

Explanation of Sexually Violent Predator (SVP) Hearing and Sentencing Procedures

SEXUALLY VIOLENT PREDATOR (SVP) HEARING

Pennsylvania's "Megan's Law" is a matter of statute. See 42 Pa.C.S. § 9791 et seq.

Generally speaking, the Law contains notification and registration requirements for enumerated "sexually violent offenses", as well as penalties for failing to abide by the statutory requirements. The length of the required registration (10 years versus lifetime) varies by the type of offense, multiplicity of certain offenses, and whether the defendant is a "sexually violent predator". A "sexually violent predator" is someone who has been convicted of a sexually violent offense and who is determined to be a sexually violent predator due to a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

After conviction, but before sentencing, the trial court is required to order a defendant convicted of a sexually violent offense to be assessed by the State Sexual Offenders Assessment Board. The Board has 90 days from the date of conviction to conduct an evaluation of the defendant to determine if defendant should be classified as a sexually violent predator. The Board is required to consider statutory factors and submit a report to the prosecution. Following receipt of the report, the prosecution may seek a hearing before the trial court to determine whether the defendant is a sexually violent predator, at which time the defendant is served with a copy of the Board's report.

At the hearing, both the prosecution and the defendant have the right to be heard, call witnesses, call expert witnesses, and cross-examine witnesses. An indigent defendant has a right to appointed counsel. The Superior Court has ruled that indigent defendants also have a right to a court-appointed expert. The prosecution has the burden of proving by clear and convincing evidence that defendant is a sexually violent predator.

SENTENCING PROCEEDINGS IN NONCAPITAL CASES

Procedures at a sentencing hearing are governed by Rule of Criminal Procedure 704.

Sentencing usually is held within 90 days after conviction or entry of a guilty plea; but, the sentencing date can be delayed for good cause. However, sentencing should only take place after all presentence investigations and reports have been completed. The defendant has the right to be present and represented by counsel at the sentencing hearing which is normally held in open court and transcribed. A defendant's absence without cause may not preclude proceeding with sentencing in the defendant's absence.

In many cases, a presentence investigation will be conducted prior to the sentencing hearing, usually by the county probation office, into the facts of the case and the circumstances of the defendant and any victims. A report of this investigation will be used by the trial judge to assist in determining an appropriate sentence. Under the Crime Victims' Act, 18 P.S. §11.101 et seq., crime victims have the opportunity to offer prior comment on the sentencing, including the submission of a written and oral victim impact statement detailing the physical, psychological and economic effects of the crime on the victim and the victim's family. This statement would be included in the presentencing investigation.

At the hearing itself, in addition to both the Commonwealth and the defense having the right to present information and argument relative to the sentence, the defendant has a right to allocute, that is, a right to make a statement on his or her own behalf about the sentence. The defense is permitted to present evidence mitigating the sentence, including, for example, evidence of family and educational background or lack of prior criminal activity, as well as testimony or affidavits from family members, employers, counselors, or others, as mitigation evidence. The rules of evidence are relaxed in a sentencing hearing. For example, hearsay statements are normally admissible for sentencing purposes.

Traditionally, the trial judge in Pennsylvania has broad discretion when it comes to sentencing. However, this discretion is tempered by the Sentencing Code, 42 Pa. C.S. §2151 et seq., that requires, among other things, that the trial judge adhere to sentencing guidelines established by the Pennsylvania Commission on Sentencing. Additionally, certain criminal offenses have mandatory minimum sentences that must be imposed if the defendant is convicted of a specified crime.

The judge also may consider as alternatives to a jail or prison sentence or as an addition to incarceration, such elements as a fine, probation or community service. The judge must also order the defendant to make restitution to any victims who have suffered financial harm.

Ordinarily, the trial judge must announce the sentence imposed and the reasons for the sentence on the record at the time the sentence is imposed.

Both the prosecution and the defendant have a right to challenge certain aspects of a sentence, usually to the Superior Court.