

Legislative Update

By Al O'Connor*

SEX OFFENDER REGISTRATION ACT (2002 Amendments) QUICK REFERENCE CHART—see pp. 11-12.

SORA Amendments

Significant amendments to the Sex Offender Registration Act were signed into law by Governor Pataki on Mar. 11, 2002. (L. 2002 Chap. 11 - S.6263-a). The amendments are largely compelled by federal requirements for sex offender registration laws and are designed to ensure that New York retains its full share of Byrne Formula grant funding. Several new offenses have been added to the list of crimes covered by Megan's Law, including the following:

- **Felonies** (including attempts): *Persistent sexual abuse* (Penal Law § 130.53); *Aggravated sexual abuse in the fourth degree* (Penal Law § 130.65-a); *Facilitating a sex offense with a controlled substance* (Penal Law § 130.90); and *Disseminating indecent material to minors in the first degree* (Penal Law § 235.22); or any SORA offense committed as a *hate crime* (Penal Law § 485.05) or as a *crime of terrorism* (Penal Law § 490.25).
- **Misdemeanors** (including attempts): *Sexual Misconduct* (Penal Law § 30.20); *Sexual abuse in the third degree* (Penal Law § 130.55); and where the victim is under age 18, or the defendant has a prior sex offense conviction: *Forcible touching* (Penal Law § 130.52); or any SORA offense committed as a *hate crime* (Penal Law § 485.05) or as a *crime of terrorism* (Penal Law § 490.25).

Some federal crimes have also been designated as Megan's Law offenses¹ and more foreign convictions will now be covered by the Act, which now applies to out-of-state misdemeanors as well as felonies with New York statutory counterparts, or any out-of-state crime that requires registration in the foreign jurisdiction. The law also includes registration requirements for persons in New York State to attend college or for employment purposes.

- **Effective date:** Registration requirements will apply prospectively to offenses committed on or after Mar. 11, 2002. However, in some limited circumstances the amendments will apply retroactively if the defendant

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¹ *Sexual exploitation of children* (18 USC § 2251); *Selling or buying children* (18 USC § 2251A); *Certain activities relating to material involving the sexual exploitation of minors* (18 USC § 2252); *Certain activities relating to material constituting or containing child pornography* (18 USC § 2252-A); *Production of sexually explicit depictions of a minor for importation into the United States* (18 USC § 2260)

was convicted of a newly added felony offense (including designated federal offenses) and was still serving the sentence on Mar. 11, 2002.

- **New Reporting Requirements:** The Sex Offender Registration Act now requires lifetime registration for three new categories of offenders (in addition to Risk Level 3). Regardless of a defendant's risk level assessment, lifetime registration will be required for **sexual predators, sexually violent offenders and predicate sex offenders**. Sexual predators will also be required to personally verify their addresses every 90 days for life. A "sexual predator" is a person who stands convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes him or her likely to engage in predatory sexually violent acts. A "sexually violent offender" is a sex offender who stands convicted of a sexually violent offense [Correction Law § 168-a (3)]. A "predicate sex offender" is a person convicted of a sex offense or a sexually violent offense who has a previous conviction for one or more of such crimes.
- **Effective date for new categories:** These three new categories will apply at risk level assessment hearings conducted on or after Mar. 11, 2002. However, the new categories will not apply to hearings conducted after Mar. 11, 2002 if the defendant was previously classified in an administrative or judicial risk level assessment proceeding conducted prior to Jan. 1, 2000, or was included in the plaintiff class in *Doe v Pataki*, 3 FSupp 2d 456 (SDNY 1998). Offenders classified after Mar. 11, 2002 as a sexual predator, sexually violent offender, predicate sex offender or Level 3 sex offender will be permanently ineligible to petition the court for relief from the duty to register pursuant to Correction Law § 168-0. Level 3 sex offenders who were classified prior to Mar. 11, 2002 may petition for such relief after 13 years. ⚖

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SEX OFFENDER REGISTRATION ACT (2002 Amendments) QUICK REFERENCE CHART

DESIGNATION	REGISTRATION PERIOD	PERSONAL VERIFICATION REQUIRED?	ELIGIBLE TO PETITION FOR RELIEF?	EFFECTIVE DATE
Sex Offender			<i>Duty to Register</i>	
Convicted of a sex offense (see list)	10 years (unless classified Risk Level 3)	No (unless classified as Risk Level 3)	No	Applies to offenses committed on or after March 11, 2002. However, registration requirements apply retroactively to defendants convicted of newly added <i>felony</i> offenses (see list in <i>bold italics</i>) who were still serving sentences on March 11, 2002.
Sexual Predator				
Convicted of a sexually violent offense (see list) and suffers from a mental abnormality or personality disorder that makes defendant likely to engage in predatory, sexually violent offense	Life (regardless of risk level)	Yes—every 90 days (regardless of risk level determination)	No	Sexual predator designation will apply at hearings conducted on or after March 11, 2002 (except where defendant has already been classified under old law and is covered by the injunction in <i>Doe v Pataki</i>).
Sexually Violent Offender				
Convicted of a sexually violent offense (see list)	Life (regardless of risk level)	No (unless classified Risk Level 3)	No	Sexually violent offender designation will apply at hearings conducted on or after March 11, 2002 (except where defendant has already been classified under old law and/or is covered by the injunction in <i>Doe v Pataki</i>).
Predicate Sex Offender				
Previously convicted of a sex offense or sexually violent offense	Life (regardless of risk level)	No (unless classified Risk Level 3)	No	Predicate sex offender designation will apply at hearings conducted on or after March 11, 2002 (except where defendant has already been classified under old law and/or is covered by the injunction in <i>Doe v Pataki</i>).
Risk Level 1	10 years	No	<i>Risk Level Downgrade</i> NA	
Risk Level 2	10 years	No	Yes	
Risk Level 3	Life	Yes—every 90 days	Risk level downgrade—yes. Duty to register—no, unless classified as Level 3 before March 11, 2002. If so may petition for relief after 13 years	

SEX OFFENDER REGISTRATION ACT OFFENSES

Note: Offenses in **bold** are newly added as of March 11, 2002.
Offenses in *italics* are felonies.

SEX OFFENSES (includes attempts)

Where victim is under age 18, or, regardless of the age of victim, where defendant has a previous sex offense conviction, including PL § 130.52 or PL § 130.55:

Forcible touching (P.L. § 130.52)

Sexual Abuse in the 3rd degree (P.L. § 130.55)

Sexual misconduct (P.L. § 130.20)

Rape in the 3rd degree (P.L. § 130.25)

Rape in the 2nd degree (P.L. § 130.30)

Sodomy in the 3rd degree (P.L. § 130.40)

Sodomy in the 2nd degree (P.L. § 130.45)

Sexual abuse in the 2nd degree (P.L. § 130.60)

Disseminating indecent material to minors in the 1st degree (P.L. § 235.22)

Sexual Performance by a Child (P.L. Act. 263)

Patronizing a prostitute in the 3rd degree (P.L. § 230.04)

(where person patronized is, in fact, less than 17)

Patronizing a prostitute in the 2nd degree (P.L. § 230.05)

Patronizing a prostitute in the 1st degree (P.L. § 230.06)

Promoting prostitution in the 2nd degree [P.L. § 230.30(27)]

Promoting prostitution in the 1st degree

Where victim is under age 17:

Unlawful imprisonment in the 2nd degree (P.L. § 135.05)

Unlawful imprisonment in the 1st degree (P.L. § 135.10)

Kidnapping in the 2nd degree (P.L. § 135.20)

Kidnapping in the 1st degree (P.L. § 135.25)

Any of the above offenses, or attempts thereof, committed as a hate crime (P.L. § 485.05) or as a crime of terrorism (P.L. § 490.25)

SEXUALLY VIOLENT OFFENSES (includes attempts)

Persistent sexual abuse (P.L. § 130.53)

Aggravated sexual abuse in the 4th degree (P.L. 130.65-a)

Facilitating a sex offense with a controlled substance (P.L. § 130.90)

Rape in the 1st degree (P.L. § 130.35)

Sodomy in the 1st degree (P.L. § 130.50)

Sexual abuse in the 1st degree (P.L. § 130.65)

Aggravated sexual abuse in the 3rd degree (P.L. § 130.66)

Aggravated sexual abuse in the 2nd degree (P.L. § 130.70)

Aggravated sexual abuse in the 1st degree (P.L. § 130.70)

Course of sexual conduct against a child in the 1st degree (P.L. § 130.75)

Course of sexual conduct against a child in the 2nd degree (P.L. § 130.80)

Any of the above offenses, or attempts thereof, committed as a hate crime (P.L. § 485.05) or as a crime of terrorism (P.L. § 490.25)

Specifically Designated Federal Offenses

Sexual exploitation of children (18 USC § 2251)

Selling or buying children (18 USC § 2251A)

Certain activities relating to material involving the sexual exploitation of minors (18 USC §2252)

Certain activities relating to material constituting or containing child pornography (18 USC § 2252-A)

Production of sexually explicit depictions of a minor for importation into the United States (18 USC § 2260)

Out-of-State and Federal Convictions

For a *crime* that includes all of the essential elements of any of the above New York offenses.

For a felony in foreign jurisdiction where defendant is required to register as a sex offender in that jurisdiction.