

Time to Apply for Release from Megan's Law Registration and Community Supervision for Life?

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[Megan's Law](#) has now been effect since 1994. While the foremost purpose of Megan's Law is the protection of the community, the legislature provided a mechanism for those subject to the law to seek relief from the court of the very onerous conditions that Megan's Law places on those convicted of qualifying sex offenses.

Both Megan's Law and the parole supervision for life statutes specifically provide for and envision a defendant's release from these requirements upon a showing that the defendant has not been convicted of another crime and does not pose a danger to the safety of anyone. There is a reason this relief has been provided for by statute - the common sense recognition that there can be a point in time where such conditions are no longer required. When a person has demonstrated the he is not a threat, he should be relieved of the intensive conditions imposed by Megan's Law.

In fact, in many cases it may be appropriately argued that there is a certain point in time that imposing such stringent parole supervision is not only unnecessary, but is counterproductive to the social adjustment and success of a Megan's supervisee. For offenders subject to the Megan's Law provisions over 15 years, it is time to assess whether they qualify for release from these provisions.

Registration and Community Supervision for Life Relief Statutes

Megan's Law specifically provides a mechanism for being released from the registration requirements 15 years from the date of conviction or release from prison, provided that person is not likely to pose a threat to the safety of others. In pertinent part the statute states:

Except as provided in subsection g. of this section, a person required to register under this act may make application to the Superior Court of this State to terminate the obligation upon proof that the person has not committed an offense within 15 years following conviction or release from a correctional facility for any term of imprisonment imposed, whichever is later, and is not likely to pose a threat to the safety of others.

N.J.S.A. 2C:7-2f.

In a similar vein, New Jersey's statute requiring the special sentence of parole supervision for life specifically provides:

A person sentenced to a term of parole supervision for life may petition the Superior Court for release from that parole supervision. The judge may grant a petition for release from a special sentence of parole supervision for life only upon proof by clear and convincing evidence that the person has not committed a crime for 15 years since the last conviction or release from incarceration, whichever is later, and that the person is not likely to pose a threat to the safety of others if released from parole supervision. Notwithstanding the provisions of section 22 of P.L. 1979, c.441 (C.30:4-123.66), a person sentenced to a term of parole supervision for life may be released from that parole supervision term only by court order as provided in this subsection.

N.J.S.A. 2C:43-6.4c.

Both Megan's Law and our sentencing statutes specifically recognize and permit those who have been registered and supervised for 15 years and who are not likely to pose a threat to the safety of others are eligible for release from the requirements of registration and parole supervision.

Certain Individuals are Excluded from Seeking the Relief

The law that permits an offender to seek release from the obligation to register under Megan's Law contains certain exceptions:

A person required to register under this section who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for more than one sex offense as defined in subsection b. of this section or who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for aggravated sexual assault pursuant to subsection a. of N.J.S.2C:14-2 or sexual assault pursuant to paragraph (1) of subsection c. of N.J.S.2C:14-2 is not eligible under subsection f. of this section to make application to the Superior Court of this State to terminate the registration obligation.

The Issue of Single Count Convictions Alleging Multiple Acts

At issue will be whether a single count conviction that includes reference to acts on several dates or over a course of time ("divers dates") will fall under the exclusion as constituting more than one offense. The counter to that argument is that if a defendant has one conviction for a sex offense, under N.J.S.A. 2C:7-2b(1), the Megan's Law definition of a "sex offense" (and therefore subject to Megan's Law), includes a conviction characterized by a "pattern of repetitive, compulsive behavior." N.J.S.A. 2C:7-2b(1). Implicit in this definition of sex offense, under N.J.S.A. 2C:7-2b(1), is a determination of a pattern of repetitive compulsive behavior. *Id.* Under the State's interpretation it is hard to imagine that any conviction qualifying under N.J.S.A. 2C:7-2b(1) would qualify for relief under N.J.S.A. 2C:7-2f.

A common sense reading of the statute compels the conclusion that N.J.S.A. 2C:2-7g is meant to exclude from relief individuals who have more than one conviction and to exclude those defendants who have been found not guilty by reason of insanity. N.J.S.A. 2C:2-7g. See generally, N.J.S.A. 2C:43-6.4 ("The judge may grant a petition for release from a special sentence of parole supervision for life only upon proof by clear and convincing evidence that the person has not committed a crime for 15 years since the last conviction or release from incarceration, whichever is later, and that the person is not likely to pose a threat to the safety of others."); *G.H. v. Township of Galloway*, 401 N.J. Super. 392, 411-412 (App. Div. 2008), *aff'd*, 199 N.J. 135 (2009) ("N.J.S.A. 2C:7-2 f and N.J.S.A. 2C:43-6.4c permit the Superior Court to relieve a CSO from the registration and notification requirements and community supervision provisions of Megan's Law if he or she is crime-free for fifteen years").

Statutory Construction of the Megan's Law Provisions

The Megan's Law statute is not clear on the "one sex offense" definition and if such an objection is raised an applicant should make a statutory construction argument. As to the principles that statutory construction of Megan's Law, the New Jersey Code of Criminal Justice specifically notes that:

The provisions of the code shall be construed according to the fair import of their terms but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this section and the special purposes of the particular provision involved.

Case law interpreting criminal law statutes confirms that "when a criminal statute is somewhat ambiguous regarding the scope of its application, the ambiguity cannot inure to the benefit of the State. *State v. Alexander*, 136 N.J. 563, 573 (1994); *State v. Galloway*, 133 N.J. 631, 658-659 (1993), *CANNEL, CRIMINAL CODE ANNOTATED*, Comment N.J.S. 2C:1-2[4],(Gann)(citing additional cases).

These particular Megan's Law provisions should be construed to permit relief because of the legislature's recognition that at some point, that there may be a time where the registration and supervision is both

unnecessary, rehabilitation has been achieved, and an individual does not pose a threat to the safety of others. Under N.J.S.A. 2C:7-2b(1) the legislature stated “[f]or the purposes of this act a sex offense shall include the following:” conduct “characterized by a pattern of repetitive, compulsive behavior, regardless of the date of the commission of the offense or the date of conviction.” As defined by N.J.S.A. 2C:7-2b(1), and consistent with the intent of remedial provision set forth in the statute, a sole conviction is considered an offense for the purposes of N.J.S.A. 2C:7-2f. This issue will, in all likelihood, eventually make it through the Appellate Courts, but currently, if an individual is deserving of relief from the statute, any one count/multiple offense objection by the State should be vigorously contested.

Megan’s Law Registration and Community Supervision for Life as Counterproductive to Rehabilitation

An argument may also be advanced that after 15 years, if a person has been productive, gainfully employed, law abiding and has fully complied with all conditions of counseling, parole conditions and supervision – registration and the intrusive nature of parole supervision can be counterproductive to rehabilitation and not in the interest of society. Registration can result in hostility from neighbors, can interfere with employment, and may create issues relative to interfering with the establishment of a normal healthy family unit. Having law enforcement periodically visit one’s home, question family members, question neighbors, can also be destructive to a healthy and stable life. The legislature recognized that there comes a time when even those convicted of sex offenses may be deserving of being welcomed back into the community without the “Scarlet Letter.” Fifteen years is a long time to prove that one can successfully participate in society without the onerous registration and supervision requirements.

Burden of Proof

The burden of proof remains on the applicant. Under the sentencing provisions providing for release from parole supervision for life the standard of review is proof by clear and convincing "evidence that the person has not committed a crime for 15 years since the last conviction or release from prison, whichever is later and that the person is not likely to pose a threat to the safety of others if released from parole supervision." N.J.S.A. 2C:43-6.4c. It is recommended that any application be accompanied by an expert report and possibly expert testimony, by an expert qualified in sex offender evaluation and treatment.

While the burden is substantial, proof of 15 years of compliant parole supervision, with evidence of counseling, stable employment, stable residence, and family/community support, will present a compelling argument for the relief that the law provides. At some point it just makes sense to remove the special conditions and let a person live out his or her life as a functioning participant in regular society.

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