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A BROOKLYN rabbi who pleaded guilty to one felony count of sexual abuse must register as a sex offender under New York's version of Megan's Law even though the criminal act occurred before the law became effective and though he was sentenced to probation instead of jail time, a state judge has ruled.

Ruling yesterday in People v. Lewis Brenner, filed in Supreme Court, Kings County, Criminal Term Part AP F1, Acting Justice Charles J. Heffernan noted, after an extensive review of 15 opinions in 13 cases across the country which have considered whether Megan's Laws should be applied to all offenders retoactively, that "there is a marked divergence of opinion between federal and state courts."

An edited version of the decision will be published Monday.

Justice Heffernan said he agreed with the majority of state judges who have considered the issue that, when applied to Mr. Brenner, New York's Sex Offender Registration Act (SORA) was not punishment, since Mr. Brenner already had felt the sting of community rejection upon his arrest. Thus, he said, the retroactive application of the notification provisions of the law was not unconstitutional as a violation of the ex post facto clause of the U.S. Constitution.

Furthermore, the judge said, the Legislature intended the law to apply to offenders sentenced to probation as well as to those who serve prison time. But, he said, prosecutors had failed to produce evidence that would justify classifying the 65-year-old man as a Level 2 Risk which would require notification to law enforcement agencies and possible announcement to the community of his "approximate" address (based on his zip code) and criminal background.

A Level 1 Risk, a "low" risk of repeat offense, requires notification of his address and background only to law enforcement agencies.

The original Megan's Law requiring notification to law enforcement agencies, and in some cases the public, of a defendant's status as as previously-convicted sex offender was enacted in New Jersey after the molestation and murder of Megan Kanka by a released sex offender whose history was unknown in the neighborhood where he and the child lived. All the remaining states have since enacted child sex offender registration laws.

Shunned in Community

Last year, U.S. District Court Judge Denny Chin in Manhattan found the notification provisions of SORA amounted to punishment and thus were unconstitutional as an ex post facto law and permanently enjoined its retroactive enforcement in Doe v. Pataki, 940 F.Supp. 603 (appeal has been argued before the Second Circuit and is pending). Justice Heffernan, however, said he was unable to reach the same conclusion for Mr. Brenner.

"While four of the six state courts which have considered the issue have rejected such [retroactivity-related] challenges . . ., decisions in four of the six federal cases on point have espoused a contrary view, either directly or by pointed suggestion. Appeals in two of those cases are now sub judice before the U.S. Court of Appeals for the Second and Third Circuits," the judge noted in his 111-page opinion.

Justice Heffernan said he agreed with the analyses and holdings of the Supreme Courts of New Jersey and Washington State, the U.S. District Court for New Jersey and a state Supreme Court justice in Rochester, N.Y., all of whom rejected the contention that retroactive notification constituted punishment.

After conducting a hearing last October, the judge concluded that Mr. Brenner had been subjected to shunning within his Orthodox Jewish community (he had to resign from the temple he founded and received a letter threatening him unless he stayed off the block where his congregation was located), but "it would appear that defendant has been able to retain considerable stability in his life with limited exceptions." Justice Heffernan noted that Mr. Brenner had been accepted by another religious congregation despite knowledge of thecharges in the case.

"[Defendant] failed to demonstrate that the effects of any form of community notification, should it be authorized, would be appreciably beyond those which arose without such notification," he said. Thus there was no basis for a

finding that the notification "would be an affirmative disability or restraint upon defendant."

Mr. Brenner had been charged with 14 counts of sodomy, sexual abuse and endangering the welfare of a child arising from sexual contact with the same youth whom he allegedly met in the bathroom of the temple they both attended. The sexual contact was alleged to have been committed over a three-year period until October 1995, when the then 15-year-old told authorities.

He agreed to plead guilty to one count of sodomy in the third degree, a Class E felony, in exchange for a sentence of five years' probation.

Mr. Brenner was represented by Marvin E. Schechter. The case was prosecuted for Brooklyn Assistant District Attorney Nancy M. Slater.