

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

97MAP 2022

COMMONWEALTH OF PENNSYLVANIA
Appellant.

v.

GEORGE J. TORSILIERI
Appellee

**OFFICE OF VICTIM ADVOCATE AMICUS CURIAE BRIEF
IN SUPPORT OF APPELLANT**

**Appeal from the Order of the Chester County Court of Common Pleas,
Criminal Division, dated August 23, 2022 at CP-15-CR-1570-2016.**

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Pennsylvania Office of Victim Advocate (“OVA”) is the state agency with the duty and authority to advocate for individual and collective rights and needs of all crime survivors. OVA works with community-based victim service programs and county District Attorney offices to ensure that all crime victims are informed of their rights and major events that occur with the criminal justice system that directly impact their cases; all crime victims who have requested post-sentencing services receive the compassionate and individualized attention and advocacy required. OVA works to ensure no additional harm occurs to crime victims through their unintended interactions with the justice system.

Since 2015, OVA has partnered with the Pennsylvania State Police to facilitate the victim notification requirements of Pennsylvania’s Sex Offender Registration and Notification Act under revised Subchapter H (“Subchapter H”)¹ for convicted offenders deemed to be sexually violent predators or sexually violent delinquent children. Specifically, OVA provides notifications to victims of reported convictions who choose to register their information with the office. Since its inception in 1995 until the filing of this brief, OVA has provided services to 6,547 registered victims of Subchapter H offenses, including but not limited to 26,458 separate notifications of information available vis-à-vis Subchapter H. In 2021

¹ 42 Pa.C.S.A., Chapter 97, Subchapter H.

alone, OVA assisted 1,885 registered victims of Subchapter H offenses by, among other services, providing 4,063 notifications relating to information about their attackers.

OVA has a significant interest in the matter before the Court because this case addresses the constitutionality of revised Subchapter H, a law that impacts many of the crime victims served by OVA. No person or entity, other than OVA, its staff, or counsel, has been paid in whole or in part for the preparation of this amicus curiae brief.

SUMMARY OF ARGUMENT

Pennsylvania's Sex Offender Registration and Notification Act under revised Subchapter H serves various critical, non-punitive functions for individuals victimized by convicted sex offenders. By granting the appropriate deference to the legislature's public policy judgments, this Court must recognize and consider the safety interests of crime victims.

Further, crime victims rely on the mandatory registration and notification system to provide them with information they need to make informed decisions regarding their safety every day. This Court must continue to weigh the significant interest that crime victims have in relevant, timely, and current information about their attackers in favor of the victims, and must also continue to consider a crime victim's unique rights and interests when assessing the purposes, reasonableness, and constitutionality of revised Subchapter H.

ARGUMENTS

I. Granting due deference to the Legislature’s public policy judgments requires this Court to continue to recognize the safety of crime victims and the need for their protection as provided for under Subchapter H.

On July 17, 2017, this Court decided *Commonwealth v. Muniz*², which found Pennsylvania’s then-prevailing sex offender registration statute, the Sexual Offender Registration and Notification Act (SORNA)³ punitive and violative of the Pennsylvania and federal *Ex Post Facto* Clauses.

On February 21, 2018, the Pennsylvania Legislature enacted Act 10 of 2018⁴ that amended SORNA to remedy the constitutional flaws identified by this Court in *Muniz*⁵, and divided the registration statute into two subchapters. Subchapter H⁶ applied to sexual offenders who committed their offenses after December 20, 2012, and to whom *Muniz*'s prohibition against the retroactive application of SORNA did not apply.⁷ Subchapter I⁸ applied to sexual offenders who committed their offenses before December 20, 2012, and whose registration obligations were potentially affected by *Muniz*.⁹ On June 12, 2018, the Legislature enacted Act 29 of 2018,¹⁰

² *Commonwealth v. Muniz*, 164 A.3d 1189 (Pa. 2017).

³ 42 Pa.C.S. §§9799.10-9799.41, effective December 20, 2012 through February 20, 2018.

⁴ H.B. 631 OF 2017.

⁵ 42 Pa.C.S. §§9799.11(b)(4); 9799.51(b)(4).

⁶ 42 Pa.C.S. §§9799.10-9799.42.

⁷ 42 Pa.C.S. §9799.11(c).

⁸ 42 Pa.C.S. §§9799.51-9799.75.

⁹ 42 Pa.C.S. §9799.52.

¹⁰ H.B. 1952 of 2017.

which replaced Act 10. Act 29 is substantially the same as Act 10, and is Pennsylvania's current sexual offender registration statute.

Strikingly missing from the legal analysis in the above cases is the significant, non-punitive function that SORNA serves for the crime victims of these sexual offenses—to notify victims of critical information about their offenders so that informed decisions can be made regarding their personal safety.¹¹ For example, as a result of SORNA's registration and notification requirements, if a crime victim has knowledge that their attacker recently moved into a specific neighborhood, the victim can decide whether to avoid that neighborhood and surrounding area. If a victim has knowledge of their attacker's current vehicle make, model, and license plate number, the victim can take precautions to stay safe by observing whether the attacker's vehicle is nearby. If a victim has knowledge that their attacker enrolled as a student in a nearby school, the victim can decide whether they need to avoid visiting or taking classes at the same school.

Pennsylvania law “makes clear that there is a strong presumption . . . that legislative enactments do not violate our Constitution,” and “[a]ll doubts are to be resolved in favor of finding that the legislative enactment passes constitutional muster.”¹² This strong presumption exists largely because of the recognition that the

¹¹ 42 Pa.C.S.A. § 9799.26.

¹² *Pennsylvania Against Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383, 393 (Pa. 2005).

legislature is in a better position to examine public policy issues and to determine how best to address competing concerns.¹³

As the late U.S. Supreme Court Justice John Paul Stevens recognized with respect to sex offender registration in Pennsylvania:

The primary purpose of the General Assembly in enacting SORNA was to protect the public, especially women, from violent sexual offenders. *See* 42 Pa.C.S. § 9799.10. The General Assembly deemed it reasonable to require a narrowly defined class of older juvenile offenders who have been adjudicated delinquent of violent, sexually charged crimes to adhere to SORNA's non-punitive collateral consequences until the twenty-five year time period elapses, and in my view our Constitution does not require this Court to substitute its judgment for that of the duly elected Legislature. The adjudicated delinquent sex offender's "right to reputation" under such circumstances should not have precedence over a rape victim's anguish that very well may last a lifetime."

In re J.B., 107 A.3d 1, 20 (2014) (dissenting opinion).

Here, the elected lawmakers of the Commonwealth considered the competing interests at stake *including* crime victims' needs for safety, life planning, and protection, evaluated the constitutional deficiencies identified by this Court, and determined that revised Subchapter H's comprehensive registration and notification scheme is a necessary and reasonable means of serving the safety interests of the

¹³ *See, e.g. Program Admin. Servs., Inc. v. Dauphin Cnty. Gen. Auth.*, 928 A.2d 1013, 1017-18 (Pa. 2007) (explaining that "it is the Legislature's chief function to set public policy and the courts' role to enforce that policy, subject to constitutional limitations"); *Naylor v. Twp. of Hellam*, 773 A.2d 770, 777 (Pa. 2001) (stating that "[t]he General Assembly is better suited to examine the significant policy issues at state and to determine the appropriate legal standards").

public including crime victims.¹⁴ Appropriate deference to the legislature's policy making role requires this Court to recognize that the crime victims are an important part of the analysis and to consider their unique safety and protection needs that are served by SORNA when weighing the elements of the statutory scheme in a constitutional analysis. Failure to consider and give adequate weight to the safety interests of crime victims stemming directly from notification would ignore the analysis of SORNA's constitutionality and stated legislative purpose of protecting the public from sex offenders.

II. Crime victims rely on SORNA's registration and notification requirements to aid in their long-term safety, planning, and healing.

A determination on the constitutionality of sex offender registration and regular status update requirements cannot stand when viewed solely from the perspective of an offender. This Court should also consider the perspective of the individuals who are most impacted by both the original crimes and the consequences therefrom—the crime victims themselves.

¹⁴ 42 Pa.C.S.A. § 9799.11 (declaration of the legislative findings and intentions). In addition to SORNA, "legislation championing the rights [and interests] of crime victims has been in effect in Pennsylvania for over 70 years." *Commonwealth v. Means*, 773 A.2d 143, 157 (Pa. 2001) (observing the existence of laws affording services and rights to crime victims first through The Administrative Code of 1929, and later through The Crime Victims Act in 1998; finding that "[c]rime victims are to be treated with dignity, respect, courtesy, and sensitivity, and their rights are to be vigorously protected and defended; and concluding that the state's 'aggressive intent to protect the rights of crime victims and involve them in the sentencing process favors the inclusion of victim impact testimony in capital cases.'").

Victims of sexual violence experience life-long physical and mental health consequences—consequences that do not simply disappear once their offenders have completed their term of confinement. Studies show victims of sexual violence may experience post-traumatic stress disorder (“PTSD”), anxiety, depression, and suicidal thoughts or behavior.¹⁵ Although there are many reasons for these symptoms to occur, in many cases, the symptoms manifest because the crime victims are scared that they will be a victim of a crime again and that the offender is still wanting to cause them harm.¹⁶ These victims may additionally suffer serious long-term physical problems including chronic pain, gastrointestinal disorders, sexually transmitted diseases, and migraines.¹⁷ Sexual violence is also linked to negative health behaviors such as being more likely to smoke, abuse alcohol, use drugs, and engage in risky sexual activity.¹⁸ The trauma from sexual violence may impact a

¹⁵ See, e.g., Laura P. Chen et al., *Sexual Abuse and Lifetime Diagnosis of Psychiatric Disorders: Systematic Review and Meta-analysis*, 85 *MAYO CLIN PROC.* 619, 625 (July 2010) (addressing a meta-study that reviewed 37 studies involving over three million male and female participants with a history of “sexual abuse”—defined to include “rape and all forms of sexual abuse”—and finding that there is “an association between a history of sexual abuse and a lifetime diagnosis of anxiety, depression, eating disorders, PTSD sleep disorders, and suicide attempts”); Melissa A. Polusny & Paul A. Arbisi, *Assessment of Psychological Distress and Disability After Sexual Assault in Adults*, in *Psychological Knowledge in Court* 97, 98 (Gerald Young et al. eds., 2006) (addressing one study that shows “[s]exual assault is a particularly potent predictor of PTSD” and another that indicates adult female rape victims have “[l]ifetime prevalence rates of PTSD . . . [that] range from approximately 32% to 80%.”).

¹⁶ See, e.g., Restorative Solutions, *The Benefits of Restorative Justice for Victims and Offenders*, <https://www.restorativesolutions.org.uk/news/the-benefits-of-restorative-justice-for-victims-and-offenders>

¹⁷ See, e.g., Center for Disease Control and Prevention, *Fast Facts: What are the Consequences*, <https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html>

¹⁸ *Id.*

victim's employment in terms of time off from work, diminished performance, job loss, or inability to work, which can disrupt the victim's earning power and has a long-term effect on the economic well-being of survivors and their families.¹⁹

Studies also show that sexual victimization leads to an increased risk of being "sexually revictimized"²⁰ and a decreased sense of control.²¹ Coping and completing everyday tasks after victimization can be challenging and, as a result, victims may have difficulty maintaining personal relationships, returning to work or school, and regaining a sense of normalcy.²² A statutory scheme, such as SORNA, provides victims with relevant, timely, and updated information concerning the whereabouts of offenders, which empowers crime victims to make meaningful choices about their safety.²³

¹⁹ *Id.*

²⁰ Catherine C. Classen, et al., *Sexual Revictimization: A Review of the Empirical Literature*, 6 J. Trauma, Violence, & Abuse 103, 124 (2005) (reviewing approximately 90 empirical studies that examined sexual victimization during childhood, adolescence, or adulthood and finding that "approximately two of three individuals who are sexually victimized are [sexually] revictimized.").

²¹ See, e.g., Restorative Solutions, *The Benefits of Restorative Justice for Victims and Offenders*, <https://www.restorativesolutions.org.uk/news/the-benefits-of-restorative-justice-for-victims-and-offenders>

²² See, e.g., Center for Disease Control and Prevention, *Fast Facts: What are the Consequences*, <https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html>

²³ Cf. Dean J. Kilpatrick & Randy K. Otto, *Constitutionally Guaranteed Participation in Criminal Proceedings for Victims: Potential Effects on Psychological Functioning*, 34 Wayne L. Rev. 7, 17, 18-22 (1987) (explaining why giving victims input into the criminal justice system proceedings and providing them with information about the justice process helps to increase victims' perceptions of control, decrease their feelings of helplessness, and reduce psychological distress; and discussing the potential for additional victimization caused by the victims' interactions with the criminal justice system).

Without a comprehensive registration and notification scheme, these victims will be left in the dark about the current whereabouts of their attackers. Given that the overwhelming majority of sexual predators are not strangers to the crime victims at the time of the attacks,²⁴ fear of post-release contact is wholly reasonable. Consequently, crime victims rely on SORNA to provide critical up-to-date information to help them make informed decisions about their safety, minimize trauma and its long-term impacts, and move forward on a path toward healing.

SORNA's registration and notification requirements are not excessive. These are reasonable requirements that the convicted sex offenders will deal with for (potentially) the rest of their lives, just as the crime victims must cope every day for the rest of their own lives with the effects of the offenders' crimes. The Court must

²⁴ See, e.g. Patricia Tjaden & Nancy Thoennes, Nat'l Inst. of Justice, U.S. Dep't of Justice, *Extent, Nature, and Consequences of Rape Victimization: Findings from the National Violence Against Women Survey*, 1, 21 (2006), <https://www.ncjrs.gov/pdffiles1/nij/210346.pdf> (observing the 1995-1996 national survey shows almost 83 percent of female victims' perpetrators were current or former intimate partners, current or former dates, boyfriends, and girlfriends); Michael Planty, et al., U.S. Dep't of Justice, Bureau of Justice Statistics, *Female Victims of Sexual Violence, 1994-2012*, 1 (2013), <https://www.bjs.gov/content/pub/pdf/fvsv9410.pdf> (finding "[i]n 2005-10, 78% of sexual violence involved an offender who was a family member, intimate partner, friend, or acquaintance"). *Amicus* cite data addresses female sexual assault victims because they are most readily available; while men and boys are also victimized by sexual assault crimes, studies indicate that sexual assault crimes disproportionately impact women and girls. See, e.g., Tjaden & Thoennes, at 1, 3 (surveying adult men and women and finding that approximately 86 percent of rape and attempted rape victims are women); see also U.S. Dep't of Justice, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*, U.S. Dep't of Justice Guidance Document 5 (2015), <https://www.justice.gov/opa/file/799366/download> (citing research showing that "[s]exual assault and domestic violence are crimes that disproportionately impact women, girls, and lesbian, gay, bisexual, and transgender (LGBT) individuals in the United States" and finding that "90 percent of all cases of rape involve female victims.").

not ignore the reliance of victims on Subchapter H's significant and non-punitive functions when analyzing the purposes and reasonableness of the statutory scheme.

CONCLUSION

OVA is in a unique position to understand the significance of the sex offender registry for victims of sexual violence and the communities that have been traumatized by heinous and violent sex crimes. This Brief as *Amicus Curiae* brings the voice of the victims to this case and respectfully requests the Court to consider the impact upon victims of sexual violence when evaluating revised Subchapter H's function and constitutionality.

Unfortunately, in today's society, sexual violence impacts every community and affects individuals of all races, genders, sexual orientations, and ages. However, sexual violence is preventable.²⁵ It is the responsibility of our legislature, the courts, and our communities to create legislation and to take appropriate action to prevent the occurrence of future sexual violence and to assist those who are the victims of senseless sexual violence. Although sexually violent offenders must report personal information under Subchapter H, victims who have been sexually assaulted need the ability to access such information. Having such knowledge gives the victim permission to feel safe in their community again, and empowers the victim to make

²⁵ See, e.g., Center for Disease Control and Prevention, *Sexual Violence is Preventable*, <https://www.cdc.gov/injury/features/sexual-violence/>.

informed choices about safety and well-being on a day to day basis.²⁶ Without revised Subchapter H's mandatory registration and reporting requirements, crime victims will be less empowered, less able to take steps for self-protection, and may become more vulnerable to unnecessary trauma and revictimization. When assessing the constitutionality of Subchapter H's statutory scheme, this Court must consider the critical function that Subchapter H serves for victims in our Commonwealth.


WHEREFORE, for the foregoing reasons, it is respectfully requested that the Supreme Court reverse the Order of the Chester County, Court of Common Pleas, in this matter.

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²⁶ See, e.g. Jennifer Storm, Victim Advocate, *The Office of Victim Advocate Testimony: Senate Judiciary Committee: SORNA*, <http://pasenategop.com/judiciary/wp-content/uploads/2018/02/victim-advocate.pdf>.

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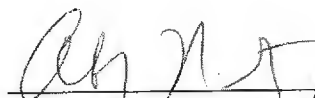
CERTIFICATE OF COMPLIANCE WITH Pa.R.A.P. 127(a) & 531(b)(3)

The undersigned hereby certifies that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Additionally, this Brief complies with the applicable word count limit, based on the word processing system used to prepare the Brief.

Respectfully Submitted,

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Dated: December 15, 2022

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that I have on this date, served a true and correct copy of the *Brief of the Pennsylvania Office of Victim Advocate as Amicus Curiae in support of Appellant* via PACFile electronic service, which satisfies the requirements of Pa.R.A.P. 121 and 2187.

Respectfully Submitted,

Office of General Counsel



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Dated: December 15, 2022