

Department of Human Services
Office of Legal and Regulatory Liaison

TO: Administrative Order Distribution List

THROUGH: Barbara G. Allen, Director
Office of Legal and Regulatory Liaison

FROM: Elena R. Flynn, Legal Compliance Officer *ER*
Office of Legal and Regulatory Liaison

DATE: September 21, 2005

SUBJ: **Administrative Order 3:06: Implementation of Megan's Law**

Attached please find a copy of the Revised Administrative Order 3:06, Department of Human Services Implementation of Megan's Law, signed by Commissioner James M. Davy on September 15, 2005. This Order should be included in Administrative Order Files by those of you responsible for maintaining them.

Most significantly, the revised Administrative Order 3:06 requires that Megan's Law Registrants must be reported to the Human Services Police within 48 hours of becoming responsible to register or being identified as a person who must register under Megan's Law. This change is necessary because the Human Services Police Department needs to know about Megan's Law Registrants in order to conduct the required notifications if there is a walk away or elopement. Additionally, the Psychiatric Hospitals will be required to create a Megan's Law data base, which is currently being developed, and which will be attached to the oracle census data base currently used.

If you have any questions about this information, please do not hesitate to contact me, (609) 292-3557.

DEPARTMENT OF HUMAN SERVICES

EFFECTIVE DATE: September 15, 2005

DATE ISSUED: June 18, 1999

REVISED: September 15, 2005

SUBJECT: Department of Human Services Implementation of Megan's Law

I. PURPOSE

The purpose of this Administrative Order is to establish Department policy and procedures concerning the implementation of the registration requirements of Megan's Law (P.L. 1994, c. 128-137). The law was enacted to provide pertinent information to permit law enforcement officials to identify and alert the public when necessary for public safety.

The law requires the Department to establish procedures, with respect to Department clients (both children and adults) under the Department's supervision who are sex offenders, regarding notification of their obligation to register with the appropriate law enforcement agency. This Administrative Order also establishes procedures to coordinate with law enforcement agencies in fulfilling their obligations concerning DNA testing.

II. SCOPE

This Administrative Order applies to the Division of Developmental Disabilities, the Division of Mental Health Services, the Division of Youth and Family Services, and the Division of Child Behavioral Health.

III. DEFINITIONS

The following terms, when used in this Administrative Order, have the meanings indicated:

- A. Department Facility includes the Division of Developmental Disabilities Developmental Centers, the Division of Mental Health Services Psychiatric Hospitals, the Arthur Brisbane Child Treatment Center, and the Division of Youth and Family Services Residential Centers.

B. Registration is the process by which the Human Services Police Departments fingerprint and photograph all clients who are sex offenders (as defined herein). These fingerprints and photographs are forwarded along with a completed registration form to the appropriate law enforcement authority.

C. Sex Offense (N.J.S.A. 2C:7-2b) includes the following crimes:

1. Aggravated sexual assault;
2. Sexual assault;
3. Aggravated criminal sexual contact;
4. Criminal sexual contact;
5. Kidnapping (if the victim is less than 16 years of age and if during the kidnapping a crime under N.J.S.A. 2C:14-2 [sexual assault], N.J.S.A. 2C:14-3 [criminal sexual contact], or N.J.S.A. 2C:24-4 [endangering the welfare of a child] is committed against the victim or the actor sells or delivers the victim to another person for pecuniary gain other than in circumstances which lead to the return of the victim to a parent, guardian or other person responsible for the general supervision of the victim);
6. Criminal restraint;
7. False imprisonment (only if the victim is a minor and the offender is not the parent of the victim);
8. Endangering the welfare of a child (must be an underlying sexual offense);
9. Luring or enticing a child; or
10. An attempt to commit any of the above offenses.

D. Sex Offender is any person convicted, adjudicated delinquent or acquitted by reason of insanity of the sex offenses listed in C. above or any offense similar to those in C. above entered or imposed under the laws of the United States or another state.

IV. POLICY AND PROCEDURES

A. Registration Requirements

1. The following Department clients are required to register:

- a. Where a client's sex offense conduct was found by a court to be characterized by a "pattern of repetitive, compulsive behavior" regardless of the date of the commission of the offense or the date of conviction. (Note: "repetitive and compulsive" determination applies only where the underlying sex offense was aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping pursuant to paragraph (2) of subsection c. of N.J.S.A. 2C:13-1 or an attempt to commit any of these crimes; it does not apply to other sex offenses listed under Section III.C. of this Order); or

- b. Where a client has been convicted, adjudicated delinquent, or acquitted by reason of insanity of a sex offense (defined in Section III.C. above) on or after October 31, 1994; or
 - c. Where a client is serving a sentence of incarceration, probation, parole or other form of community supervision as a direct result of a sex offense (defined in Section III.C. above) on or after October 31, 1994.
2. Department clients who have been found incompetent to stand trial or whose criminal charges are still pending are not required to register.
3. Timing of registration of Department clients
 - a. Registration of a client is required prior to a client being released/discharged from a Department Facility to a community setting, either on or off the grounds of the Department Facility.
 - b. Registration of a client is required when the client is placed at a Level of Supervision or other status that allows him or her to leave a Department Facility without supervision, and interact with the community for any purpose while continuing to reside at a Department Facility.

B. Registration Procedures

1. When a sex offender client is admitted to a Department Facility, or within 48 hours of a current client becoming responsible to register or identified to staff as a person who must register, Division specified staff shall notify the Human Services Police. When the client is required to register, the treatment team, interdisciplinary team, or other designated staff will notify the Human Services Police, who will contact the appropriate local law enforcement authority for registration of the client and will notify the prosecutors of the county where the client will reside or the county in which the facility is located or both as appropriate.
2. Division specified staff shall ensure that each client, or his/her legal guardian, is given a copy of the law (P.L. 1994, c.133) and verbally advised of the registration requirements. The client or legal guardian shall also be advised that registration with the local law enforcement agency is a continuing obligation that requires periodic registration, notice of change of address and re-registration upon relocation to another community.

D. Division of Mental Health Services Procedures

1. The psychiatric hospital treatment team shall provide written notice to the committing court, the client's attorney, the Attorney General, and the prosecutor in the county of conviction (if any) by the treatment team no fewer than 10 calendar days prior to the proposed date of any administrative discharge of an individual required to register. If the Attorney General or the prosecutor files a request for a hearing on the continuing need for commitment and serves notice of that request, the treatment team shall delay the administrative discharge until the court has made a determination on the issue. When a person is ordered discharged by a court against the recommendation of the treatment team, the team shall consult with the Office of Legal and Regulatory Liaison within one working day.
2. Each facility shall maintain data about Megan's Law Registrants in a database that includes the name, ward location, current level of supervision or privilege status, home address, next of kin, photograph or the physical location of a current photograph, and physical identifying characteristics for each person being treated in the facility who is or will be required to register during his or her treatment at the facility or upon discharge. The portion of the database containing information about Megan's status shall contain no clinical information (diagnosis, treatment modalities) and shall be read-accessible to the CEO or designees of the CEO, the coordinator of the SSPRC, and the Human Services Police. Only the CEO, an officer designated by the Human Services Police to be responsible for the referral and processing of patients who must register, and other persons specifically designated by the CEO shall have access to enter information in the database.
3. When a patient subject to Special Status Patient Review Committee (SSPRC) review pursuant to N.J.A.C. 10:36-2 is recommended for Level of Supervision III, IV, or discharge, the SSPRC coordinator shall consult the Megan's Law Registrant Database and the Human Services Police as necessary to determine if the patient is required to register. If s/he is required to register, the SSPRC coordinator shall notify the Human Services Police to initiate the registration process. No off-grounds privileges, whether supervised or unsupervised, or discharge, with or without conditions, shall be approved by the SSPRC or recommended to a court by a witness in a civil or criminal (Krol) commitment hearing until the Human Services Police have been notified of the need to begin the registration process.

E. Admissions Procedures

1. Megan's Registrants admitted to a Department facility

Upon admission, Division specified staff shall identify which clients are subject to the registration requirements of Megan's law (P.L. 1994, c.133) and shall, within 48 hours of admission, notify the HSPD that the client has been admitted. The HSPD shall, as soon as clinically feasible, obtain fingerprints and a photograph of the patient and add the patient to the facility's Megan's Law Registrant Database.

2. Offenders and those adjudicated Not Guilty by Reason of Insanity are required to submit DNA samples in accordance with N.J.S.A. 53:1-20.17 et seq.
 - a. Division specified staff shall confirm that, prior to admission, all requisite buccal swab or blood samples for DNA testing have been obtained by law enforcement authorities when a person is being placed with the Department as a result of a conviction, adjudication of delinquency, or finding of not guilty by reason of insanity of a sex offense as defined in Section III.C. above.
 - b. In those instances where a person has been placed with the Department without having a DNA sample taken prior to admission, Division specified staff shall ensure that a DNA sample is taken when the person is being released from the Department's custody. The DNA sample shall be obtained at the facility by the facility staff. If a client refuses to provide a sample, facility staff shall contact the Division of Criminal Justice to obtain judicial authority. Human Services Police shall assist when required to obtain fingerprints for completion of the DNA sample process.

F. Division Specific Policies and Procedures

To the extent not inconsistent with this Administrative Order, Divisions are authorized to have written policies and procedures in accord with Megan's Law (P.L. 1994, c. 128-137) that supplement and implement the provisions of this Administrative Order. Any supplemental policies or procedures must be submitted to the Department for prior review and approval.

G. Inquiries concerning this order shall be directed to the Office of Legal and Regulatory Liaison.



James M. Davy,
Commissioner