

# SORNA – Legal Updates



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**FBI**



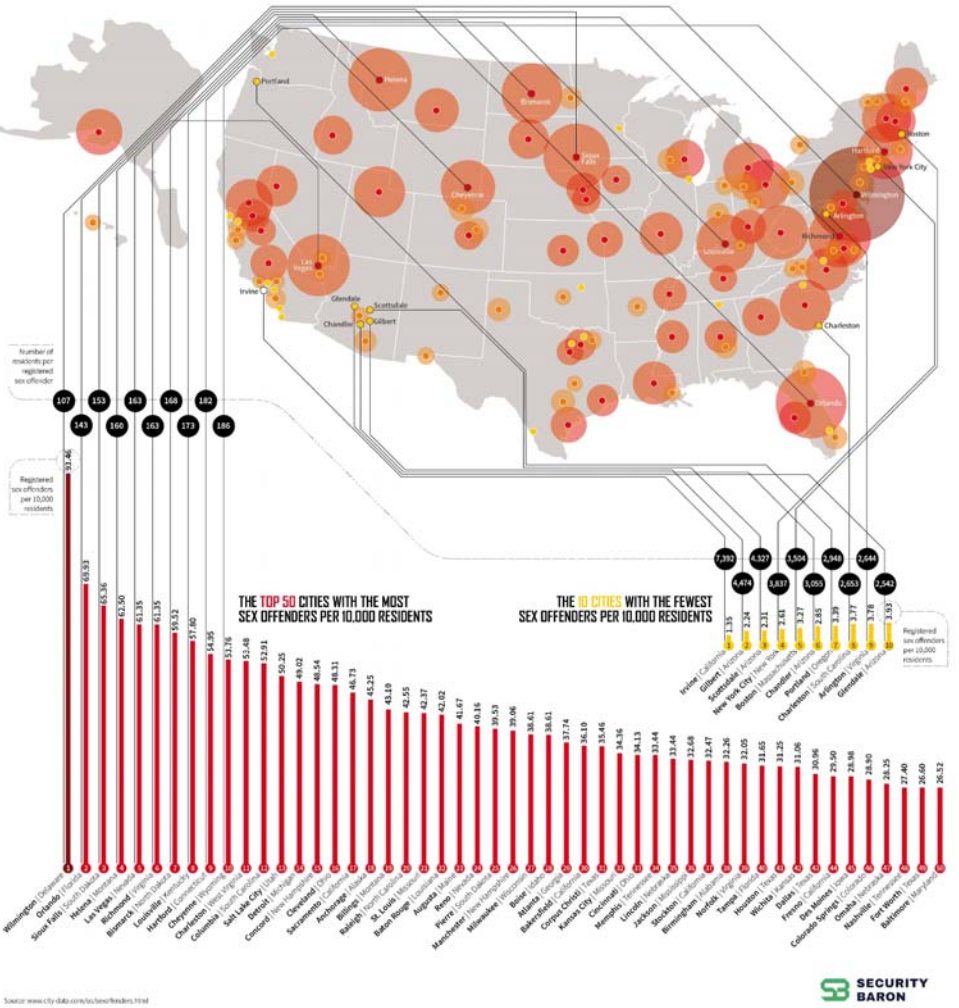
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- I truly am honored to be here
- I do not practice military justice, although intrigued by it
- I am not fluent in, nor do I speak, “acronym”
- I am a criminal defense lawyer by trade (i.e., I’m a bleeding heart liberal)
- The Corona Virus has taken entirely too much of my time the last few days
- I do believe some level of sex offender registration is necessary
- I thank you all for your service!

**U.S. CITIES RANKED BY THE FREQUENCY OF REGISTERED SEX OFFENDERS**  
BASED ON THE NUMBER OF SEX OFFENDERS PER 10,000 RESIDENTS IN 125 MAJOR CITIES IN THE UNITED STATES



1. **Wilmington, Delaware** — 1 sex offender for every 107 residents
2. **Orlando, Florida** — 1 sex offender for every 143 residents
3. **Sioux Falls, South Dakota** — 1 sex offender for every 153 residents
4. **Helena, Montana** — 1 sex offender for every 160 residents
5. **Las Vegas, Nevada** — 1 sex offender for every 163 residents
6. **Richmond, Virginia** — 1 sex offender for every 163 residents
7. **Bismarck, North Dakota** — 1 sex offender for every 168 residents
8. **Louisville, Kentucky** — 1 sex offender for every 173 residents
9. **Hartford, Connecticut** — 1 sex offender for every 182 residents
10. **Cheyenne, Wyoming** — 1 sex offender for every 186 residents



(2018 Statistics published by Security Baron)

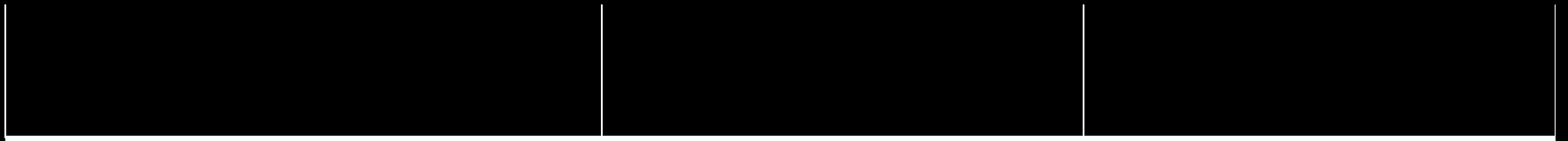
# History of Sexual Offender Registration

1994

1996

2006

2015



Wetterling Crimes  
Against Children & SVO  
Act  
(SVP & 10 year registration  
Discretionary public notification)

Megan's Law  
(Mandatory public  
disclosures)

Adam Walsh Act  
(SORNA)

Military Sex  
Offender  
Reporting  
Act

# Pennsylvania's Problematic History

## Megan's Law 1 (1995)

- SVP status increased maximum confinement
- Struck down by *CW v. Williams* 733 A.2d 593 (Pa. 1999)

## Megan's Law II (2000)

- No further presumptive predicate offenses or increased maximum for SVP but still SVP distinction
- Non-SVP – more reporting requirements

## Megan's Law III (2004)

- All the additional notification requirements
- Created criminal offenses for failure to comply
- 20 year exemption for SVP or lifetime offender

# Pennsylvania's SORNA (2012)

- Legislative Findings Included:
  - Sexual Offenders pose a high risk of committing additional sexual offenses and protection of the public is a paramount government interest (42 Pa.C.S. §9799.10(a)(4))
  - Sexual Offenders have a reduced expectation of privacy because of the public's interest in public safety
- Declaration of policy:
  - It is the policy of the Commonwealth to require the exchange of relevant information about sexual offenders among public agencies... and shall not be construed as punitive (42 Pa.C.S. §9799.10(b)(2))
- BUT – failure to comply with requirement = subject to prosecution and incarceration under 18 Pa.C.S. § 4915.1

# Who it applies to...

- Residents of PA
- Employed in PA
- Students in PA
- Or Transients
- Also those incarcerated who were previously required to register under Megan's Law



# The Tiered Offenses

## Tier I – 15 years

- Unlawful restraint
- False imprisonment
- Interference with custody of children
- Luring a child
- Institutional Sexual Assault
- Indecent Assault
- Corruption of Minors
- Invasion of Privacy
- Video Voyeurism
- Misleading Domain Names
- Inchoates of the above

## Tier II – 25 Years

- Trafficking
- Statutory Sexual Assault
- Prostitution
- Unlawful Contact with Minor
- Sexual Exploitation of Children
- Abusive Sexual Contact of victim age 13 – 18
- Production of Sexually Explicit Depictions of Minors
- Inchoates

## Tier III - Lifetime

- Kidnapping
- Rape
- IDSI
- Aggravated Indecent Assault
- Incest
- Sexual Abuse
- Inchoates



# Failure to Comply

## Tier I – 15 years

- Felony of 3<sup>rd</sup> degree
- F2 for second violations or if doesn't provide accurate info

## Tier II – 25 Years

- F2
- F1 for second violation or doesn't provide accurate info

## Tier III - Lifetime

- F2
- F1 for second violation or doesn't provide accurate info

## Is SORNA punitive?

- *CW v. Muniz*, 164 A.3d 1198 (Pa. 2017)
  - analogized registration and notification provisions as akin to probation
  - declared SORNA sufficiently punitive to overcome the General Assembly's stated non-punitive purpose.
  - Violates *Ex Post Facto* clauses
- *Cw v. Butler*, 173 A.3d 1212 (Pa. Super. 2017)
  - SVP designation based on clear & convincing evidence is constitutionally infirm b/c enhanced punishment without proof BRD (violating *Apprendi v. New Jersey*, 120 S. Ct. 2348 (U.S. N.J. 2000))

# Pennsylvania Response to Muniz & Butler

- Made SORNA prospective not retroactive
- Limited procedure for some offenders to petition the court after 25 years
- Decreased how often people in compliance had to appear
- Deleted Intentional interference with custody of child
- BUT no new SVP determinations/burden of proof
- Does not address punitive nature

## *CW v. Torsilieri*

- 23 year old with no prior record
- Charged with Rape, convicted of Agg Indecent Assault and Indecent Assault
- Post sentence motion challenged SORNA
  - Due Process b/c of irrebuttable presumption of recidivism deprives individuals right to reputation
  - Procedural due process violations (State & Federal) b/c no notice or opportunity to be heard
  - SORNA constitutes criminal punishment

## Are all Sex Offenders Created Equal?

- 80-90% of adult male sex offenders are never reconvicted for a new sexual crime (Affidavit of Professor Letourneau, Johns Hopkins University)
- Sex offenders typically have lower recidivism rates (Jill S. Levenson, Ph.D., LCSW, Professor of Social Work at Barry University)
- Torsilieri had a <2% recidivism risk per Static-99 and Static-99R (R. Karl Hanson, Ph.D., C. Psych., Carleton University in Ottawa, Canada)





## *CW v. Torsilieri Trial Court Holdings & Outstanding Issues for the PA Supreme Court*

- PA Constitution provides the right to reputation is a fundamental right, thus applied the strict scrutiny test
- Irrebuttable presumption is not constitutional where
  - 1. encroaches interest protected by due process;
  - 2. the presumption is not universally true; and
  - 3. reasonable alternative means exist for ascertaining the presumed fact
- SORNA violates *Apprendi* and *Alleyne* because of burden of proof
- SORNA is punitive (violates 5/7 *Mendoza-Martinez* factors)
- Application of SORNA constitutes illegal sentences b/c extend sentence beyond the predicate offense (8<sup>th</sup> Amendment)

**So what?**

**We are Military Attorneys, who cares?**

## Current CAAF Rulings...

- Members should not consider sex offender registration requirements at sentencing because it's a collateral consequence – *US v. Talkington*, 73 M.J. 212 (C.A.A.F. 2014)
  - See also *US v. Feliciano*, No. 20140766, slip op. at 9 (A. Ct. Crim. App. Aug. 22, 2016)
- Failure of defense counsel to ensure an accused understands sex offender registration consequences will overturn a guilty plea, but not ineffective assistance of counsel – *US v. Fink, per curiam decision*, No. 201800250 (N-M Ct. Crim. App. Feb. 6, 2020)

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