

## **COMMITTEE AMENDMENT ANALYSIS**

**Bill:** Senate Bill 1183

**Printer's No.:** 1449

**Amendment No.** 05691

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**Summary:** Other than the provisions revising the Crimes Code and Chapter 64, the amendment has been drafted as a “gut and replace” amendment. Through discussions with legislative staff, a number of changes were requested relating to style and form necessitating the re-writing of the original bill. This amendment makes the following substantive changes to the bill:

### **Crimes Code provisions**

The Class I, II and III sexual offenses requiring registration under Megan’s Law reference the provision of the Crimes Code but often have qualifying language such as “if the victim is a minor.” At the suggestion of the Pennsylvania Commission on Sentencing, this amendment revises provisions of the Crimes Code to insert specific subsections that will correspond with the registration requirements. For example, a Class 3 sexual offense is 18 Pa.C.S. §2901 (relating to kidnapping) if the victim is a minor. The amendment adds to section 2901 subsection (a.1) relating specifically to the kidnapping of a minor. This should help police, prosecutors and judges know that the case involves a Megan’s Law offense.

As a rule the grading of the more specific criminal offense is not changed. However, statutory sexual assault (§3122.1) increases from a second degree felony to a first degree felony when the person who engages in sexual intercourse with a complainant under the age of 16 years is 11 or more years older because such activity is considered a Class 3 sexual offense. A change is also made to the provision relating to prostitution. Currently it is a sexual offense to promote the prostitution of a child under the age of 16 years (§5902(c)). This provision changes the age to 18 to correspond with the Class 2 sexual offense of promoting the prostitution of a minor.

### **Chapter 64 offenders**

Senate Bill 1183 establishes a comprehensive system in Pennsylvania for managing the sex offender population. Part of that system is 42 Pa.C.S. Ch. 64 (relating to court-ordered involuntary treatment of certain sexually violent persons). Chapter 64 (§6401) provides for the “rights and procedures for the civil commitment of sexually violent delinquent children who, due to a mental abnormality or personality disorder, have serious difficulty in controlling sexually violent behavior and thereby pose a danger to the public and further provides for additional periods of commitment for involuntary treatment for said persons.” The amendment makes several changes to Chapter 64 further providing for the rights and procedures relating to these persons.

Instead of discharging the person outright, the amendment provides for outpatient treatment. An outpatient treatment plan shall be in writing and shall identify the specific entity that will provide each clinical and support service. The Department of Public Welfare shall provide a copy of the outpatient treatment program to the court, the person, the attorney who represented the person, the board, the district attorney and the county solicitor. The court shall order involuntary outpatient treatment for one year with annual reviews. The court shall not order discharge from involuntary treatment until the person has completed involuntary outpatient treatment. The amendment provides a step down process for a person who has been civilly committed as a delinquent sexual offender. These persons are also subject to the registration requirements under the legislation.

**Look back provisions**

Senate Bill 1183 recaptures back into Megan's Law offenders with prior convictions for sexual offenses but not currently subject to registration, if the offender re-enters the criminal justice system because of a crime punishable by a term of imprisonment of more than one year. The one-year requirement was based on the federal government's definition of a felony. The Department of Justice has informed Pennsylvania that it may use its own definition of a felony so the amendment revises the registration requirement to make conviction of a felony as defined in Pennsylvania the trigger for bringing a person back under the registration requirements of Megan's Law. This revision will significantly reduce the number of offenders to which the look back provisions will apply.

**Expiration of registration requirements**

The registration requirements under Senate Bill 1183 are structured so that an offender is required to register for life but Class I and Class II sexual offenders may apply to be relieved of their registration requirements after 15 and 25 years, respectively. The amendment automatically relieves Class I and II sexual offenders of their registration requirements when their time periods have expired. The registration periods are tolled when an offender is in custody or civilly committed for any reason.

**DNA samples taken**

Title 44 (Law & Justice) is amended regarding the taking of DNA samples from sexual offenders. Any person who is subject to registration shall have a DNA sample taken and forwarded to the State Police for inclusion in the State DNA data base. The collection of DNA at the time of the sex offender's registration, updating or verifying sex offender registration information is not required if the individual has previously submitted a DNA sample and the submission has been confirmed with the State Police. The taking of a DNA sample is an Adam Walsh requirement.