

No. 2000-18

AN ACT

SB 380

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for guardians ad litem in juvenile matters; further providing for counsel in juvenile matters, for adjudications in certain juvenile matters and for the registration of sexual offenders; and making a repeal.

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

Section 1. Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 6311. Guardian ad litem for child in court proceedings.

(a) Appointment.—When a proceeding, including a master’s hearing, has been initiated alleging that the child is a dependent child under paragraph (1), (2), (3), (4) or (10) of the definition of “dependent child” in section 6302 (relating to definitions), the court shall appoint a guardian ad litem to represent the legal interests and the best interests of the child. The guardian ad litem must be an attorney at law.

(b) Powers and duties.—The guardian ad litem shall be charged with representation of the legal interests and the best interests of the child at every stage of the proceedings and shall do all of the following:

(1) Meet with the child as soon as possible following appointment pursuant to section 6337 (relating to right to counsel) and on a regular basis thereafter in a manner appropriate to the child’s age and maturity.

(2) On a timely basis, be given access to relevant court and county agency records, reports of examination of the parents or other custodian of the child pursuant to this chapter and medical, psychological and school records.

(3) Participate in all proceedings, including hearings before masters, and administrative hearings and reviews to the degree necessary to adequately represent the child.

(4) Conduct such further investigation necessary to ascertain the facts.

(5) Interview potential witnesses, including the child’s parents, caretakers and foster parents, examine and cross-examine witnesses and present witnesses and evidence necessary to protect the best interests of the child.

(6) At the earliest possible date, be advised by the county agency having legal custody of the child of:

(i) *any plan to relocate the child or modify custody or visitation arrangements, including the reasons therefor, prior to the relocation or change in custody or visitation; and*

(ii) *any proceeding, investigation or hearing under 23 Pa.C.S. Ch. 63 (relating to child protective services) or this chapter directly affecting the child.*

(7) *Make specific recommendations to the court relating to the appropriateness and safety of the child's placement and services necessary to address the child's needs and safety.*

(8) *Explain the proceedings to the child to the extent appropriate given the child's age, mental condition and emotional condition.*

(9) *Advise the court of the child's wishes to the extent that they can be ascertained and present to the court whatever evidence exists to support the child's wishes. When appropriate because of the age or mental and emotional condition of the child, determine to the fullest extent possible the wishes of the child and communicate this information to the court. A difference between the child's wishes under this paragraph and the recommendations under paragraph (7) shall not be considered a conflict of interest for the guardian ad litem.*

Section 2. Sections 6337, 6341(a), (b) and (c) and 9714(g) of Title 42 are amended to read:

§ 6337. Right to counsel.

Except as [otherwise] provided [under this chapter] in section 6311 (relating to guardian ad litem for child in court proceedings), a party is entitled to representation by legal counsel at all stages of any proceedings under this chapter and if he is without financial resources or otherwise unable to employ counsel, to have the court provide counsel for him. If a party appears without counsel the court shall ascertain whether he knows of his right thereto and to be provided with counsel by the court if applicable. The court may continue the proceeding to enable a party to obtain counsel. Counsel must be provided for a child unless his parent, guardian, or custodian is present in court and affirmatively waive it. However, the parent, guardian, or custodian may not waive counsel for a child when their interest may be in conflict with the interest or interests of the child. If the interests of two or more parties may conflict, separate counsel shall be provided for each of them.

§ 6341. Adjudication.

(a) General rule.—After hearing the evidence on the petition the court shall make and file its findings as to whether the child is a dependent child[, or if]. *If the petition alleges that the child is delinquent, within seven days of hearing the evidence on the petition, the court shall make and file its findings whether the acts ascribed to the child were committed by him. This time limitation may only be extended pursuant to the agreement of the child and the attorney for the Commonwealth. The court's failure to comply with the time limitations stated in this section*

shall not be grounds for discharging the child or dismissing the proceeding. If the court finds that the child is not a dependent child or that the allegations of delinquency have not been established it shall dismiss the petition and order the child discharged from any detention or other restriction theretofore ordered in the proceeding. For cases involving allegations of delinquency where fingerprints or photographs or both have been taken by a law enforcement agency and where it is determined that acts ascribed to the child were not committed by him, the court shall direct that those records be immediately destroyed by law enforcement agencies.

(b) Finding of delinquency.—If the court finds on proof beyond a reasonable doubt that the child committed the acts by reason of which he is alleged to be delinquent it shall enter such finding on the record and it shall then proceed immediately or at a postponed hearing, which shall occur not later than 20 days after adjudication if the child is in detention *or not more than 60 days after adjudication if the child is not in detention*, to hear evidence as to whether the child is in need of treatment, supervision or rehabilitation and to make and file its findings thereon. *This time limitation may only be extended pursuant to the agreement of the child and the attorney for the Commonwealth. The court's failure to comply with the time limitations stated in this section shall not be grounds for discharging the child or dismissing the proceeding.* In the absence of evidence to the contrary, evidence of the commission of acts which constitute a felony shall be sufficient to sustain a finding that the child is in need of treatment, supervision or rehabilitation. If the court finds that the child is not in need of treatment, supervision or rehabilitation it shall dismiss the proceeding and discharge the child from any detention or other restriction theretofore ordered.

* * *

(e) Continued hearings.—On its motion or that of a party the court may continue the hearings under this section for a reasonable period, *within the time limitations imposed by this section*, to receive reports and other evidence bearing on the disposition or the need for treatment, supervision or rehabilitation. In this event the court shall make an appropriate order for detention of the child or his release from detention subject to supervision of the court during the period of the continuance. In scheduling investigations and hearings the court shall give priority to proceedings in which a child is in detention or has otherwise been removed from his home before an order of disposition has been made.

§ 9714. Sentences for second and subsequent offenses.

* * *

(g) Definition.—As used in this section, the term “crime of violence” means murder of the third degree, voluntary manslaughter, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault), rape, involuntary deviate sexual intercourse, *aggravated indecent assault, incest, sexual assault*, arson as defined in 18 Pa.C.S. § 3301(a)

(relating to arson and related offenses), kidnapping, burglary of a structure adapted for overnight accommodation in which at the time of the offense any person is present, robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery), or robbery of a motor vehicle, or criminal attempt, criminal conspiracy or criminal solicitation to commit murder or any of the offenses listed above, or an equivalent crime under the laws of this Commonwealth in effect at the time of the commission of that offense or an equivalent crime in another jurisdiction.

Section 3. Subchapter H of Chapter 97 of Title 42 is reenacted and amended to read:

SUBCHAPTER H REGISTRATION OF SEXUAL OFFENDERS

§ 9791. Legislative findings and declaration of policy.

(a) Legislative findings.—It is hereby determined and declared as a matter of legislative finding:

(1) If the public is provided adequate notice and information about sexually violent predators and certain other offenders, the community can develop constructive plans to prepare themselves and their children for the offender's release. This allows communities to meet with law enforcement to prepare and obtain information about the rights and responsibilities of the community and to provide education and counseling to their children.

(2) These sexually violent predators pose a high risk of engaging in further offenses even after being released from incarceration or commitments and that protection of the public from this type of offender is a paramount governmental interest.

(3) The penal and mental health components of our justice system are largely hidden from public view and lack of information from either may result in failure of both systems to meet this paramount concern of public safety.

(4) Overly restrictive confidentiality and liability laws governing the release of information about sexually violent predators have reduced the willingness to release information that could be appropriately released under the public disclosure laws and have increased risks to public safety.

(5) Persons found to have committed such an offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government.

(6) Release of information about sexually violent predators to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information released is rationally related to the furtherance of those goals.

(b) Declaration of policy.—It is hereby declared to be the intention of the General Assembly to protect the safety and general welfare of the people of this Commonwealth by providing for registration and community notification regarding sexually violent predators who are about to be released from custody and will live in or near their neighborhood. It is further declared to be the policy of this Commonwealth to require the exchange of relevant information about sexually violent predators among public agencies and officials and to authorize the release of necessary and relevant information about sexually violent predators to members of the general public as a means of assuring public protection and shall not be construed as punitive.

§ 9792. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Board.” The State [Board to Assess Sexually Violent Predators.] *Sexual Offenders Assessment Board.*

“Employed.” *Includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered or for the purpose of government or educational benefit.*

“Mental abnormality.” A congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

“Minor.” *As used in section 9795.1 (relating to registration), is any individual under the age of 18 unless the age of the victim who is considered a minor is otherwise defined in section 9795.1.*

“Municipality.” A city, borough, incorporated town or township.

“Offender.” An individual who is:

(1) designated a sexually violent predator under the provisions of this subchapter; or

(2) required to register under section 9793(b) (relating to registration of certain offenders for ten years).]

“Offender.” *An individual required to register under section 9795.1(a), (b)(1) or (2) (relating to registration).*

“Penetration.” *Includes any penetration, however slight, of the genitals or anus or mouth of another person with a part of the person’s body or a foreign object for any purpose other than good faith medical, hygienic or law enforcement procedures.*

“Predatory.” An act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

“Residence.” A location where an individual resides or is domiciled or intends to be domiciled for 30 consecutive days or more during a calendar year.

“Sexually violent offense.” Any criminal offense specified in section [9793(b) (relating to registration of certain offenders for ten years)] 9795.1 (relating to registration).

“Sexually violent predator.” A person who has been convicted of a sexually violent offense as set forth in section [9793(b) (relating to registration of certain offenders for ten years)] 9795.1 (relating to registration) and who is determined to be a sexually violent predator under section [9794(e) (relating to designation of sexually violent predators)] 9795.4 (relating to assessments) due to a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses. *The term includes an individual determined to be a sexually violent predator where the determination occurred in another state, territory, Federal Court, the District of Columbia or by court martial.*

“Student.” A person who is enrolled on a full-time or part-time basis in any public or private educational institution, including any secondary school, trade or professional institution or institution of higher education.
[§ 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, 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 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.

(b) **Presumption.**—An offender convicted of any offense set forth in section 9793(b) shall be presumed by the board and the court to be a sexually violent predator. This presumption may be rebutted by the offender by clear and convincing evidence at a hearing held in accordance with subsection (e).

(c) **Assessment.**—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 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.

(f) **Subsequent board review.**—No sooner than one year prior to release from a State or county correctional institution, or in five-year intervals thereafter, an offender designated as a sexually violent predator may petition the court with original jurisdiction in the matter for reconsideration of the determination. The court may review the determination and request a new report by the board. The court may enter an order terminating the designation in which case the court shall notify the Pennsylvania State Police.

§ 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 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) 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.]

§ 9795.1. Registration.

(a) **Ten-year registration.**—*The following individuals shall be required to register with the Pennsylvania State Police for a period of ten years:*

(1) *Individuals convicted of any of the following offenses:*

18 Pa.C.S. § 2901 (relating to kidnapping) where the victim is a minor.

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

18 Pa.C.S. § 4302 (relating to incest) where the victim is 12 years of age or older but under 18 years of age.

18 Pa.C.S. § 5902(b) (relating to prostitution and related offenses) where the actor promotes the prostitution of a minor.

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

18 Pa.C.S. § 6312 (relating to sexual abuse of children).

18 Pa.C.S. § 6318 (relating to unlawful contact or communication with minor).

(2) *Individuals convicted of an attempt to commit any of the offenses under paragraph (1) or subsection (b)(2).*

(b) **Lifetime registration.**—*The following individuals shall be subject to lifetime registration:*

(1) *An individual with two or more convictions of any of the offenses set forth in subsection (a).*

(2) *Individuals convicted of any of the following offenses:*

18 Pa.C.S. § 3121 (relating to rape).

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. § 3125 (relating to aggravated indecent assault).

18 Pa.C.S. § 4302 (relating to incest) when the victim is under 12 years of age.

(3) *Sexually violent predators.*

§ 9795.2. Registration procedures and applicability.

(a) **Registration.**—

(1) *Offenders and sexually violent predators shall be required to register all current residences or intended residences 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.

(2) Offenders and sexually violent predators shall inform the Pennsylvania State Police within ten days of a change of residence. Registration with a new law enforcement agency shall occur no later than ten days after establishing residence in another state.

(3) The ten-year registration period required in section 9795.1(a) (relating to registration) shall be tolled when an offender is recommitted for a parole violation or sentenced to an additional term of imprisonment. In such cases, the Department of Corrections or county correctional facility shall notify the Pennsylvania State Police of the admission of the offender.

(4) This paragraph shall apply to all offenders and sexually violent predators:

(i) Where the offender or sexually violent predator was granted parole by the Pennsylvania Board of Probation and Parole or the court or is sentenced to probation or intermediate punishment, the board or county office of probation and parole shall collect registration information from the offender or sexually violent predator and forward that registration information to the Pennsylvania State Police. The Department of Corrections or county correctional facility shall not release the offender or sexually violent predator until it receives verification from the Pennsylvania State Police that it has received the registration information. Where the offender or sexually violent predator is scheduled to be released from a State correctional facility or county correctional facility because of the expiration of the maximum term of incarceration, the Department of Corrections or county correctional facility shall collect the information from the offender or sexually violent predator no later than ten days prior to the maximum expiration date. The registration information shall be forwarded to the Pennsylvania State Police.

(ii) Where the offender or sexually violent predator scheduled to be released from a State correctional facility or county correctional facility due to the maximum expiration date refuses to provide the registration information, the Department of Corrections or county correctional facility shall notify the Pennsylvania State Police or police department with jurisdiction over the facility of the failure to provide registration information and of the expected date, time and location of the release of the offender or sexually violent predator.

(b) Individuals convicted in jurisdictions outside this Commonwealth.—

(1) The registration requirements of this subchapter shall apply to individuals convicted of an equivalent offense listed in section 9795.1 where the conviction occurred in another state, territory, Federal court or the District of Columbia or where the individual was sentenced by court martial, or where the individual was required to register under a sexual offender statute in the jurisdiction where the individual was convicted, and the individual:

- (i) resides in this Commonwealth; or*
- (ii) is employed or is a student in this Commonwealth.*

(2) An individual subject to registration under this subsection shall register within ten days of his arrival in this Commonwealth.

(3) An individual subject to registration under this subsection who is paroled to the Commonwealth pursuant to the interstate compact for the supervision of parolees and probationers shall, in addition to the requirements of this subchapter, be subject to the requirements of section 33 of the act of August 6, 1941 (P.L.861, No.323), referred to as the Pennsylvania Board of Probation and Parole Law.

(c) Registration information to local police.—The Pennsylvania State Police shall provide the information obtained under this section and sections 9795.3 (relating to sentencing court information) and 9796 (relating to verification of residence) to the chief law enforcement officer of the police department of the municipality in which the individual will reside. In addition, the Pennsylvania State Police shall provide this officer with the address at which the individual will reside following his release from incarceration, parole or probation.

(d) Penalty.—

(1) An individual subject to registration under section 9795.1(a) who fails to register with the Pennsylvania State Police as required in this section commits a felony of the third degree.

(2) An individual subject to registration under section 9795.1(b)(1) or (2) who fails to register with the Pennsylvania State Police as required in this section commits a felony of the first degree and shall be sentenced to a mandatory minimum sentence of probation for the remainder of the individual's lifetime and may be sentenced to a period of incarceration of up to the individual's lifetime.

§ 9795.3. Sentencing court information.

The sentencing court shall inform offenders and sexually violent predators at the time of sentencing of the provisions of this subchapter. The court shall:

(1) Specifically inform the offender or sexually violent predator of the duty to register and provide the information required for each registration, including verification as required in section 9796(a) (relating to verification of residence).

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

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

(4) Order the fingerprints and photograph of the offender or sexually violent predator to be provided to the Pennsylvania State Police upon sentencing.

(5) Specifically inform the offender or sexually violent predator of the duty to register with the appropriate authorities in any state in which the offender or sexually violent predator is employed, carries on a vocation or is a student if the state requires such registration.

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

§ 9795.4. Assessments.

(a) Order for assessment.—After conviction but before sentencing, a court shall order an individual convicted of an offense specified in section 9795.1 (relating to registration) 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.

(b) Assessment.—Upon receipt from the court of an order for an assessment, a member of the board as designated by the administrative officer of the board shall conduct an assessment of the individual to determine if the individual should be classified as a sexually violent predator. The board shall establish standards for evaluations and for evaluators conducting the assessments. An assessment shall include, but not be limited to, an examination of the following:

(1) Facts of the current offense, including:

(i) Whether the offense involved multiple victims.

(ii) Whether the individual exceeded the means necessary to achieve the offense.

(iii) The nature of the sexual contact with the victim.

(iv) Relationship of the individual to the victim.

(v) Age of the victim.

(vi) Whether the offense included a display of unusual cruelty by the individual during the commission of the crime.

(vii) The mental capacity of the victim.

(2) Prior offense history, including:

(i) The individual's prior criminal record.

(ii) *Whether the individual completed any prior sentences.*

(iii) *Whether the individual participated in available programs for sexual offenders.*

(3) *Characteristics of the individual, including:*

(i) *Age of the individual.*

(ii) *Use of illegal drugs by the individual.*

(iii) *Any mental illness, mental disability or mental abnormality.*

(iv) *Behavioral characteristics that contribute to the individual's conduct.*

(4) *Factors that are supported in a sexual offender assessment filed as criteria reasonably related to the risk of reoffense.*

(c) *Release of information.—All State, county and local agencies, offices or entities in this Commonwealth shall cooperate by providing copies of records and information as requested by the board in connection with the court-ordered assessment.*

(d) *Submission of report by board.—The board shall submit a written report containing its assessment to the district attorney no later than 90 days from the date of conviction of the individual.*

(e) *Hearing.—*

(1) *A hearing to determine whether the individual is a sexually violent predator shall be scheduled upon the praecipe filed by the district attorney. The district attorney upon filing a praecipe shall serve a copy of same upon defense counsel together with a copy of the report of the board.*

(2) *The individual 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 individual shall have the right to counsel and to have a lawyer appointed to represent him if he cannot afford one. If the individual requests another expert assessment, the individual shall provide a copy of the expert assessment to the district attorney prior to the hearing.*

(3) *At the hearing prior to sentencing, the court shall determine whether the Commonwealth has proved by clear and convincing evidence that the individual is a sexually violent predator.*

(4) *A copy of the order containing the determination of the court shall be submitted to the individual, the district attorney, the Pennsylvania Board of Probation and Parole, the Department of Corrections and the board.*

(f) *Presentence investigation.—In all cases where the board has performed an assessment pursuant to this section, copies of the report shall be provided to the agency preparing the presentence investigation.*

(g) *Parole assessment.—The Pennsylvania Board of Probation and Parole may request of the board an assessment of an offender or sexually violent predator be conducted and provide a report to the Pennsylvania*

Board of Probation and Parole prior to considering an offender or sexually violent predator for parole.

§ 9796. Verification of residence.

(a) Quarterly verification.—The Pennsylvania State Police shall verify the residence ***and compliance with counseling as provided for in section 9799.4 (relating to counseling of sexually violent predators)*** of sexually violent predators every 90 days through the use of a nonforwardable verification form to the last reported [address. **The form shall be returned by the offender within ten days.**] residence. ***For the period of registration required by section 9795.1 (relating to registration), a sexually violent predator shall appear within ten days of receipt of the form at any Pennsylvania State Police station to complete the verification form and to be photographed.***

(b) Annual verification.—The Pennsylvania State Police shall verify the residence of offenders [designated in section 9793 (relating to registration of certain offenders for ten years)] through the use of a [residence] nonforwardable verification form. [The form shall be returned by the offender within ten days.] ***For the period of registration required by section 9795.1, the offender shall appear within ten days of receipt of the form at any Pennsylvania State Police station to complete the verification form and to be photographed.***

(c) Notification of law enforcement agencies of change [in] of [address.—A change of address] residence.—***A change of residence of an offender or sexually violent predator*** required to register under this subchapter reported to the Pennsylvania State Police shall be immediately reported by the Pennsylvania State Police to the appropriate law enforcement agency having jurisdiction of the offender's ***or the sexually violent predator's*** new place of residence. The Pennsylvania State Police shall, if the offender ***or sexually violent predator*** changes residence to another state, notify the law enforcement agency with which the offender ***or sexually violent predator*** must register in the new state.

(d) Failure to provide verification.—Where [any offender] ***an offender or sexually violent predator*** fails to provide verification of residence within the ten-day period as set forth in this section, the Pennsylvania State Police shall immediately notify the municipal police department of the offender's ***or the sexually violent predator's*** last verified residence. The local municipal police shall locate the offender ***or sexually violent predator*** and arrest him for violating this section. The Pennsylvania State Police shall assume responsibility for locating the offender ***or sexually violent predator*** and arresting him in jurisdictions where no municipal police jurisdiction exists. The Pennsylvania State Police shall assist any municipal police department requesting assistance with locating and arresting an offender ***or sexually violent predator*** who fails to verify his residence.

(e) Penalty.—

(1) Any [offender] *individual subject to registration under section 9795.1(a)* who fails to verify his residence *or be photographed* as required in this section commits a felony of the third degree.

(2) Any *individual subject to registration under section 9795.1(b)(1) or (2) who fails to verify his residence or to be photographed as required in this section commits a felony of the first degree and shall be sentenced to a mandatory minimum sentence of probation for the remainder of the individual's lifetime and may be sentenced to a period of incarceration of up to the individual's lifetime.*

§ 9797. Victim notification.

(a) Duty to inform victim.—

(1) Where the [offender] *individual* is determined to be a sexually violent predator by a court under section [9794(e)] *9795.4* (relating to [designated of sexually violent predators] *assessments*), the local municipal police department or the Pennsylvania State Police where no municipal police jurisdiction exists shall give written notice to the [offender's] *sexually violent predator's* victim when the [offender] *sexually violent predator* registers initially and when he notifies the Pennsylvania State Police of [a change of address] *any change of residence*. This notice shall be given within 72 hours after the [offender] *sexually violent predator* registers or notifies the Pennsylvania State Police of a change of address. The notice shall contain the [offender's] *sexually violent predator's* name and the address or addresses where he resides.

(2) A victim may terminate the duty to inform set forth in paragraph (1) by providing the local municipal police department or the Pennsylvania State Police where no local municipal police department exists with a written statement releasing that agency from the duty to comply with this section as it pertains to that victim.

(b) Where an [offender] *individual* is not [designated as] *determined to be* a sexually violent predator.—Where [the offender] *an individual* is not determined to be a sexually violent predator by a court under section [9794(e)] *9795.4*, the [offender's] victim shall be notified in accordance with section [479.3 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.] *201 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act.*

§ 9798. Other notification.

(a) [By] *Notice* by municipality's chief law enforcement officer.—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 *full-time or part-time* 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] determined** by court order **[as] to be** a sexually violent predator, which **[designation] determination** 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.

(b) To whom written notice is provided.—The chief law enforcement officer shall provide written notice, under subsection (a), to the following persons:

(1) Neighbors of the sexually violent predator.

(2) The director of the county children and youth service agency of the county where the sexually violent predator resides.

(3) The 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 sexually violent predator resides*.

(3.1) The superintendent of each school district and the equivalent official for each private and parochial school located within a one-mile radius of where the sexually violent predator resides.

(4) The **[director] licensee** of each **[licensed] certified** day care center and licensed preschool program **and owner/operator of each registered family day care home** in the municipality *where the sexually violent predator resides*.

(5) The president of each college, university and community college located within 1,000 feet of a sexually violent predator's **[address] residence**.

(c) Urgency of notification.—The municipal police department's chief law enforcement officer shall provide notice within the following time frames:

(1) To neighbors, notice shall be provided within 72 hours after information of the sexually violent predator's release date and **[address] residence** has been received by the chief law enforcement officer. Notwithstanding the provisions of subsections (a) and (b), verbal notification may be used if written notification would delay meeting this time requirement.

(2) To the persons specified in subsection (b)(2), (3), (4) and (5), notice shall be provided within seven days after the chief law enforcement officer receives information regarding the sexually violent predator's release date and **[address] residence**.

(d) Public notice.—All information provided in accordance with subsection (a) shall be available, upon request, to the general public. *The information may be provided by electronic means.*

(e) Interstate parolees.—The duties of police departments under this section shall also apply to individuals who are paroled to this Commonwealth pursuant to section 33 of the act of August 6, 1941 (P.L.861, No.323), referred to as the Pennsylvania Board of Probation and Parole Law.

§ 9799. Immunity for good faith conduct.

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

(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, 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) County probation and parole offices and their agents and employees.

[(7)] (8) [Directors of licensed] Licensees of certified day care centers and directors of licensed preschool programs and owners/operators of registered family day care homes, and their agents and employees.

(9) The Pennsylvania Department of Corrections and its agents and employees.

(10) County correctional facilities and their agents and employees.

(11) Members of the Sexual Offenders Assessment Board and its agents and employees.

§ 9799.1. Duties of Pennsylvania State Police.

The Pennsylvania State Police shall:

(1) Create and maintain a State registry of offenders ***and sexually violent predators*** [pursuant to section 9793 (relating to registration of certain offenders for ten years)].

(2) In consultation with the ***Department of Corrections, the Office of Attorney General [and], the Pennsylvania Board of Probation and Parole and the chairman and the minority chairman of the Judiciary Committee of the Senate and the chairman and the minority chairman of the Judiciary Committee of the House of Representatives,*** promulgate guidelines necessary for the general administration of this subchapter.

(3) Write regulations regarding neighbor notification of the current [address] ***residence*** of sexually violent predators.

(4) Notify, within 72 hours of receiving the offender's *or the sexually violent predator's* registration, the chief law enforcement officer of the police department having primary jurisdiction of the municipality in which an offender *or sexually violent predator* resides of the fact that the offender *or sexually violent predator* has been registered with the Pennsylvania State Police pursuant to sections [9795 (relating to registration of offenders) 9795.2 (relating to registration procedures and applicability) 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 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] *a* 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 *and sexually violent predators* required to register under this subchapter of their duty under the law.

(2) In cooperation with the Department of Corrections and other Commonwealth agencies, obtain the following information regarding offenders *and sexually violent predators*:

(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 *or sexually violent predator*.

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

§ 9799.3. Board.

(a) Composition.—The State *Sexual Offenders Assessment Board* [to Assess Sexually Violent Predators] shall be composed of psychiatrists,

psychologists and criminal justice experts, each of whom is an expert in the field of the behavior and treatment of sexual offenders.

(b) Appointment.—The Governor shall appoint the board members.

(c) Term of office.—Members of the board shall serve four-year terms.

(d) Compensation.—The members of the board shall be compensated at a rate of ~~[\$200]~~ \$350 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.

(e) Staff.—Support staff for the board shall be provided by the Pennsylvania Board of Probation and Parole.

§ 9799.4. [**Sexually**] *Counseling of sexually violent predators.*

[(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] *For the period of registration required by section 9795.1(b) (relating to registration), a 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. The board shall monitor the compliance of the sexually violent predator.* 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.

[(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.

(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 (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.

(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.

§ 9799.5. Exemption from notification.

Nothing in this subchapter shall be construed as imposing a duty upon a person licensed under the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, or an employee thereof to disclose any information regarding an offender required to register under this act.

§ 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.]

§ 9799.7. Exemption from notification for certain licensees and their employees.

Nothing in this subchapter shall be construed as imposing a duty upon a person licensed under the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, or an employee thereof to disclose any information regarding:

- (1) a sexually violent predator; or*
- (2) an individual who is paroled to this Commonwealth pursuant to the interstate compact for the supervision of parolees and probationers.*

Section 4. The provisions of 23 Pa.C.S. § 6382 are repealed.

Section 5. This act shall apply as follows:

- (1) To proceedings initiated on or after the effective date of this act.
- (2) The reenactment and amendment of 42 Pa.C.S. Ch. 97 Subch. H shall apply to individuals incarcerated or convicted on or after the effective date of this act.

(3) This act shall not affect the requirements for individuals registered pursuant to 42 Pa.C.S. Ch. 97 Subch. H prior to the effective date of this act.

Section 6. This act shall take effect in 60 days.

APPROVED—The 10th day of May, A.D. 2000.

THOMAS J. RIDGE