially responsible for all fees assessed from such counseling sessions. If the sexually violent predator can prove to the satisfaction of the court that the person cannot afford to pay for the counseling sessions, that person shall still attend the counseling sessions and the parole office shall pay the requisite fees.

[(b)] (c) Mandatory sentence.--Notwithstanding any other provision of law to the contrary, when a person who has been designated as a sexually violent predator is convicted of a subsequent sexually violent offense, the mandatory sentence shall be life imprisonment. Should a previous conviction be vacated and an acquittal or final discharge entered subsequent to imposition of sentence under this section, the offender shall have the right to petition the sentencing court for reconsideration of sentence if this section would not have been applicable except for the conviction which was vacated.

[(c)] (d) Authority of court in sentencing.--There shall be no authority in any court to impose on an offender to which this section is applicable any lesser sentence than provided for in subsection [(b)] (c), to place such offender on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section.

[(d)] (e) Appeal by Commonwealth.--If a sentencing court refuses to apply this section when it is applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for the imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

Section 3. Title 42 is amended by adding a section to read:
§ 9799.6. Applicability.

The provisions of section 9793(d) (relating to registration of certain offenders for ten years) shall apply to all offenders convicted of an offense equivalent to an offense set forth in section 9793(b) before the effective date of this section who remain incarcerated or on parole on the effective date of this section. In addition, the provisions of section 9793(d) shall apply to all offenders convicted of an offense equivalent to an offense set forth in section 9793(b) on or after the effective date of this section.

Section 4. This act shall take effect immediately.

APPROVED--The 22nd day of May, A. D. 1996.

THOMAS J. RIDGE