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CRIMINAL PRACTICE

Changes to Megan's Law Add Challenges for Juvenile Offenders

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Special to the Legal

On Dec. 20, 2011, Gov. Tom Corbett signed into law Senate Bill 1183 as Act 111 of 2011 (Megan's Law IV). The law makes extensive revisions to Pennsylvania's classification and registration requirements of adult and juvenile sexual offenders. Juvenile registration responsibilities are now extensive and violation consequences severe.

(The revised classification and registration matrix can be found on the Pennsylvania Sentencing Commission's website at <http://pcs.la.psu.edu>.)

Counsel must advise the juvenile client and his or her family of these future reporting responsibilities prior to any admission or trial on any triggering offense under the statute. A major sex offense is defined in the act, and for this article, as rape, involuntary deviate sexual intercourse, aggravated indecent assault or an attempt or conspiracy to commit such offense. Negotiating for an admission to a lesser offense, rather than risking adjudication on a major sex offense, is paramount for the many reasons that this article will discuss.

The revised registration scheme now requires previously adjudicated juveniles 14 years of age or older not subject to Megan's Law, but whose criminal acts are now classified and fall within Megan's Law, to be subject to Megan's Law if they are under supervision (jurisdiction) of Juvenile Court on Dec. 21, 2012. Also, after Dec. 20, 2011, any juvenile who admits to, or



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is adjudicated delinquent for, committing a major sex offense will be subject to Megan's Law if he or she is under court supervision after Dec. 21, 2012.

A "juvenile offender" is an individual 14 years of age or older after Dec. 21, 2012, who is adjudicated delinquent for committing a major sex offense or any time prior to that date was adjudicated delinquent for committing such an offense, regardless of age at the time the offense was committed, and as of Dec. 21, 2012, is still under court supervision.

Juvenile offenders must now register for life (with quarterly confirmation), receive lifetime monthly counseling and are subject to the same community notification requirements as adults. It is a separate, first-degree felony offense for a juvenile offender to knowingly fail to comply with any post-adjudicatory treatment or registration requirement.

Arrest and detention without a warrant is possible if the investigating officer has probable cause to believe a registration violation has occurred. Other registrants subject to either 15- or 25-year registrations commit felonies of the third and second degree, respectively, if they knowingly fail

to register. It is a first-degree misdemeanor, as well as a violation of court supervision, for lesser registrants who fail to comply with all treatment requirements.

Depending on the supervisory tier classification, mandatory minimum incarceration of between two and five years shall occur for the registrant, adjudicated or convicted, who fails to register for the first time. A second or subsequent conviction for failure to register carries with it a mandatory minimum jail term of 25 years to life, depending on the underlying criminal offense.

If the commonwealth provides notice of intent to proceed with the mandatory minimum sentence after a conviction or adjudication for failing to register, the court shall impose at least such minimum sentence. If the court does not, the commonwealth has a right of appeal and the appellate court shall vacate any deficient sentence and remand with instructions to impose at least the mandatory minimum sentence.

Forfeiture of any personal or real property that the court finds aided or assisted the commission of the major sex offense or failure to register offenses is now possible. This means houses and cars in addition to computers and other more typical instrumentalities of the crime.

Most significantly, the reclassification scheme fundamentally alters the post-adjudication lifetime supervision compliance requirements of all juveniles, regardless of whether they are in custody or supervision on their 20th birthday. Juvenile offenders, "sexually violent delinquent children" and juveniles previously civilly committed are

now required to be psychologically assessed annually and are exposed to yearly involuntarily civil commitment. Importantly, sexually violent delinquent children are those children, regardless of what sex offense they were adjudicated of committing, who have been assessed as such by the Sex Offenders Board.

At a civil commitment hearing, the commonwealth must prove by clear and convincing evidence that “the person has a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes the person likely to engage in an act of sexual violence.” If the court makes such a finding, it shall immediately commit the individual for one year for treatment, with only an annual review.

If the offender is released from involuntary civil commitment, there is an additional year of involuntary outpatient treatment with extensive supervision restrictions, including polygraph testing, prior to discharge from court supervision. A juvenile, or adult by now, who violates any term of the outpatient treatment plan shall be judicially recommitted for a year without a hearing upon presentation of such violations to the court.

Juvenile offenders and “sexually violent delinquent children” are now held to the same reporting responsibilities as adults. They face the same potential penalties for failure to register, report or comply with any registration or treatment requirement. There are substantial collateral consequences for any juvenile who admits to, or is adjudicated delinquent for, committing any major sex offense.

Supervision for a sex offense committed while a juvenile could be for life. As well, there are unlimited opportunities for state-sanctioned violation hearings — based upon subjective assertions of failure to successfully complete treatment, regardless of

why — and new failure-to-register-based offenses.

In my experience, adult offenders have a very difficult time keeping track of, complying with and paying for their registration and treatment requirements. Annual legislative reclassification of sex offenses and their registration requirements — monthly, quarterly, annually and identifying home, school, transient and/or work addresses — make these tasks even harder. Conviction for failure to report or treat, which itself carries mandatory minimum terms of incarceration, will result in further jail and lengthy supervision for these young adults.

Saddling these children and their families with a myriad of complex registration and treatment requirements may be counterproductive.

With the same reporting and compliance expectations for wayward youths as adults, it is foreseeable in the not-too-distant future that there will be an avalanche of juvenile supervision violations hearings, further criminal charges for registration and treatment violations and civil commitment hearings. Adjudicated youths, not just the juvenile offender, who need rehabilitation and seek re-entry into society as productive citizens will face confounding registration requirements; impossible job prospects; probable long-term, expensive, outpatient treatment regimens; and a lifetime of technical violation hearings.

Respecting and protecting the safety of

our citizenry is paramount. The rational relation of the act to the ultimate goal of treatment and rehabilitation of the most serious offenders is a clear and appropriate goal. However, long-term civil commitment and a lifetime of registration and treatment violation hearings and custody could be in conflict with the long-established treatment and rehabilitative purpose of the juvenile justice system.

The need to track and treat the most violent juvenile offenders is necessary. Nonetheless, saddling these children and their families with a myriad of complex registration and treatment requirements that they are unable to even afford, let alone comply with, may be counterproductive. It can be argued that supervisory schemes that are designed for failure create more violation hearings and involuntary civil commitment, and further criminal consequences will only stigmatize and label the young adult and impede recovery and rehabilitation.

Treating every case the same when, factually, each juvenile’s brain, mental capacity, environment, education and crime are unique, paints with a broad brush hard cases that warrant and require individual attention to case facts, the causes of the crime and the needs and capabilities of each youthful offender. Let’s hope some degree of recovery and re-entry can eventually be achieved for these young adults. •