

PENNSYLVANIA STATE POLICE TESTIMONY

HB 1952

SENATE JUDICIARY COMMITTEE

FEBRUARY 5, 2018



PRESENTED BY

MAJOR SCOTT PRICE

ACTING DEPUTY COMMISSIONER

AND

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PENNSYLVANIA STATE POLICE

Good morning, Chairmen Greenleaf and Leach, Vice Chairman Rafferty, and members of the Senate Judiciary Committee. I'm Major Scott Price, Acting Deputy Commissioner for the Pennsylvania State Police (PSP). With me is John Herman of our Office of Chief Counsel. We appreciate the opportunity to provide testimony today on the impact of a recent State Supreme Court decision on Pennsylvania's sexual offender registration system and a piece of proposed legislation to address same.

What is known as Pennsylvania's Megan's Law, Title 42 of the Pennsylvania Consolidated Statutes, Chapter 97, Subchapter H, was first established in 1995. Legislative amendments to the law became effective in 2000, 2005 and 2012. These versions of Megan's Law are often colloquially referred to as "Megan's Law 1, 2, 3, and 4 a.k.a., SORNA"; this, because Megan's Law 4 adopted the guidelines enumerated in the Federal Sex Offender Registration and Notification Act (SORNA). Megan's Law 3 was struck down by the courts in its entirety and, because this effectively nullified the repeal included in the law, abiding legislation reverted to Megan's Law 2. As such, our testimony today will reference Megan's Law 2 and SORNA.

The Pennsylvania Sexual Offender registry is maintained by PSP and currently includes approximately 22,072 active offenders. Prior to enactment of SORNA, the registry numbered approximately 11,000. Thus, a considerable number of offenders were added to the registry subsequent to SORNA implementation on December 20, 2012.

Under Megan's Law 2, sexual offenders were subject to registration requirements with PSP for certain enumerated offenses. Those offenders were subject to either a 10-year or lifetime period of registration. In either case, the offenders were required to update and verify their personal information on an annual basis. The information collected included,

but was not limited to, address of residence, employer, school and temporary habitat, as applicable. If an offender required to register under Megan's Law was incarcerated while on the registry, the period of registration was tolled during the incarceration period. This information was maintained by PSP; however, at the time of enactment, there was no Megan's Law public website. The public website was established under Megan's Law 3 and was subsequently made a provision of SORNA.

When SORNA became effective in December of 2012, numerous significant changes to the statute took place. SORNA implemented a much more comprehensive, robust registry; in order to keep sex crime victims, law enforcement, and members of the public better informed to make personal safety decisions prudently as applicable to their situations. The number of enumerated offenses that subject an individual to registration was expanded which resulted in an increase of offenders that were not required to register. This increase can also be partly attributed to a front-end model where the registration of individuals is completed shortly after sentencing; whereas prior to SORNA, individuals were registered upon release from incarceration, parole, or commencement of probation. Furthermore, a "tier system" was enacted, which changed the registration duration and frequency of updates. SORNA offenders are classified and required to register for 15 years/annual updates, 25 years/semi-annual updates or lifetime/quarterly updates. Those previously convicted and subject to the 10-year or lifetime registration requirement were reclassified under the tier system and subject to the new registration requirements if they remained incarcerated or under supervision at the time of enactment of SORNA. The personal information collected was also expanded and included, among other things, vehicles owned and operated (including air and water craft), international

travel documents, internet identifiers and professional/occupational licenses. Much of this information is made available on the public internet site. Upon enactment, SORNA essentially repealed all prior versions of the law.

In July of 2017, the Pennsylvania Supreme Court issued a ruling in *Commonwealth v. Muniz*. In interpreting this ruling, PSP determined the registration requirements currently in place under SORNA are deemed unconstitutional when applied to registrants whose offenses occurred prior to the date of enactment. A Petition for Certiorari to the Supreme Court of The United States was recently denied, firmly establishing *Muniz* as law of the land. While awaiting the case to wind its way through the legal system, PSP moved to proactively evaluate potential impacts and develop, to the degree possible, contingency plans. While the full impact of *Muniz* can only be assessed through rigorous, granular analysis of each case file, our preliminary analysis makes clear the magnitude of the task ahead; as well as the impact on the public's ability to access information necessary to make informed personal safety decisions.

This decision, as interpreted, will likely impact over 17,000 offenders, including over 1,636 designated by the Sexual Offenders Assessment Board (SOAB) as sexually violent predators; and 55 sexually violent delinquent children. Though a review and determination of the appropriate registration status of each of these individuals will be required, we believe a first pass will eliminate many offenders whose offense dates occurred prior to December 20, 2012, from requirements to register. Case reviews will verify the offense date, specific offense committed, registration requirement at the time of offense (or negotiated by plea agreement) and any subsequent offenses and/or periods of incarceration. While these case reviews proceed, PSP will also have to determine how

the registry is to be managed while performing status evaluations. Past experience has revealed we will likely be unable to locate approximately 16 percent of those offenders who would ultimately be required to remain on the registry due to factors such as relocation if an interruption in registration and verification requirements were to occur.

Barring enactment of HB 1952, any person whose offense occurred prior to the enactment of SORNA simply will not be required to register. In light of the *Muniz* decision, it is a reasonable legal interpretation to assert there is no statutory registration requirement for *offenses occurring* prior to December of 2012. In this interpretation, an offender arrested and convicted after December 2012 would not be required to register *if the offense occurred* before that date. This potentially impacts pending and future cases, as well as offenders currently in the registry. Registrants whose offense occurred prior to enactment of SORNA, but who were arrested and convicted post-SORNA would require removal and should future prosecutions occur in cases in which offenses occurred prior to SORNA, no registration would be required. Those found to have reoffended post-SORNA would remain on the registry.

Enactment of HB 1952 would move toward blunting the impact of the *Muniz* decision on our public safety posture. Of the 17,544 potential removals barring legislative action, HB 1952 captures an estimated 9,000 to 12,000 offenders. Put another way, upon completion of our analyses, the impact of *Muniz*, though mitigated by HB 1952, may still result in somewhere between 3,000 and 5,000 individuals being removed from the registry.

In accordance with our public safety mandate, PSP urges consideration of HB 1952. PSP has worked in cooperation with legislators and their staff, as well as other

stakeholders, to develop this legislative solution. Confidence and trust in our judicial system is imperative for the victims of all crimes; none more so than those of sexual crimes and abuse. Should no action be taken, a very large number of currently registered sex offenders will no longer be required to register. This would prevent victims and the public at large from making decisions about their safety. In addition, it would likely result in a negative psychological impact on victims. Another problematic consequence is that it could lead pre-SORNA offenders to consider relocating to Pennsylvania simply to escape their state's registration requirements. Should this occur, the premise of SORNA -- to close potential gaps and loopholes that existed under prior law and generally strengthen the nationwide network of sex offender registration and notification programs -- would be further compromised.

Thank you for the opportunity to provide you with our perspective and we would be happy to answer any questions you may have at this time.

APPENDAGE

- Tier I Offenders -**2908**
- Tier II Offenders - **2,625**
- Tier III Offenders - **10,320**
- Sexually Violent Delinquent Child - **55**
- Sexually Violent Predators - **1,636**

2,908 Offenders

Tier I Sexual Offenses - 15 Year Registration

Offenders convicted of the following offenses shall be classified as a Tier I offender:

- 18 Pa.C.S. § 2902(b) (relating to Unlawful Restraint).
- 18 Pa.C.S. § 2903(b) (relating to False Imprisonment).
- 18 Pa.C.S. § 2904 (relating to Interference with Custody of Children).
- 18 Pa.C.S. § 2910 (relating to Luring a Child into a Motor Vehicle or Structure).
- 18 Pa.C.S. § 3124.2(a) (relating to Institutional Sexual Assault).
- 18 Pa.C.S. § 3126(a)(1) (relating to Indecent Assault).
- 18 Pa.C.S. § 6301(a)(1)(ii) (relating to Corruption of Minors).
- 18 Pa.C.S. § 6312(d) (relating to Sexual Abuse of Children).
- 18 Pa.C.S. § 7507.1. (relating to Invasion of Privacy).
- 18 U.S.C. § 1801 (relating to Video Voyeurism).
- 18 U.S.C. § 2252(a)(4) (relating to Certain Activities Relating to Material Involving the Sexual Exploitation of Minors).
- 18 U.S.C. § 2252A (relating to Certain Activities Relating to Material Constituting or Containing Child Pornography).
- 18 U.S.C. § 2252B (relating to Misleading Domain Names on the Internet).
- 18 U.S.C. § 2252C (relating to Misleading Words or Digital Images on the Internet).
- 18 U.S.C. § 2422(a) (relating to Coercion and Enticement).
- 18 U.S.C. § 2423(b), and (c) (relating to Transportation of Minors).
- 18 U.S.C. § 2424 (relating to Filing Factual Statement about Alien individual).
- 18 U.S.C. § 2425 (relating to Use of Interstate Facilities to Transmit Information about a Minor).

2,625 Offenders

Tier II Sexual Offenses – 25 Year Registration

Offenders convicted of the following offenses shall be classified as a Tier II offender:

- 18 Pa.C.S. § 3011(b) (relating to Trafficking in Individuals).
- 18 Pa.C.S. § 3122.1(a)(2) (relating to Statutory Sexual Assault).
- 18 Pa.C.S. § 3124.2(a.2) and (a.3) (relating to Institutional Sexual Assault).
- 18 Pa.C.S. § 3126(a)(2), (3), (4), (5), (6) or (8) (relating to Indecent Assault).
- 18 Pa.C.S. § 5902(b.1) (relating to Prostitution and related Offenses).
- 18 Pa.C.S. § 5903(a)(3)(ii), (4)(ii), (5)(ii) or (6) (relating to Obscene and other Sexual Materials and Performances).
- 18 Pa.C.S. § 6312(b) and (c)(relating to the Sexual Abuse of Children).
- 18 Pa.C.S. § 6318 (relating to Unlawful Contact with Minor).
- 18 Pa.C.S. § 6320 (relating to Sexual Exploitation of Children).
- 18 U.S.C. § 1591 (relating to Sex Trafficking of Children by Force, Fraud, or Coercion).

- 18 U.S.C. § 2243 (relating to Sexual Abuse of a Minor or Ward).
- 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.
- 18 U.S.C. § 2251 (relating to Sexual Exploitation of Children).
- 18 U.S.C. § 2251A (relating to Selling or Buying of Children).
- 18 U.S.C. § 2252(a)(1), (2) or (3) (relating to Certain Activities Relating to Material Involving the Sexual Exploitation of Minors).
- 18 U.S.C. § 2260 (relating to Production of Sexually Explicit Depictions of a Minor for Importation into the United States).
- 18 U.S.C. § 2421 (relating to Transportation Generally).
- 18 U.S.C. § 2422(b) (relating to Coercion and Enticement).
- 18 U.S.C. § 2423(a) (relating to Transportation of Minors).

10,320 Offenders

Tier III Sexual Offenses – Lifetime Registration

Offenders convicted of the following offenses shall be classified as a Tier III offender:

- 18 Pa.C.S. § 2901(a.1) (relating to Kidnapping).
 - 18 Pa.C.S. § 3121 (relating to Rape).
 - 18 Pa.C.S. § 3122.1(b) (relating to Statutory Sexual Assault).
 - 18 Pa.C.S. § 3123 (relating to Involuntary Deviate Sexual Intercourse).
 - 18 Pa.C.S. § 3124.1 (relating to Sexual Assault).
 - 18 Pa.C.S. § 3124.2(a.1) (relating to Institutional Sexual Assault).
 - 18 Pa.C.S. § 3125 (relating to Aggravated Indecent Assault).
 - 18 Pa.C.S. § 3126(a)(7) (relating to Indecent Assault).
 - 18 Pa.C.S. § 4302(b) (relating to Incest).
 - 18 U.S.C. § 2241 (relating to Aggravated Sexual Abuse).
 - 18 U.S.C. § 2242 (relating to Sexual Abuse).
 - 18 U.S.C. § 2244 where the victim is under 13 years of age (relating to Abusive Sexual Contact).
- A conviction or court martial of a comparable military offense or similar offense under the laws of another jurisdiction or foreign country or under a former law of this Commonwealth.
 - A conviction of an attempt, conspiracy or solicitation to commit an offense enumerated under Tier III classification.
 - Two or more convictions of an offense(s) enumerated under Tier I or Tier II classification.

55 Offenders

Sexually Violent Delinquent Child

A child who has been found to be delinquent for an act of sexual violence which if committed by an adult would be a violation of 18 Pa.C.S. § 3121 (relating to rape), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault), 3125 (relating to aggravated indecent assault), 3126 (relating to indecent assault) or 4302 (relating to incest) and who has been determined by the Court to be in need of commitment for involuntary treatment.

- A Sexually Violent Delinquent Child shall register for life.

1,636 Offenders

Sexually Violent Predator

An individual convicted of a Tier I sexual offense, a Tier II sexual offense, or a Tier III sexual offense who is determined to be a Sexually Violent Predator by the Court. The term also includes an individual determined to be a Sexually Violent Predator or a similar designation where the determination occurred in another jurisdiction, a foreign country or by court martial following a judicial or administrative determination pursuant to a process similar to that of the Commonwealth's.

- Sexually Violent Predator shall register for life.