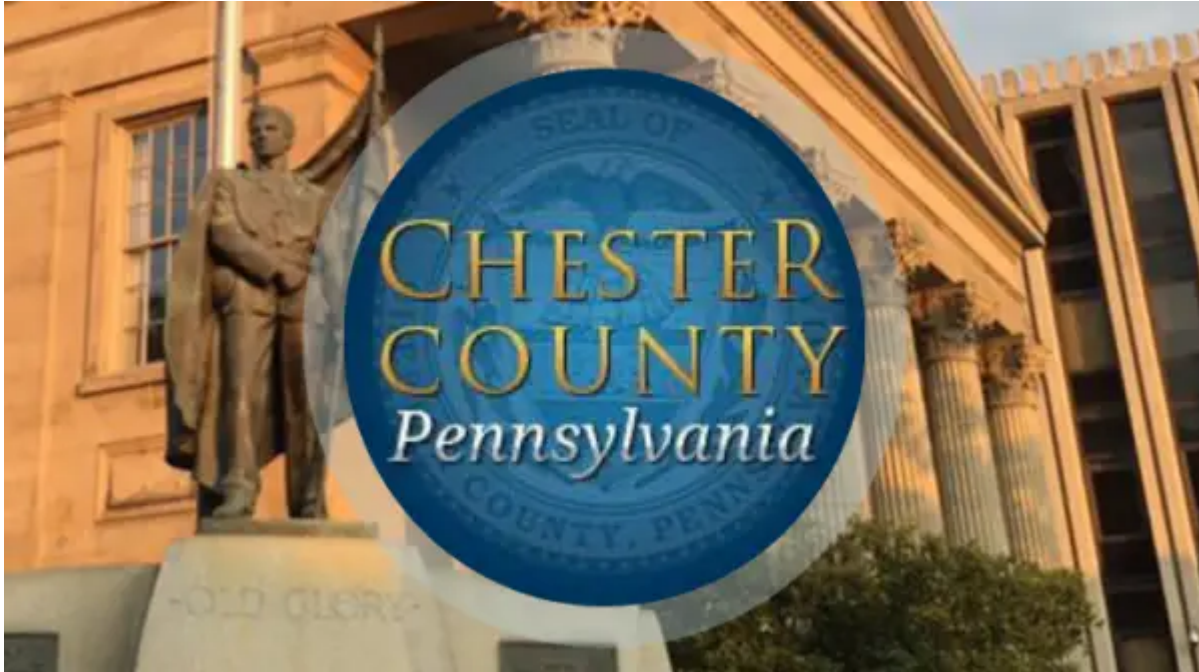


PARSOL's Analysis of Commonwealth v. Torsilieri

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Pennsylvania Assc. for Rational Sexual Offense Laws . . . Here in Pennsylvania (PA), we have been given hope for significant improvement, possibly even abolishment, of SORNA. Judge Allison Bell Royer of Chester County has written [an eloquent opinion](#) on the June 2021 evidentiary hearing involving this case.

This analysis summarizes all the key points; however, due to the importance, we highlight how the U.S. Supreme Court decisions in *Alleyne* and *Apprendi* were effectively used in this case in Pennsylvania.

Please note that PARSOL does not give legal advice. For those who live in Chester County, we recommend that you follow up with your attorney and ask how this decision affects the status of your registration.

The key points of the court's opinion have been discussed by [ACSOL](#) and on episode [236 of the Registry Matters podcast](#),

where PARSOL's executive director was a guest.

The three key points are as follows:

First, the main argument in this case is that SORNA violates [Pennsylvania's Constitution, Article I, Section 1, Right to Reputation](#), which states, "All men are born equally free and independent, and have certain inherent and **indefeasible** rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and **reputation**, and of pursuing their own happiness" (emphasis added). The PA General Assembly made a legislative finding that "Sexual offenders pose a high risk of committing additional sexual offenses, and protection of the public from this type of offender is a paramount governmental interest." The defense argued that the legislative finding is not universally true. As a result, the court found, ". . . irrebuttable presumption unduly stigmatizes persons convicted of committing sexual offenses, a class of crimes that covers a wide spectrum of conduct, and does so without any consideration of individual characteristics and circumstances" **Opinion** at 3. Studies have consistently shown that persons on the registry have a low rate of reoffending.

We stress the term "indefeasible" because, according to Black's Law Dictionary, it means "(of a claim or right) not vulnerable to being defeated, revoked, or lost." Indefeasible is distinct from "inalienable" which means "not transferable or assignable." An inalienable right can be forfeited through due process, but an indefeasible right, according to its definition, cannot under *any* circumstance be taken away by the government. As an afterthought, the right to an expungement is the enforcement of the constitutional right to reputation in the context of a criminal case after the sentence is completed.

At the heart of the legal and advocacy matter is the stigma of "high risk," which ruins the chances for registrants to ". . .

successfully rehabilitate under Pennsylvania law, rehabilitation being another indisputable aim of penal legislation and an equally compelling interest and policy of the Commonwealth” **Fross. v. County of Allegheny**, 20 A.3d 1993 (Pa. 2011), aff’d, 438 Fed. Appx. 99 (3rd Cir. Pa. 2011).

Dr. Elizabeth Letourneau, Ph.D. explained many studies have demonstrated that the registration and notification elements of SORNA do not considerably decrease recidivism rates. In some states, non-sexual recidivism rates have increased because the stigma has encumbered a registrant’s efforts to a successful reentry. Loss of housing, job, friends, family, and social supports are needed for a successful reintegration into society. Any state that seeks successful reentry or promotes public safety must reevaluate their versions of SORNA and other restrictive laws, because the end results of these statutes contradict said goals.

Second, after Judge Bell Royer’s examination of five of the seven **Mendoza-Martinez** factors, she concluded that SORNA constitutes criminal punishment. All five factors were found to weigh in favor of the punitiveness of the statute. The five factors reviewed were (1) whether the statute imposes an affirmative disability or restraint; (2) whether the resulting sanction or burden has historically been regarded as punishment; (3) whether the statute promotes retribution and deterrence, traditional aims of punishment; (4) whether the statute is rationally connected to an alternative purpose other than punishment; and (5) whether the statutory sanction or burden appears excessive in relation to the alternative. More importantly, after the judge’s review of (2), sanction as punishment, she stated in a footnote “. . . that the provisions of SORNA are located in the [PA] Crimes Code and there are serious criminal penalties associated with one’s failure to comply. These facts support the conclusion that the second factor weighs in favor of a determination that SORNA is punitive” **Opinion** at 20, FN 8.

Third, because SORNA is punitive, “. . . it violates the cases of **Apprendi** and **Alleyne**; resulting in a criminal sentence that exceeds the statutory maximums; offends Federal and State proscriptions against cruel and unusual punishment; and breaches the separation of powers doctrine” **Opinion** at 29, **Court Order**. **Apprendi** noted that a state’s provisions are over and above what the regular sentence would be for a particular crime. **Alleyne** asserted that the minimum amount of punishment must be made known to the defendant, and the finder-of-fact must determine whether these circumstances apply to the defendant.

Our Conclusion

Apprendi and **Alleyne** tie in numerous factors of constitutional rights afforded to every Pennsylvania citizen. Of particular importance is the breach of the separation of powers doctrine. **Apprendi** and **Alleyne** are judicial sentencing issues. According to the rulings in these two cases, sentencing issues should be left to the sole discretion of the court because no two cases are the same. As the court noted, “[F]acts can be murky and most often there are no independent eyewitnesses” **Opinion** at 14.

Equally important in Judge Bell Royer’s opinion is the Court Order (**Opinion** at 29). The judge said, “SORNA is unconstitutional both facially and as applied” to Mr. Torsilieri for all the above reasons. “Facially” is important to note because “facially unconstitutional” means that there is no set of circumstances by which it could be constitutional.

The PA Supreme Court had remanded this case back to the Chester County Court of Common Pleas for a full development of the record. As such, it will most likely be sent back up to the Supreme Court for their final decision. We do not know when a decision will be made, but we will remain ever vigilant for a result in our favor.

We hope this case or at least the arguable points behind it are transferable among the states. We are highly grateful to Mr. Torsilieri's defense team and the experts who testified for their dedication and commitment both to rational sexual offense laws and seeing that the rights and dignity of registrants in Pennsylvania are protected.