

Testimony Presented to the House Judiciary Committee

Pennsylvania House of Representatives

on

House Bill 85

by

**Major R. Dane Merryman
Pennsylvania State Police**

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Good afternoon. My name is Major Dane Merryman. I am the Director of the Pennsylvania State Police Bureau of Records and Information Services.

Thank you for the opportunity to discuss our analysis of House Bill 85. My presentation includes our perspectives on the background, the content and recommended amendments concerning the proposed legislation.

Bill Description

The proposed legislation provides for persons convicted of sex offenses, and certain other offenses having minor victims, to register their address with the Pennsylvania State Police for a period of ten years following release from incarceration or upon commencement of a sentence of intermediate punishment or probation. The court and institution from which the offender is released are required to notify the offender of his duty to register. The proposal also provides for designation of certain offenders as sexually violent predators, who would be required to register for life, or until such requirement is removed by a court. The Pennsylvania State Police would be responsible for maintaining this registry, notifying the appropriate law enforcement agencies of an offender's address, verifying these addresses quarterly, and providing notification to the appropriate agency of an offender's failure to verify. Additionally, under this bill, the Pennsylvania State Police would be required to maintain fingerprints and photographs of all offenders required to be registered, and in the case of sexually violent predators, forward copies of the fingerprints and photographs to the Federal Bureau of Investigation. Certain information concerning sexually violent predators would be required to be entered into the offender's criminal history record and provided to the appropriate police department. Failure of an offender to provide verification of address would constitute a felony of the third degree.

The proposal also provides for the establishment of a State Board to Assess Sexually Violent Predators.

Background

This proposal is similar to Senate Bill 7. This proposal differs, in that the responsibility of the Pennsylvania State Police to notify victims, neighbors, schools and county children and youth agencies in a municipality served by a local police department has been removed. In this bill, our responsibility would include notification of the local police department having jurisdiction, concerning change of address by a registered offender. We would also be required to notify the appropriate law enforcement agency of another state when an offender takes up residence in that state. Senate Bill 7 provides for lifetime parole and monthly counseling for sexually violent predators, as well as mandatory life sentence for sexually violent predators convicted of a subsequent enumerated offense.

Similar legislation in New Jersey, known as "Megan's Law", has been challenged in New Jersey state courts on the basis that it is unconstitutional. Support for this legislation can be expected from victims' advocacy groups, although some such groups had opposed Senate Bill 7. Opposition can be expected from constitutional "watchdog" groups such as the American Civil Liberties Union.

Analysis

While the Pennsylvania State Police agrees with the intent of the proposed legislation, we cannot support it as it is written. There are numerous shortcomings throughout the proposal:

-There are several requirements in the proposed legislation for "immediate" action to be taken. For example, Section 9795(c) requires that changes of address "... shall be immediately reported by the Pennsylvania State Police to the appropriate law enforcement agency..." The phrase "as soon as is practicable," or a definite period of time, should be substituted for "immediately."

-Section 9792(b)(1) refers to offenses in which the victim is a minor. One of those offenses is 18 Pa. C. S., Section 5902, relating to prostitution and related offenses. Circumstances in which a minor involved in this offense would be considered a victim, should be specified. If a minor pays an adult prostitute to engage in sexual intercourse, it does not appear that the minor would be a victim of prostitution. The same would apply if a minor prostitute conducts business with an adult customer. Because the Commonwealth is generally considered the victim in prostitution offenses, the intent of the legislature should be clarified.

-Section 9793(e) states, "The court may enter an order terminating the designation as a

sexually violent predator, in which case the court shall notify the Pennsylvania State Police." For the Department to maintain accurate and up-to-date information concerning the status of sexually violent predators, changes in status need to be reported in as timely a manner as possible. The legislation should specify a time limit, such as ten days, within which the court shall notify the Department of such a change.

-Section 9794(a) states, "a sexually violent predator shall be required to register a current address..." This does not take into account that an offender may regularly reside at more than one address. If the apparent intent of the proposed legislation is to be fulfilled, offenders should be required to register all current addresses, or at a minimum, their primary current address.

-Section 9794(b)(4) requires that the fingerprints and photographs of a designated offender be forwarded to the Pennsylvania State Police. Section 9797(5) requires that the fingerprints of sexually violent predators, and certain additional information pertaining to sexually violent predators, be forwarded by the Pennsylvania State Police to the FBI. These actions would be redundant with respect to the fingerprints. Currently, the Pennsylvania State Police and the FBI receive the fingerprints of all persons arrested and fingerprinted. The need for the State Police to retain photographs of such offenders is uncertain, as is the need of the FBI to maintain duplicate information concerning sexually violent predators. The proposal should

be amended to eliminate the need for additional fingerprints to be forwarded, and to provide for notification of an offender's status by other means, such as by mail, or electronically. An amendment should be made to eliminate the requirement that photographs be forwarded to the Pennsylvania State Police, as well as an amendment to eliminate the requirement that duplicate information be forwarded to the FBI. We do not believe the relevant Federal Law requires submission of photos to the FBI.

- Section 9795(c) requires that the Pennsylvania State Police notify a local police department having jurisdiction of an offender's change of address. Effectively, then, the Pennsylvania State Police is not required to notify a local police department when an offender is released and takes up residence in that jurisdiction, but must do so if the offender subsequently moves within that jurisdiction. While it appears the intent of this legislation is to require notification of the appropriate law enforcement agency having jurisdiction of an offender's initial and subsequent addresses, the proposal must be amended to clarify that intent.

-Section 9795(e) establishes the penalty for failure of an offender to verify their address. No such provision is made for offenders who fail to register in the first place. As written, the legislation would allow an offender to remain "underground," as long as they did not register initially. The proposed legislation should be amended to establish a similar penalty for those offenders who fail to register.

-Section 9796(c) specifies that the release of "...information that is necessary to protect the public concerning a specific offender..." shall be done under guidelines provided by the Attorney General of the United States. These guidelines have not yet been provided to the Pennsylvania State Police, nor is it known if they currently exist. The legislation should clearly define these guidelines.

Persons required to register their address with the Department are notified in several ways of their duty to do so. No provision is made for the Department to be notified of the identity of offenders who are required to register. As the proposed legislation is written, compliance will be impossible to monitor. The Department should be notified by the Board of Probation and Parole, the releasing institution, or the sentencing court, of the identity of the offender required to register, and the offender's address or intended address at the time of release, or commencement of intermediate punishment or probation.

-Section 9799 of Senate Bill 7 provides for lifetime parole for sexually violent predators, and provides for mandatory life sentence for sexually violent predators convicted of a subsequent enumerated offense. The Pennsylvania State Police supports these provisions and recommends this proposal be amended to include them.

The above recommendations notwithstanding, House Bill 85 is grossly flawed in that it places enormous responsibilities on the Pennsylvania State Police, many of which are already being

performed by the Board of Probation and Parole. Probation and Parole currently tracks parolees and probationers at the state level, and is notified monthly of probationers at the county level. Additionally, Probation and Parole is notified when these offenders are released or sentenced to intermediate punishment or probation. Probation and Parole currently notifies many, if not most, police departments of this information on a monthly basis. Since the great majority of sex offenders are sentenced through the state correctional system, and since less than one percent of offenders released from prison are not released as parolees, the tracking of offenders specified in the proposed legislation will represent a relatively insignificant increase in Probation and Parole's work load. Establishment and maintenance of such a registry by any agency other than Probation and Parole would constitute a wasteful and unnecessary duplication of effort.

It is with my strongest recommendation that I urge you to consider assignment of responsibility for registering and verifying addresses for these sexual offenders to the Board of Probation and Parole. If the committee considers notifications, such as is required in Senate Bill 7, notification of victims, neighbors, schools, and others, should be the responsibility of the police department having primary jurisdiction in the municipality where the offender resides, whether that be the State Police or a local department. Failure of offenders to register or verify their address (a felony) should result in criminal charges being

filed, in addition to being considered a violation of parole or probation. The legislation should be amended to authorize the Board of Probation and Parole to file criminal charges for violations of the Act. The District Justice before whom the offender is preliminarily arraigned should be given the authority to deny bail for this offense. Prior to the legislation being revised, it is strongly recommended that the Board of Probation and Parole and the Pennsylvania State Police be consulted to assist in drafting effective legislation which will most efficiently fulfill the intent of this proposal.

If the responsibilities described in this bill remain with the Pennsylvania State Police, we will incur significant costs for computer hardware, software, and support, as well as personnel and administrative costs associated with this proposal. This does not include the additional personnel needed to conduct notifications or conduct investigations. Further, the requirements of the Brady Act, the National Child Protection Act, Act 85 of the Pennsylvania Legislature, House Bill 304 and House Bill 367, and anticipated State firearm control legislation all place significant loading on our information storage and processing systems, which will be further taxed by this bill. Our mainframe electronic storage is at near 100% capacity and cannot accept additional data as required by the proposed legislation. Even without the additional demands and growth, we need to replace our mainframe computer. Our costs for the first ten years of this program, including mainframe and peripherals, are listed below.

Mainframe Computer	\$6,000,000.00
Operational Costs Associated With Software Maintenance	\$1,783,375.00
Personnel - Information Systems Division	\$912,225.00
Personnel - Records and Identification Division	\$1,156,815.00
TOTAL:	\$9,852,415.00

That concludes our analysis of House Bill 85. Thank you for the opportunity to discuss our concerns. I will try to answer any questions you may have.