

# CONSEQUENCES OF & LEGAL RESPONSES TO JUVENILE SEXUAL OFFENSES IN PENNSYLVANIA:

## I. CONSEQUENCES

### ACT 21 – INDEFINITE CIVIL COMMITMENT

**Official Title:** Pa. Legislation 2003-21 (S.B. 521): Court-ordered Involuntary Treatment of Certain Sexually Violent Persons  
**Statute:** Pennsylvania Statute 42 Pa. C.S.A. § 6302 et. seq.  
**Sponsor:** Senator David Brightbill  
**Enactment date:** August 14, 2003  
**Effective Date:** February 10, 2004

#### Who will the Act affect?:

Act 21 mandates Pennsylvania's Department of Public Welfare ("DPW") to provide mental health and sex-offense specific treatment to individuals who:

- (1) Reside in a juvenile treatment facility and are about to turn 21 years of age;
- (2) Have been adjudicated delinquent for certain enumerated sex 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. § 3126	Relating to Indecent Assault
18 PA.C.S. § 4302	Relating to Incest

- (3) Have been assessed and determined by the Sex Offender Assessment Board ("SOAB") to have a mental illness or personality disorder that "makes the person likely to engage in an act of sexual violence."

#### History of Act 21:

Act 21, enacted on February 10, 2004, has the potential to seriously and detrimentally affect the civil liberties of adjudicated youth, aging out of the juvenile justice system. Passage of Act 21 followed a case in Central Pennsylvania in which twenty-year-old old Allen Crispin allegedly told authorities he would offend again as soon as he was released from juvenile custody. Crispin of Butler County was civilly committed indefinitely because he admitted thinking about committing additional sex crimes. Crispin's attorney, Armand Cingolani, of Butler, criticized the act by saying, "[t]hey're keeping him confined for his thoughts. It's like 'Clockwork Orange,'" said Attorney Cingolani, "referring to a futuristic 1970s movie in which a criminal has his brain altered in an effort to prevent future crimes<sup>1</sup>."

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<sup>1</sup> Kane, Karen. Pittsburgh Post Gazette. "Young sex offender won't get out at 21: Butler County resident to remain jailed for thinking about committing more crimes." December 17, 2004.

**What is the intended purpose of the Act?**

The authority for the State Sex Offender Assessment Board (SOAB) assessments comes directly from Act 21. The Act requires counties to evaluate a juvenile delinquent sex offender under civil mental commitment standards before his 21st birthday, at which point juvenile court otherwise loses jurisdiction. Without Act 21, a person in juvenile confinement is automatically released from custody and is no longer part of the court system the day he turns 21.

In Philadelphia County, the Defender Association of Philadelphia is automatically appointed to defend all Act 21 matters. The Act appoints the district attorney or the county solicitor to represent the State in Act 21 proceedings. In Philadelphia, the District Attorney's Office handles issues of retroactivity and preliminary procedural hearings while the City Solicitor litigates the substantive issues, challenges to the Constitutionality of the Act and the civil commitment hearing. Thus far our office has assisted or acted as co-counsel on juvenile civil commitment cases in ten different counties in Pennsylvania and three different states in the country.

If a youth is determined by the SOAB to have "serious difficulty in controlling sexually violent behavior," a petition for a mental health hearing is required to determine if civil commitment to the Sexual Responsibility and Treatment Program (SRTP) is appropriate. The SRTP is located on the grounds of Torrance State Hospital, in Westmoreland County, PA, which is approximately 50 miles east of Pittsburgh. Youth are entitled to yearly reviews of their commitment however it is well known that this type of commitment could range in length for a period of ten years to LIFE!

**B. ADAM WALSH CHILD PROTECTION & SAFETY ACT**

**Official Title:** Title I of the Adam Walsh Child Protection & Safety Act of 2006 Public Law 109-248: Sex Offender Registration and Notification Act (SORNA)  
**Statute:** Federal Statute 42 U.S.C. §§16901-16962  
**Sponsor:** Sensenbrenner  
**Enactment date:** July 27, 2006  
**Effective Date:** July 27, 2006 (However there is a 3 year grace period and it will become enforceable in some states until July 27, 2009)  
**Disposition:** Active  
**Actions:** Interim Rules and Regulations as to applicability and retroactivity, issued In March 2007. Proposed Guidelines to the implementation of the Act issued in August 2007.

**Who will the Act affect?:**

Title I of the Adam Walsh Act, entitled the Sex Offender Registration Act (hereinafter SORNA), creates a new sex offender registry law at 42 U.S.C. §§16901-16962 and prospectively repeals the current sex offender registry law in each state (Megan's Law in Pennsylvania) as of July 27, 2009.

**How will they be affected?:**

The Act is to be applied retroactively to “virtually the entire sex offender population” regardless of whether their adjudication or conviction predates the enactment date of the Adam Walsh Act.

The Act also creates new offenses for failure to register, including in some cases consecutive mandatory minimum sentences and stiff sentences of up to ten (10) years imprisonment. In most juvenile cases, registration and notification will be for life!

**Intended purpose:**

Proponents of the Act have stated that the purpose of SORNA is to strengthen sex offender registration and notification by sealing up “the leaky patchwork of state offender registry” laws making it “harder for predators to slip through the cracks.”<sup>2</sup>

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## **II. LEGAL RESPONSES TO JUVENILE SEXUAL OFFENSES**

We will need to enhance the way defenders respond to juvenile sexual offenses in every stage of the proceeding. This includes changing our practices upon arrest of our client, at the detention hearing, at the post-disposition phase, and upon release from a facility.

We plan to address these enhancements in our practice at an upcoming training. Some of the issues to be covered include;

1. **Training for Defense Attorneys**
  - **Sex Offender Legislation laws in Pennsylvania. This includes;**
    - **Act 21 updates including information on the Matter of K.A.P. and its effect on our Act 21 Advocacy.**
    - **Up to the latest information on the Adam Walsh Act in Pennsylvania and across the Country.**
  - **Enhancing our motions practice to include;**
    - **Motions and Briefs challenging Sexually Violent Predator laws (this includes Adam Walsh and Civil Commitment under Act 21)**
    - **Preparing a Motion to Redact what information can be presented to the SOAB or used to challenge psychosexual evaluations and treatment reports.**
  - **Frye/Daubert hearings to exclude/limit assessment instruments and tools**
  - **Addressing DSM-IV diagnoses in court**
  - **Addressing the use of actuarial instruments in court**

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<sup>2</sup> Please note that this federal law includes both registration and notification. Nearly 33 states have juvenile sex offender registration laws. In most states, youth have been subject to registration however notification has been limited to law enforcement agencies only. Under the new law, children will be on a national website and have the duty to notify their community, schools and employers. How will this affect the welfare and safety of our young clients and their families?

- Issue identification in sex cases
- Obtaining relevant materials through discovery
- Walking a client through the “juvenile sexual offender colloquy” and explaining the procedures and possible consequences of their adjudication to our clients and their families.
  - This includes developing an information form to apprise clients and their families on the Adam Walsh Act
- Developing a “theory” of the case
- Selecting Exhibits, demonstrative evidence and Preparing Power Point Presentations
- Effective opening/closing statements
- Direct & cross examination questions for experts in sex cases
- Qualifying an expert, expert witness preparation/cross-examination
- Working effectively with a mitigation specialist or social worker to prepare aftercare plans for clients
- The use of the polygraph in sex offender treatment

**2. Forensic Psychology in a nutshell**

- Participants will receive solid and clear training from a noted forensic psychologist who specializes in juvenile sexual offending. They will learn how to read and assess a pscho-sexual evaluation, how to challenge the Commonwealth’s experts, how to best use an independent evaluation and how to integrate the science on juvenile sexual offending into our practice.

**3. Media and Communications Strategy**

- In order to be effective in defending sex offense cases, it is essential that we change the public’s perception about adolescent sexual behavior and educate the public, judges and prosecutor on the nuances of adolescent development.