



MEGAN'S LAW PERFORMANCE AUDIT OF COMMONWEALTH AGENCIES

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I. INTRODUCTION

The Pennsylvania General Assembly has mandated that the Office of Attorney General (OAG) annually audit the performance of criminal justice agencies with respect to the registration of sexual offenders pursuant to 42 Pa.C.S.A. § 9791 *et seq.*, commonly known as “Megan’s Law,” and has required the full cooperation of state and local agencies in this evaluation.¹ The Regulatory Compliance and Intelligence Section (RCIS) of the Criminal Law Division, which has been tasked with reviewing compliance of various criminal justice agencies with the requirements of state statutes, conducted the initial audit released in July 2007,² that covered the 10 year-period from October of 1995 through December of 2005.³ The current audit covers the period January 1, 2006 through December 31, 2006.

Section II summarizes the history of Megan’s Law in Pennsylvania; Sections III and IV describe the various reporting and notification requirements that existed during the audit period; and Section V explains how this audit was conducted, identifying the agencies and other entities whose performance was reviewed and the gathering of information and methodology used by the RCIS audit team.

II. AN OVERVIEW OF PENNSYLVANIA MEGAN’S LAW

The Pennsylvania General Assembly first enacted Megan’s Law requiring the registration of sexual offenders on October 24, 1995, as part of the Pennsylvania General Assembly’s Special Session No. 1 on crime.⁴ Pennsylvania, the other 49 states, the District of Columbia and the federal government, all took swift action to ensure greater public knowledge about convicted sex offenders in their midst, in the wake of the tragic rape and murder of 7-year old Megan Nicole Kanka of Hamilton Township, NJ, in 1994. These brutal crimes were committed by a neighbor who, unbeknownst to the Kanka family, or the community, had been convicted twice previously of sex offenses against young girls.

¹ This audit is to “include a review of the practices, procedures and records of the Pennsylvania State Police, the Pennsylvania Board of Probation and Parole, the Department of Corrections, the State Sexual Offenders Assessment Board, [and] the Administrative office of the Pennsylvania Courts” It may also review the activities of “any other State or local agency the Attorney General deems necessary in order to conduct a thorough and accurate performance audit.” 42 Pa.C.S.A. § 9799.8(a)(1). State and local agencies “shall fully cooperate” with the Attorney General in this effort, which means, “at a minimum, [providing] complete access to unredacted records, files, reports and data systems.” 42 Pa.C.S.A. § 9799.8(b).

² *Megan’s Law Performance Audit of Commonwealth Agencies October 24, 1995 – December 31, 2005*, (released July 2007), Commonwealth of Pennsylvania, Office of Attorney General (“prior audit”).

³ This 10-year period encompassed the inception of Megan’s Law legislation through calendar year 2005.

⁴ P.L. 1079, No. 24, Act 1995-24.

Since its enactment, the General Assembly has made adjustments to Pennsylvania's original statute, *Megan's Law I*, on an ongoing basis. On May 10, 2000, midway in the period of time which was the subject of the prior audit, the legislature significantly revised the registration and notification provisions of Pennsylvania's law. Legislative changes which instituted the current procedures for designating sexually violent predators (SVPs),⁵ known as *Megan's Law II*, were effective as of July 20, 2000.⁶ Several other amendments occurred during that audit period.

The various changes made to Megan's Law since 1995 have not altered the requirement of registering at specified intervals with the Pennsylvania State Police (PSP). At all times during calendar year 2006, and at present, those convicted of a Megan's Law offense had to register at the time of release from incarceration or at the time a form of non-custodial supervision, such as probation or parole, commenced.⁷

III. REGISTRATION REQUIREMENTS AND MAINTENANCE OF OFFENDER INFORMATION

The offender registration requirements that existed during the period of this audit are set forth in detail in Appendix A.

Under the Commonwealth's Megan's Law, the PSP has been given the duty to register offenders and to compile, maintain and disseminate offender-related information as defined by that statute. On a day-to-day basis, these responsibilities are carried out by the PSP's Megan's Law Section, a specialized administrative unit dedicated to the implementation of Megan's Law.⁸ The Megan's Law Section maintains two databases pertaining to sexual offenders. One is the internet-accessible "Megan's Law Website" which contains information about individual sex

⁵ An SVP is a person who has been convicted of a sexually violent offense as set forth in § 9795.1 (relating to registration) and who has been determined to be such under § 9795.4 (relating to assessments due to a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses). The term also includes any individual determined to be an SVP in the United States, any of its territories and possessions, any state, the District of Columbia, the Commonwealth of Puerto Rico, a foreign nation or by court martial. 42 Pa.C.S.A. § 9792.

⁶ P.L. 74, No. 18, Act 2000-18; 18 Pa.C.S.A. § 4915.

⁷ See 42 Pa.C.S.A. § 9795.2(a)(1). Offenders subject to registration also had to inform the PSP of changes in residence, employment and enrollment as a student within ten days and those relocating to another state must register with law enforcement in the other state within ten days of establishing residence. 42 Pa.C.S.A. § 9795.2(a)(2) and (a)(2.1). For offenders not subject to lifetime registration, recommitment for a parole violation or imprisonment on a new offense would toll the time period of registration. 42 Pa.C.S.A. § 9595.2(a)(3).

⁸ Within the PSP organizational structure, the Megan's Law Section is part of the Operational Records Division of the Bureau of Records and Identification.

offenders that, by law, must be posted and made available to the general public.⁹ The other is the Megan’s Law Registry, which contains information about all registered offenders listed on the Megan’s Law Website, as well as those who have been reclassified because they have moved out of Pennsylvania or are deceased.¹⁰

Throughout the audit period, all out-of-state sex offenders transferred to the Commonwealth pursuant to interstate compacts concerning parole are required to register with the PSP prior to their arrival in Pennsylvania.¹¹ Those relocating who were subject to registration in their prior place of residence are also subject to registration in the Commonwealth and the provisions of Pennsylvania law governing the dissemination of offender-related information and notification. Failure to comply with these requirements is constituted as violation of Megan’s Law and was subject to prosecution under the criminal statutes.¹² Implementation of these requirements is carried out through the interstate compact structure, participation in which was overseen by the Pennsylvania Board of Probation and Parole (PBPP). In the case of a relocating out-of-state offender, the Office of Chief Counsel for the PBPP makes a preliminary determination about what was required by Megan’s Law, following which a thorough review of the case is completed, resulting in the determination of the appropriate registration status for each offender.

IV. SVP NOTIFICATION REQUIREMENTS

In addition to the general dissemination of information about registered sex offenders, Megan’s Law also provides that specific individuals and members of the general public be provided with information about SVPs. The notification requirements that were applicable to all SVPs during the period of this audit report are summarized in Appendix B.

V. HOW THIS AUDIT WAS CONDUCTED

- **Agencies and Departments Whose Policies & Practices Were Reviewed**

As directed by statute, in evaluating the administration of Megan’s Law, the audit team confirmed the continued application of appropriate policies and practices in processing Megan’s Law offenders for the following agencies:

⁹ See 42 Pa.C.S.A. § 9798.1. The creation of the website and a description of its contents are discussed in more detail in Part IX.

¹⁰ See 42 Pa.C.S.A. § 9799.1(1) (providing that the PSP “shall...create and maintain a State registry of offenders and sexually violent predators”).

¹¹ 42 Pa.C.S.A. §§ 9795.2(b)(4) and (5). Pennsylvania Interstate Compact Concerning Parole. See 61 P.S. § 321 repealed, replaced by 61 P.S. § 324 *et seq.* the Interstate Compact for the Supervision of Adult Offenders June 19, 2002.

¹² See 42 Pa.C.S.A. § 9795.2(d) and 18 Pa. C.S.A. § 4915.

- the Pennsylvania State Police (PSP);
- the Pennsylvania Board of Probation and Parole (PBPP);
- the Pennsylvania Department of Corrections (DOC);
- the State Sexual Offenders Assessment Board (SOAB); and
- the Administrative Office of the Pennsylvania Courts (AOPC).
- the Clerks of Court of the 67 Pennsylvania counties;
- county probation and parole systems;
- county prison systems;
- the District Attorneys of the Commonwealth; and
- the police departments charged with maintaining supervisory contact with an offender.

Each group's role in the processing of Megan's Law offenders was reviewed to determine how successfully each agency and department was carrying out its responsibilities regarding the processing of Megan's Law offenders.

- **Gathering of Information and Technology**

Having reviewed in detail the policies and procedures of each agency during the 10-year period covered by the prior audit (1995-2005), this audit focused on each agency's execution of its responsibilities with respect to Megan's Law offenders during the subsequent calendar year, 2006. To assess the overall rate of offender compliance with registration requirements it was necessary to identify those offenders for whom an active obligation to register arose in 2006 and to determine whether or not an obligated offender had in fact registered as required by Megan's Law. As addressed in more detail in Section VII, this included determining whether any of the individuals who had been identified in the prior audit as having a deferred obligation to register due to incarceration, had an active obligation in 2006, due to a change in the individual's custodial status.

As with the prior audit, the review process began with the audit team identifying the Megan's Law offenders from information contained in the AOPC and PSP databases.¹³ The final dispositions available for each offender¹⁴ formed the basis for the evaluation of proper processing by the agencies. Each Megan's Law offender with a final disposition required evaluation to determine if registration was required.

The audit team also conducted a similarly-detailed examination of compliance with the public notification requirements for which Megan's Law provides in the cases of SVPs for all offenders who classified as such in 2006. Part IX addresses both the manner in which the statute's procedures for designation of SVPs have been practically implemented and details how

¹³ The comparison of PSP final disposition data with the AOPC, ("CPCMS") data from each county provided a base line accurate and detailed file on each offender for the audit team to review. The CPCMS data is provided by AOPC to the PSP as the detail for the official final disposition on each offender, including Megan's Law offenders.

¹⁴ Determined by a review of AOPC data provided to the PSP Central Repository.

those charged with oversight of this most serious class of offenders have discharged their responsibilities.

Because the Megan's Law legislation in the Commonwealth will be impacted by the federal law, specifically, the Adam Walsh Child Protection and Safety Act of 2006 ("Adam Walsh Act")¹⁵ the audit team reviewed this statute and the status of its implementation. A summary of the changes to registration and dissemination of sexual offender information it will make is provided in Section IX.

VI. FINDINGS CONCERNING IMPLEMENTATION OF REGISTRATION REQUIREMENTS DURING CALENDAR YEAR 2006

- *Summary*

During calendar year 2006, 219 offenders incurred active obligations to register due to their conviction of qualifying offenses. 216 of this group, or 98.63%, complied with this obligation. The 3 instances where there was a failure to register resulted from isolated mistakes.

- *Discussion*

Using State Identification Numbers (SID) and Offense Tracking Numbers (OTN),¹⁶ the RCIS audit team searched Central Repository¹⁷ for those arrested for possible Megan's Law offenses during the period of the audit, *i.e.*, January 1, 2006 through December 31, 2006, and also gathered available, related conviction data. This process identified 5,076 individuals who had been charged with Megan's Law offenses during the audit period. Further review revealed that that 681 of those individuals were not convicted of the offenses charged. This resulted in a total of 4,395 offenders who were possibly obliged to register.

The audit team then proceeded to examine the circumstances of each of these offenders to ascertain which, if any, had an active obligation to register in 2006. In conducting this review, the team eliminated from this pool of 4,395 potential registrants: those who had no obligation to register because the offenses for which they were ultimately convicted were not crimes requiring Megan's Law registration; those who were incarcerated in county or state penal facilities and

¹⁵ 42 U.S.C. § 16901 *et seq.*

¹⁶ The State Identification Number (SID) follows a criminal throughout his life so that recidivists receive the same SID rather than being assigned a new number. After submission of a criminal record and fingerprint card to the central repository, the state police analyze the prints and assign the SID; the number is then forwarded to the arresting agency. The Offense Tracking Number (OTN) is affixed to a specific offense and offender by the PSP upon receipt of the criminal record entered at the time of arrest when fingerprints are taken.

¹⁷ Under CHRIA, the PSP has the responsibility for collecting, compiling, maintaining and disseminating criminal history record information. The centralized location of information obtained is known as the "Central Repository." 18 Pa.C.S.A. § 9102.

whose obligation to register was deferred until their release; those who were juveniles; and a very few instances of recordkeeping mistakes. The total number of offenders who, through this process, were found to have an obligation in 2006 to register due to their conviction of one or more qualifying offenses was 216. The ensuing review of PSP registration records confirmed that 213 of those 216 had in fact registered as required. The team reviewed the circumstances of the 3 instances where there was a failure to register and found that they amounted to isolated incidents of mistake which could not fairly be seen as evidence of an abiding problem with an agency's operational procedures or any dereliction of an agency's responsibilities. As proved to be the case in the prior audit, these few lapses were chiefly attributable to inadvertent human error.

VII. FOLLOW-UP ON INCARCERATED, OBLIGATED OFFENDERS IDENTIFIED IN PRIOR AUDIT REPORT

The prior audit identified 885 state or county incarcerated offenders who had an obligation to register under Megan's Law upon their release from prison.¹⁸ Information about the status of those offenders was current only through December 31, 2005, the end of the time period examined in that report. This audit sought to determine if there were any changes in the status of these inmates and whether any who may have been released from incarceration during calendar year 2006 had met their obligation to register at the time they were discharged from custody.

The audit team's preliminary review of this group identified 29 offenders who appeared to fall into this category. The team then reviewed each offender's status and individual circumstances and, after doing so, determined that only 1 offender's status had changed to make him obliged to register in 2006. The team confirmed he had done so.

¹⁸ See Prior Audit Report at p. 8.

VIII. FINDINGS CONCERNING COMPLIANCE WITH SVP NOTIFICATION REQUIREMENTS

- *Summary*

In 2006, 34 offenders were classified as SVPs following a Megan's Law conviction. In all 34 cases, the statutory notification requirements were met, for a compliance rate of 100%.

- *Discussion*

Just as in the case of the prior audit, during 2006, SVPs were the most serious offenders for whom registration was mandated under Megan's Law. For this category of sexual offenders, Megan's Law required considerably more than listing information about these individuals on the Megan's Law Website. The PSP and local law enforcement officials were specifically mandated to act affirmatively to ensure that certain individuals, institutions or groups were provided with prompt and detailed notice about the presence of SVPs in their communities.

As preface to the discussion of the audit team's findings about the performance of criminal justice agencies with respect to the notification requirements of Megan's Law, both the process specified by the statute for SVP designation and how it was carried out during the audit period are addressed.

During the audit period, Pennsylvania's statute provided that following conviction, but before sentencing, "a court shall order" a defendant found guilty of any offense requiring registration to be assessed by the SOAB.¹⁹ Upon receipt of the court's order, a SOAB member is to be designated to conduct an assessment of the defendant to determine if he/she should be classified as an SVP.²⁰ This assessment is to be completed and a report of the assessment is to be submitted to the district attorney within 90 days of the date of conviction.²¹ The district attorney may apply to the court for a hearing to determine whether the defendant is an SVP. Prior to sentencing, the court must determine whether the Commonwealth had proven by clear and convincing evidence that the defendant is an SVP and must issue an order containing its determination.²²

During the audit period, the SOAB conducted court-ordered evaluations of the 34 defendants convicted of Megan's Law offenses.²³

¹⁹ 42 Pa.C.S.A. § 9795.4(a).

²⁰ 42 Pa.C.S.A. § 9795.4(b).

²¹ 42 Pa.C.S.A. § 9795.4(d).

²² 42 Pa.C.S.A. § 9795.4(e).

²³ The statute directs the SOAB to conduct an assessment "[u]pon receipt from the court of an order. . . ." 42 Pa.C.S.A. § 9795.4(b).

The audit team confirmed that, in these cases, the SOAB conducted the required evaluation.²⁴

As of December 31, 2006, there were 34 newly-listed SVPs on the PSP's Megan's Law Website. After confirming with the PSP that each individual so identified was correctly listed, the audit team examined a compilation of each offender's personal data and photograph as listed on the PSP Megan's Law Website. No errors were detected.

The audit team then determined the present whereabouts of each of the 34 SVPs. 28 have been released to the community and are living in the Commonwealth. 6 were determined to be out-of-state offenders, previously registered in the Commonwealth.

The RCIS team conducted in-depth review of whether the various notification requirements of Megan's Law had been met with respect to each of the 34 released SVPs. As part of this review, the audit team conducted on-site interviews with each police department currently having jurisdiction over the 28 SVPs living in Pennsylvania. During the interviews, information was sought and obtained about compliance with the provisions of Megan's Law providing for transmittal of information from the PSP to local police authorities and about dissemination of information by local police to those individuals and organizations specified in the statute. The audit team determined that, as to all 34 of the released SVPs, the requirements of Megan's Law had been met. In each case, offender relevant documentation was furnished by the PSP to the required police department which in turn carried out the notification provisions of the act.

IX. MEGAN'S LAW WEBSITE

Because it is an indispensable tool for achieving the important public safety purposes served by Megan's Law, and a significant responsibility prescribed by that statute, the audit team reviewed the status and functionality of Pennsylvania's Megan's Law Website. As the prior audit noted, all 50 states have Megan's Law websites, though there is considerable variety in the contents from state to state. Pennsylvania's website became active on October 30, 2002, more than two years before the General Assembly formalized its operation in the amendments to Megan's Law that became effective on January 24, 2005.²⁵ The information to be posted about offenders specified by those amendments applied during the audit period.

²⁴ As discussed later in this report, the Adam Walsh Act does not utilize the procedures via which SVPs are presently assessed and designated under Pennsylvania law, but instead categorizes an offender based on convictions for specific types of offenses and his/her recidivism. In implementing the Adam Walsh Act, Pennsylvania will need to review what role, if any, SOAB will have.

²⁵ See 42 Pa.C.S.A. § 9798(b) (directing the Commissioner of the PSP to develop and maintain an internet website on which sex offender information was to be posted and made available to the public.) In its related legislative findings, the General Assembly expressly declared that public safety would be enhanced by the dissemination of information about sex offenders via an internet website and that through such ready access to information, parents and others would be better able "to undertake appropriate remedial precautions to prevent or avoid placing potential

For SVPs, only the following information could be posted:

- (i) name and any aliases;
- (ii) year of birth;
- (iii) the street address, city, county and zip code of all residences;
- (iv) the street address, city, county and zip code of any institution or location at which the person is enrolled as a student;
- (v) the city, county and zip code of any employment location;
- (vi) a photograph of the offender, which shall be updated not less than annually;
- (vii) a description of the offense or offenses which triggered the application of the provisions of Megan's Law; and
- (viii) the date of the offense and conviction, if available.

The audit team's conclusion was that the PSP-maintained Megan's Law Website content conformed to the applicable state law requirements that existed during the audit period. Notably, in 2006, Pennsylvania law did not authorize the posting of physical description information and only permitted the posting of address information with respect to SVPs.²⁶

As discussed in more detail in the next section, because of federal legislation passed in 2006, changes to Pennsylvania's website, and a significant expansion of the amount of sex offender-related information that can be accessed electronically, appears to be in the offing.

X. ADAM WALSH ACT

Midway in the audit period, the Adam Walsh Child Protection and Safety Act of 2006, was passed by Congress and signed into law by the President.²⁷ This federal statute raises to a national level sex offender classification, registration, notification, and apprehension. States must implement the provisions of this act within three years of the date it became law, *i.e.*, by

victims at risk." 42 Pa.C.S.A. § 9798(a). On January 24, 2005, the PSP "went live" with a much-expanded Megan's Law Website.

²⁶ Late in 2006, the General Assembly changed this when it passed P.L. 1581, No. 179, Act 2006-179 on November 21, 2006, which was signed by the Governor on November 29, 2006. That law provided that, effective on May 29, 2007, for all offenders listed on Pennsylvania's website, addresses would be required as would a physical description (sex, height, weight, eye color, hair color and race) and identifying marks. The changes to website content also included the addition of the license plate number and the description of any vehicle owned or registered to the offender, an indication if the offender is currently compliant with registration requirements, the name of any place of confinement that may be applicable, the name of any educational institution in which the offender is enrolled, and (as to persons convicted after November 30, 2006), an indication of whether the victim of the offense was a minor.

²⁷ Pub.L. 109-248, July 27, 2006, 120 Stat. 587 (portions referenced here now codified at 42 U.S.C. § 16901 *et seq.*)

July 27, 2009.²⁸ To date, no states have passed legislation which has been determined to meet the requirements of the Adam Walsh Act, and five states have been informed that their respective statutes do not satisfy the Act's specifications.²⁹ At least 13 states have either enacted laws, or have pending legislative proposals, designed to implement Adam Walsh. At least 7 states have requested an extension of the deadline based on the need to develop and implement the technology necessary to afford public access to both the national database and the national website the Act will establish.

As explained in the prior audit report, the Adam Walsh Act greatly enhances the public's ability to obtain information about convicted sex offenders electronically, establishing a national database – the National Sex Offender Registry – to be maintained by the Federal Bureau of Investigation (FBI), in which information will be contained about each sex offender and any other person required to be listed in the sex offender registries of every state,³⁰ and a national sex offender public website – the Dru Sjodin National Sex Offender Public Website – which will contain information for all offenders listed on the states' individual websites.³¹

The major changes that the Adam Walsh Act will make involve the classification of sex offender and the registration requirements those classifications trigger, and community notification. Generally, an individual will be considered a sex offender if he/she has been convicted of: a criminal offense that has an element involving a sexual act or sexual contact with another; any of various specified offenses against a minor, including child pornography-related offenses; child prostitution, or using the internet to facilitate or attempt to commit criminal sexual conduct involving a minor; certain federal and military offenses; or attempting or conspiring to commit such crimes.³² Under this new federal law, sex offenders will be classified, for purposes of registration requirements, according to three “tiers,” principally defined by the offender's convictions or recidivism. Registration requirements, their duration, as well as an

²⁸ 42 U.S.C. § 16924(a)(1). The Attorney General of the United States may grant up to two, one-year extensions of this deadline. Exception is also made for jurisdictions that lack the software necessary to meet the requirements for sex offender registries and websites. In those situations, a jurisdiction must implement the law within one year of the date the software is available. 42 U.S.C. §§ 16924 (a)(2) and (b).

²⁹ The Adam Walsh Act establishes the Office of Sex Offender Sentencing, Monitoring, Apprehending and Tracking (SMART), which is authorized to determine whether states meet the Act's requirements. *See* 42 U.S.C. §§ 16945(a) and (c). The determinations referenced here were made by SMART.

³⁰ *See* 42 U.S.C. § 16919(a). The provisions of the Adam Walsh Act also specifically extend to the District of Columbia, the Commonwealth of Puerto Rico and various U.S. Territories. *See* 42 U.S.C. § 16911(10).

³¹ This website is named in memory of Dru Sjodin, who was sexually assaulted and murdered in North Dakota in 2003. *See* 42 U.S.C. §§ 16901(5) and 16920.

³² *See* 42 U.S.C. §§ 16911(1), (5)-(8) for a more detailed description of the qualifying criminal offenses.

offender's obligation to update and verify registration information will correspond to the respective tiers.

- Tier I:** All offenders who do not qualify for classification in Tiers II and III,³³ must register for 15 years (may be reduced to 10 years) and must appear for in-person verification annually;³⁴
- Tier II:** All offenders not classified in Tier III whose offense against a minor is punishable by imprisonment for more than one year and involves the use of a minor in a sexual performance, the solicitation of a minor to practice prostitution or the production of child pornography. Offenders convicted of an attempt or conspiring to commit such crimes are also included as are offenders who have a prior Tier I offense;³⁵ must register for 25 years (may be reduced to 10 years) and appear for in-person verification every 6 months;³⁶
- Tier III:** All offenders convicted of a crime punishable by imprisonment for more than one year involving sex acts with victims of any age, children below the age of 13; kidnapping of minor (except by parent or guardian); or any attempt or conspiracy to commit such crimes and offenders with a prior Tier II offense;³⁷ must register for the life of the offender (may be reduced to 25 years) and appear for in-person verification every 3 months.³⁸

Initially, offenders must register before completing a sentence of imprisonment that gives rise to the obligation to register, or no later than three business days after being sentenced on a registrable offense if no incarceration was imposed.³⁹ An offender must register in each jurisdiction where he/she resides, works, or is a student and must keep his/her registration current in those jurisdictions.⁴⁰ Each state is also required to provide a criminal penalty that includes a

³³ 42 U.S.C. § 16911(2).

³⁴ 42 U.S.C. §§ 16915(a)(1) and (b); 16916(1).

³⁵ 42 U.S.C. § 16911(3).

³⁶ 42 U.S.C. §§ 16915(a)(2) and (b); 16916(2).

³⁷ 42 U.S.C. § 16911(4).

³⁸ 42 U.S.C. § 16915(a)(3) and (3); 16916(3).

³⁹ 42 U.S.C. § 16913(b). If the jurisdiction in which the offender was convicted is different from the jurisdiction of his/her residence, he/she must also register in the jurisdiction of conviction at the time of initial registration, 42 U.S.C. § 16913(a).

⁴⁰ 42 U.S.C. § 16913(a).

maximum term of imprisonment greater than one year for failure to comply with these registration requirements.⁴¹

The Adam Walsh Act also requires each state to maintain an internet-based website providing sex offender information, which must be accessible to all jurisdictions and to the public. Each state site must allow users to be able to access the Dru Sjodin National Sex Offender Public Website. It establishes the minimum content that must be included on a state's public website providing sex offender information and also requires that a state's website allow a user to obtain information for sex offenders by a single query for any zip code or geographical radius.

On May 30, 2007, The U.S. Department of Justice published proposed guidelines for implementing this new legislation and received public comments until August 1, 2007. It issued final guidelines on July 2, 2008.⁴² It now remains for the Commonwealth to take legislative action to bring its Megan's Law statute into compliance with the requirements of the Adam Walsh Act.

XI. RECOMMENDATIONS

The prior audit made five recommendations intended to improve the system created to manage the ever-increasing population of Megan's Law offenders throughout the Commonwealth. In this second audit the audit team reiterates a number of those recommendations and makes additional recommendations that, in its opinion will improve the efficiency, completeness, and accuracy of the Megan's Law tracking process throughout the Commonwealth.

1. We reprise here the first recommendation made at the conclusion of the prior audit: that the time for registration of convicted sexual offenders be changed to require registration at the time of sentencing.

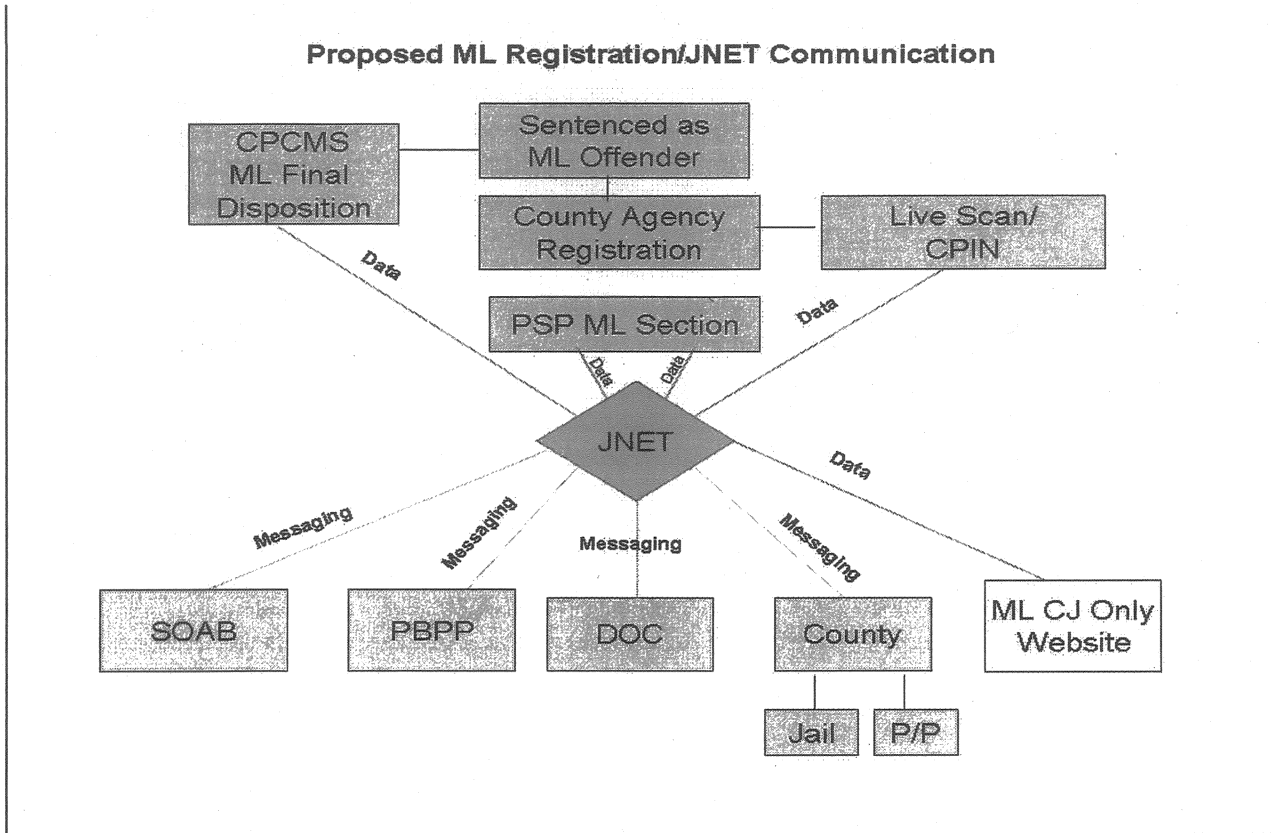
Replacing the current registration provisions in 42 Pa.C.S.A. § 9795.2(a)(1), which generally defer registration until release from custody, with a requirement that registration occur immediately after sentencing, would effectively eliminate the problems which have resulted from the delayed registration scheme provide for in the present statute. The requirement that an offender register earlier, at the time of sentencing, would better serve the interest of protecting the public as it would work as a safeguard against oversights resulting from deferred compliance. The requirement of offender registration concurrent with sentencing would ensure that the offender is immediately a subject of the Megan's Law website. It would be wise to ensure that the "immediate registration" requirement is carried out uniformly by assigning this responsibility to a specific court office or personnel who may communicate with their counterparts in other counties. There should also be corresponding obligations on the corrections and probation/parole systems to periodically update registrations during the course of an offender's incarceration or

⁴¹ 42 U.S.C. § 16913(3).

⁴² Pub. L. 109-248, *Federal Register*, Vol. 73, No. 128, Wednesday, July 2, 2008.

period of supervision so information remains current. Once registration occurs, the sharing of that data can be effectively transmitted as set forth as illustrated in Chart A.

CHART A

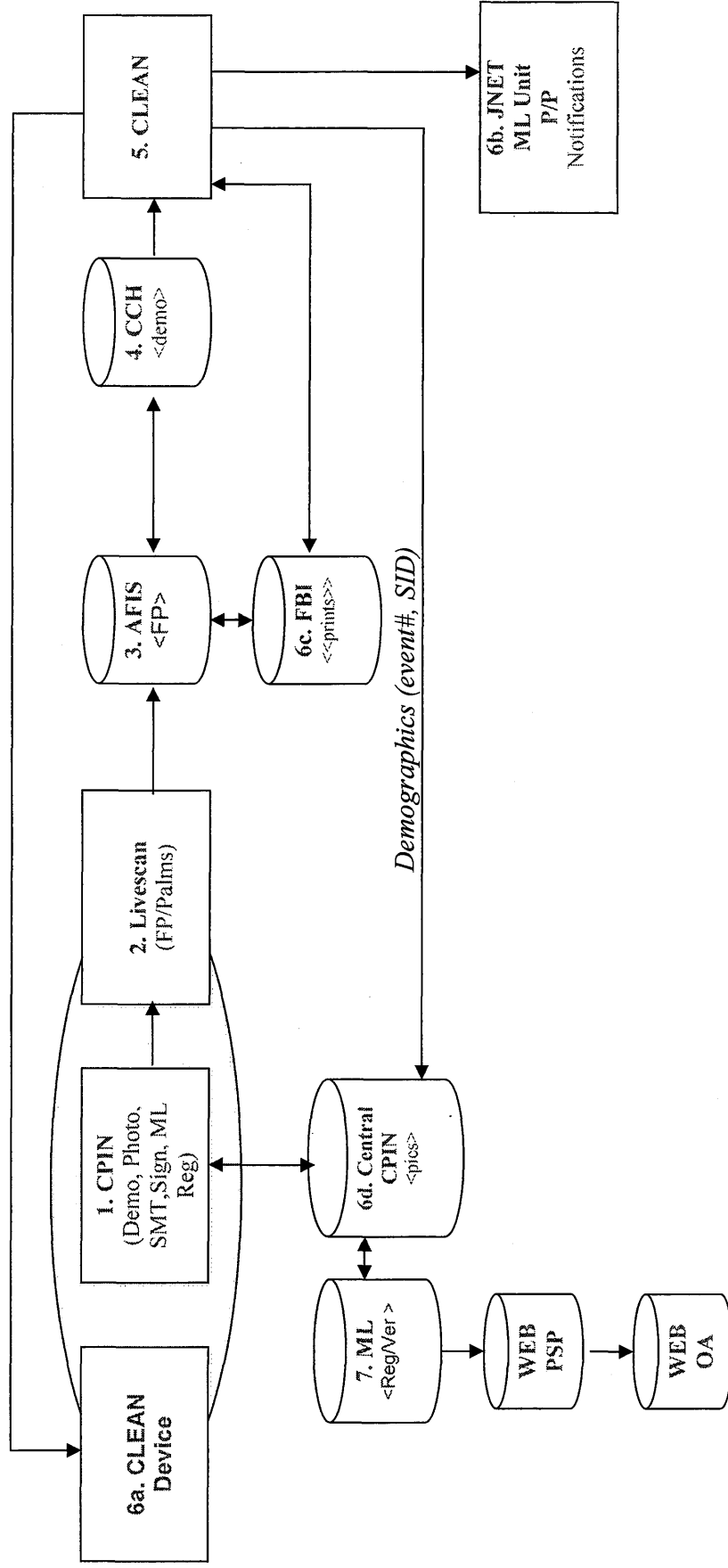


2. We likewise re-embrace the second recommendation previously made: that the improvement of technology necessary for proper enforcement of Megan’s Law continue to be pursued. While we acknowledge the commendable progress made in the past year in this regard, given critical role of technology in the proper enforcement of Megan’s Law, there is an abiding need for improvement. The prompt and accurate transmission of information between and among the various criminal justice agencies that have responsibilities for carrying out the registration and notification requirements of Megan’s Law is essential.

In instances where updated registration is required the appearance by any offender at a location where Livescan, CPIN and CLEAN systems are operable would allow for the immediate registration. The need for paper documentation traveling through the system will no longer delay the registration at the PSP point of entry into the Megan’s Law web system. This system is currently part of a JNET, PSP, PCCD test program. The test program has been introduced in Lancaster, Reading and Dauphin Counties. That program permits those agencies that process offenders (for any criminal conduct) through Live Scan and AFIS to automatically access the Commonwealth Photo Identity Network (CPIN) and a digital signature program. With these 3 elements, anyone apprehended under (1) above when processed will automatically have their registration updated at that location. See Chart B.

CHART B

Electronic Megan's Law Registration Process



3. The third recommendation, echoing our prior audit, is the continued upgrading of the Megan's Law website.

The changes that were in the planning stages through much of the prior audit period and which have now been effected, together with other legislative adjustments in 2007, have combined to dramatically improve the Commonwealth's website, and it now provides substantially greater and more detailed information regarding offenders.

Two aspects of the website, however, still need attention:

(a) *The introduction and use of map technology to provide ease of access to geographic data regarding offenders.* This many-featured technology, which is easily used and rapid in the transmission of data, would be most helpful in effectuating the overarching purpose of Megan's Law to supply members of the public with information that is highly important for its safety.

(b) *Pennsylvania's adoption and implementation of the Adam Walsh Act.* This action would be a vital contribution to the creation and maintenance of the national database for which the act provides and which, given the mobility of American society, is essential. It should be a priority for the PSP and the legislature.

4. As a practical matter, the fourth recommendation—again made in the prior audit—that the legislature should allocate sufficient resources to permit the post-audit recommended adjustments to the implementation of Megan's Law to be implemented—retains its significant importance.

5. Global positioning system ("GPS") technology has recently received much attention in law enforcement's ongoing effort to track convicted Megan's Law offenders. Before the Commonwealth adopts this tool in aid of offender tracking, it will be very important to explore in detail the types of GPS systems available and their respective capabilities, to ensure that the appropriate legal authority exists for its utilization, and to identify the costs associated with it. j

Generally, GPS technology can be divided into two system types, active and passive, though a third system now available combines both technologies that can be activated as necessary. *Active* systems are capable of tracking offenders at all times, in real time. This is accomplished by requiring offenders to wear a monitor that emits signals through satellite technology. To date, active technology has been most commonly used in home confinement situations where court-ordered "incarceration" is monitored by personnel from the Board of Probation and Parole on a 24/7 basis. *Passive* systems record offender movements for monitoring purposes but instead store the information for later access if it becomes necessary to track an offender's movements.

Presently, the Commonwealth does not have statutory authority to order either active or passive monitoring of Megan's Law offenders on a 24/7 basis. The costs associated with implementation of the different types of GPS Technology must also be considered. Tracking systems, monitors, and control rooms for keeping a watch on the Commonwealth's more than 9,000 offenders would not come without significant cost.

While it is undeniable that a system capable of around-the-clock tracking of an offender would be of significant benefit, there are hurdles that must be overcome before such a system is adopted in the Commonwealth. Some basic concerns include ensuring adequate funding for each county and state probation office, and adoption of appropriate legislation to permit monitoring beyond incarceration. There is no doubt that this technology would assist Pennsylvania in maintaining control of what has proven to be a growing population. While research about GPS systems is ongoing, the recommendations made in this report, if adopted, would enhance a system that already deserves high marks for its performance.

APPENDIX A

HISTORY OF MEGAN'S LAW REGISTRATION REQUIREMENTS

(References are to Title 42 Pennsylvania Consolidated Statutes)

April 24, 1996 to July 9, 2000

10 YEAR REGISTRATION

Where Offense is a Felony, Victim is a Minor, and Person Convicted of:

- Kidnapping (*Except by Parent*) (§ 2901)
- Rape (§ 3121)
- Involuntary Deviate Sexual Intercourse (IDSI) (§ 3123)
- Aggravated Indecent Assault (§ 3135)
- Prostitution and (§ 5902(b))
- Obscene, Other Sexual Materials and Performances (§ 5903(a)(3-6))

Regardless of Age of Victim, Where Person is Convicted of:

- Rape (§ 3121)
- IDSI (§ 3123)
- Aggravated Indecent Assault (§ 3125)
- Spousal Sexual Assault (§ 3128(a), (b))
- Indecent Assault (*Misdemeanor of the First Degree*) (§ 3126)

LIFETIME REGISTRATION*

Offender Determined to be "Sexually Violent Predator" (SVP)

**Registration is "Indefinite" Rather Than "Lifetime" and Only Ends Upon a Court Determination that SVP Designation No Longer Applies*

July 10, 2000 to Present

10 YEAR REGISTRATION

Persons Convicted of any of the Following or Attempt to Commit any of the Following:

- Kidnapping (*Where Victim is Minor*) (§ 2901)
- Indecent Assault (*Misdemeanor of the First Degree*) (§ 3126)
- Incest (*Where Victim is 12-17 Years Old*) (§ 4302)
- Prostitution and Related Offenses (*Where Actor Promotes Prostitution of Minor*) (§ 5902(b))
- Obscene and Other Sexual Materials and Performances (*Where Victim is Minor*) (§ 5903(a)(3)(6))
- Sexual Abuse of Children (§ 6312)
- Unlawful Contact or Communication with Minor (§ 6318)

Persons Convicted of Attempt to Commit any of the Following:

- Rape (§ 3121)
- IDSI (§ 3123)
- Sexual Assault (§ 3124.1)
- Aggravated Indecent Assault (§ 3125)
- Incest (*Where Victim is Under Age 12*) (§ 4302)

LIFETIME REGISTRATION

Persons with Two or More Convictions for any of the Offenses Requiring 10-year Registration

Persons Convicted of:

- Rape (§ 3121)
- IDSI (§ 3123)
- Sexual Assault (§ 3124.1)
- Aggravated Indecent Assault (§ 3125)
- Incest (*Where Victim is Under Age 12*) (§ 4302)

Persons Determined to be SVPs

Continued

February 20, 2001 to Present

Added 10-year Registration Required for Conviction of Sexual Exploitation of Children (§ 6320)

January 20, 2003 to Present

Amended 10-year Registration Requirement for Unlawful Contact with Minor Offense by Deleting "or Communication" that Preceded Phrase "with Minor"

January 24, 2005 to Present

Added 10-year Registration Required for Luring Child into Motor Vehicle (§ 2910) and Institutional Sexual Assault (§ 3124.2)

APPENDIX B

HISTORY OF MEGAN'S LAW NOTIFICATION REQUIREMENTS

April 24, 1996

Established First Requirements for Notification of Local Police, Victims, and Community Regarding Registered Offenders.

LOCAL POLICE NOTIFICATION

Pennsylvania State Police (PSP) Must Notify the Police Department Having Primary Jurisdiction of the Municipality in Which a Registrant Resides of the Facts of Registration and Verification Within 72 Hours of Receipt of Registration.

VICTIM NOTIFICATION

Local Police Department or PSP Must Give Written Notice to the Victim of a Sexually Violent Predator (SVP) Within 72 Hours After the SVP Registers Initially and After He/She Notifies the Pennsylvania State Police of any Change of Residence. The Notice Must Contain the SVP's Name and the Address(es) Where He/She Resides. Victim May Terminate Duty to Give Notice.

COMMUNITY NOTIFICATION

Local Police Department of a Municipality Where an SVP Lives Must Provide Verbal or Written Notice to Neighbors of SVP Within 72 Hours of Receipt of Information.

Local Police Department of a Municipality Where an SVP Lives Must Provide Written Notice to the Following Within Seven Days of Receipt of Information:

- Director of the County Children and Youth Service Agency of the County Where the SVP Resides
- Superintendent of Each School District and the Equivalent Official for Private and Parochial Schools Enrolling Students up through Grade 12 in the Municipality Where the SVP Resides
- Director of Each Licensed Day Care Center and Preschool Program in the Municipality Where the SVP Resides
- President of Each College, University, and Community College Located Within 1,000 Feet of an SVP's Residence

The Notice Must Contain:

- Name of the Convicted SVP
- Address(es) at Which He/She Resides
- Offense for Which He/She was Convicted
- Statement that He/She has been Determined by Court Order to be a SVP, Which Determination has or has not been Terminated as of a Certain Date.

All Information Contained in Such Notice Must be Available, Upon Request, to the Public.

**HISTORY OF MEGAN'S LAW
NOTIFICATION REQUIREMENTS
(CONTINUED)**

May 22, 1996

Added Requirement that Community Notification Include a Photograph of Registered Offenders

July 9, 2000

Expanded List of Those Entitled to Community Notification to Include: (1) Public and Private Schools Within One Mile Radius of SVP'S Residence; and (2) Licensed Day Care Centers, Licensed Preschool Programs, and Registered Family Day Care Homes

December 16, 2002

Expanded Duty of PSP to Notify Local Police Not Only in Connection with Municipalities Where Registered Offender Resides, But Also Municipalities Where Registered Offender is Employed and/or Enrolled as a Student

November 24, 2004

Gave PSP 5 Days to Notify Local Police of Registration Information, Rather Than the Previously-Required 72 Hours

Gave Local Police 5 Days to Notify Neighbors of SVP's Residence Rather Than the Previously-Required 72 Hours

January 24, 2005

Expanded the Information to be Relayed to Community to Include Information About Offenses for Which a Registered Offender was Sentenced, Adjudicated Delinquent, or Court Martialled

Established First Internet Posting Requirements