ORIGINAL

In the

Supreme Court of Ohio

STATE OF OHIO,	:	Case No. 2008-2502
	:	
Appellee,	:	On Appeal from the
	:	Huron County
v.	:	Court of Appeals,
	:	Sixth Appellate District
CHRISTIAN N. BODYKE, et al.,	:	
	:	Court of Appeals Case
Appellants.	:	Nos. H-07-040
	:	H-07-041
	:	H-07-042

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FILED
SEP 01 2009
CLERK OF COURT
SUPREME COURT OF OHIO

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INTRODUCTION

In 1997, the General Assembly enacted Megan's Law, a state-wide system of sex offender registration and community notification. Given the brutality of sex crimes and concerns about offenders' recidivism, the legislature required that all sex offenders periodically verify their contact information with the county sheriff. For the more dangerous offenders, Megan's Law also required the sheriff to notify certain individuals—local law enforcement, neighbors, nearby schools, and officials responsible for the safety of children—whenever a sex offender relocated into the community. In *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, and *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, this Court affirmed that Megan's Law was a civil, remedial scheme designed to protect and educate the public. The three Appellants in this case are convicted sex offenders who received classifications under that law.

In 2006, Congress passed the Adam Walsh Child Protection and Safety Act ("AWA"), which enacted national standards for sex offender classification, registration, and community notification. The AWA specifies that every sex offender be classified into one of three tiers based on his crime of conviction. Congress then mandated that the States adopt those standards as part of its desire "to sew together the patch-work quilt of 50 different State attempts to identity and keep track of sex offenders." 152 Cong. Rec. S8012 (July 20, 2006) (Statement of Sen. Hatch).

In 2007, after a year of deliberation, the General Assembly passed Senate Bill 10 (S.B.10) "to revise Ohio's Sex Offender Registration and Notification Law and conform it to recently enacted requirements of federal law contained in the [AWA]." S.B.10 repealed Megan's Law and enacted the AWA's tier-based system. The General Assembly also tasked the Attorney General with notifying sex offenders who had been classified under Megan's Law of their new

tier. The Attorney General did so in this case. All three Appellants were notified that, based on their crimes of conviction (sexual battery or attempted rape), they were Tier III offenders.

Under S.B.10, the frequency and duration of Appellants' registration periods increased from their previous Megan's Law requirements. Appellants objected, claiming that S.B.10 imposes criminal punishment and, therefore, cannot be applied retroactively.

They are wrong. S.B.10 employs the same tools as Megan's Law. It requires that sex offenders periodically verify their contact information with the county sheriff. And it requires the sheriffs to notify certain community members when Tier III sex offenders move into a neighborhood. S.B.10 does not stray past the constitutional boundaries of *Cook* and *Ferguson*. No offender is required to register more than four times a year—"a *de minimus* administrative requirement" "comparable to renewing a driver's license." *Cook*, 83 Ohio St.3d at 418. Furthermore, the community notification provision "is restricted to those mostly likely to have contact with the offender." *Id.* at 422. Finally, S.B.10 permits reclassified sex offenders to petition the trial court for the removal of community notification. All three Appellants in this case exercised that option, and the trial court removed the requirement. Accordingly, S.B.10, like its predecessor statute, is a civil, remedial law designed to protect the public, and, therefore, it can be applied retroactively to sex offenders like these Appellants.

Appellants nevertheless argue that "a classification system resting entirely on the offense of conviction" is not "remediation and regulation," but "punishment." (Br. 6). The problem with this theory is two-fold. First, automatic classification was a staple of the old Megan's Law regime, which this Court upheld as constitutional. Two of the three Megan's Law classifications rested entirely on the offender's crime of conviction and his criminal record; there was no individualized determination. Second, the U.S. Supreme Court has expressly approved the use

of automatic sex offender classifications: "The State's determination to legislate with respect to convicted sex offenders as a class, rather than require individual determination of their dangerousness, does not make the statute a punishment." *Smith v. Doe* (2003), 538 U.S. 84, 104.

The General Assembly, in S.B.10, "ma[de] reasonable categorical judgments that conviction of specified crimes should entail particular *regulatory* consequences." *Id.* at 103 (emphasis added). As the crime gets more severe and violent, the tier level goes up, and the registration period lengthens. Because these offense-based classifications are reasonably calibrated to an offender's level of dangerousness, and because the classifications advance the purpose of protecting the public, as well as the vital governmental interest in aligning Ohio's sex offender laws with a comprehensive national registration system, S.B.10 is a civil, remedial law. Therefore, Appellants' constitutional claims must fail.

STATEMENT OF AMICUS INTEREST

Ohio Attorney General Richard Cordray is the chief law enforcement officer for the state. R.C. 109.02. The Attorney General has a strong interest in defending the legislative actions of the General Assembly against constitutional attack and in ensuring the proper administration of Ohio's sex offender registration and community notification laws.

THE HISTORY OF SEX OFFENDER LAWS IN OHIO

Ohio has had some form of sex offender registration since 1963, but the General Assembly has modified the law several times in the past twelve years. In 1997, the legislature enacted House Bill 180 ("H.B.180"), known as "Megan's Law," which rewrote R.C. Chapter 2950 to establish a comprehensive system for sex offender classification and registration. In 2003, the General Assembly passed Senate Bill 5 ("S.B.5"), which revised the law. And, in 2007, the General Assembly passed Senate Bill 10 ("S.B.10")—the subject of this action—which revised the classification and registration system again, this time in response to a federal mandate.

A. Sex Offender Registration and Notification under Megan's Law and the Constitutional Challenges to Megan's Law

Under the old Megan's Law, sex offenders were divided into three categories: (1) sexually oriented offenders, (2) habitual sex offenders, and (3) sexual predators. The "sexually oriented offender" designation was the default category. The law placed any individual convicted of a "sexually oriented offense" listed in former R.C. 2950.01(D) into this category unless he qualified for a higher classification. This "sexually oriented offender" classification was automatic upon conviction; no judicial determination was involved.

The "habitual sex offender" category—the middle category—was defined as "a person who [was] convicted of or plead[ed] guilty to a sexually oriented offense" and who "previously ha[d] been convicted of or pleaded guilty to one or more sexually oriented offenses." Former R.C. 2950.01(B) (1998).

The most severe classification, "sexual predator," was reserved for an individual who "ha[d] been convicted of or pleaded guilty to committing a sexually oriented offense and [was] likely to engage in the future in one or more sexually oriented offenses." Former R.C. 2950.01(E) (1998). The designation was affixed in one of two ways—either automatically or after an evidentiary hearing. If the offender was charged with and then "convicted of or plead[ed] guilty to a sexually violent predator specification," he was "automatically classifie[d] . . . as a sexual predator." Former R.C. 2950.09(A) (1998). Otherwise, the trial court could affix the designation on an individual convicted of a sexually oriented offense after an evidentiary hearing. Former R.C. 2950.09(B)(1), (C)(2) (1998). Megan's Law provided that, at the hearing, the offender had the right to counsel, the right to testify, and the right to call and cross examine witnesses. Former R.C. 2950.09(B)(1) (1998). The trial court then considered a list of statutory factors—the offender's age, criminal record, mental state, and mental capacity, the victim's age,

and the nature of the offense—to determine if the offender was likely to re-offend. Former R.C. 2950.09(B)(2)(a)-(j) (1998). That determination was made using a standard of clear and convincing evidence. Former R.C. 2950.09(B)(3) (1998).

Megan's Law required all sex offenders to register with their county sheriff by providing a current home address, the name and address of their employer, and a photograph. Former R.C. 2950.04(A),(C) (1998). Offenders with a "sexual predator" designation were also required to provide the license plate number of any vehicle registered in their name. Former R.C. 2950.04(C)(2) (1998). The offenders then verified their home addresses with the sheriff at periodic intervals depending on their classification: (1) for sexually oriented offenders, annual verification for ten years; (2) for habitual sex offenders, annual verification for twenty years; and (3) for sexual predators, quarterly registration for life. Former 2950.06(B), 2950.07(B) (1998). The law imposed criminal penalties on an offender who failed to register. Former R.C. 2950.99 (1998).

Megan's Law also created a system of victim and community notification. When an eligible offender registered with his county sheriff, the sheriff was to notify particular victims and members of the community—local law enforcement, neighbors, nearby schools, and other officials responsible for the safety of children—of his address and offense of conviction. Former R.C. 2950.10, 2950.11 (1998). These notification provisions applied to all sexual predators and to select habitual sex offenders designated by the trial court, but not to sexually oriented offenders. Former R.C. 2950.10(A), 2950.11(A) (1998).

Under Megan's Law, offenders with "sexual predator" designations could petition the trial court for removal of the designation at specified time intervals. Former R.C. 2950.09(D) (1998).

The offender had to establish "by clear and convincing evidence that [he was] unlikely to commit a sexually oriented offense in the future." Former R.C. 2950.09(D)(1) (1998).

The General Assembly applied Megan's Law retroactively to sex offenses committed before its effective date. Regardless of when the offense was committed, the law applied to any offender sentenced on or after July 1, 1997, and any offender released from a prison term on or after July 1, 1997. Former R.C. 2950.04(A)(1) (1998). The General Assembly also applied the law retroactively to individuals who, as of July 1, 1997, were classified as "habitual sex offenders" under the old sex offender law. Former R.C. 2950.04(A)(3) (1998).

This Court considered a series of constitutional challenges to Megan's Law. In *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, the Court unanimously rejected claims that the retroactive application of the law violated the Retroactivity Clause of the Ohio Constitution or the Ex Post Clause of the United States Constitution. The Court held that the registration and notification requirements found in Megan's Law were civil in nature, and not criminal penalties, and that they were remedial, not substantive. In *State v. Williams*, 88 Ohio St.3d 513, 2000-Ohio-428, the Court unanimously held that Megan's Law complied with the Double Jeopardy, Bill of Attainder, and Equal Protection Clauses of the United States Constitution, and with Article I, Section 1 of the Ohio Constitution. And in *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169, the Court determined that the automatic imposition of the "sexually oriented offender" designation without a hearing did not violate due process.

In *Smith v. Doe* (2003), 538 U.S. 84, the U.S. Supreme Court reached the same conclusion as this Court did in *Cook*. The U.S. Supreme Court found that Alaska's sex offender registration and notification law was a civil, regulatory scheme that "'alert[s] the public to the risk of sex offenders in their community.'" *Id.* at 103 (citation omitted). Because the law was

"nonpunitive," "its retroactive application d[id] not violate the Ex Post Facto Clause." *Id.* at 105-06.

B. The Revisions to Megan's Law in S.B.5 and Constitutional Challenges to S.B.5

In 2003, the General Assembly revised Megan's Law through the enactment of S.B.5. With respect to the sex offender classification system, the legislature removed the provision that previously allowed offenders to seek revocation of their "sexual predator" designation. That designation would remain for life. Former R.C. 2950.07(B)(1) (2006). The new law also instructed the county sheriffs to collect additional information. Sex offenders now had to periodically verify the address of their school or employer, whereas previously, they only had to verify their home address. Former R.C. 2950.06(B) (2006). Finally, S.B.5 clarified that any statements, information, photographs, or fingerprints provided by sex offenders to the county sheriff were public records available for inspection. Former R.C. 2950.081 (2006). The information was also to be included in an Internet database maintained by the Attorney General. Former R.C. 2950.13(A)(13) (2006).

All three provisions applied retroactively to sex offenders who had been classified before S.B.5's effective date. In *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, the Court rejected claims that this retroactive application violated the Retroactivity Clause of the Ohio Constitution or the Ex Post Facto Clause of the United States Constitution. Relying on its decision in *Cook*, the Court ruled that S.B.5's elimination of the possible removal of the sexual predator classification, its more onerous registration and reporting requirements, and the collection and dissemination of more information about offenders were not driven by a punitive intent, but by a desire to protect the public.

S.B.5 also added a new housing restriction. Sex offenders could not "establish a residence or occupy residential premises within one thousand feet of any school premise." Former R.C.

2950.031(A) (2006). In *Hyle v. Porter*, 117 Ohio St.3d 165, 2008-Ohio-542, a sex offender challenged this provision, claiming that it violated the Retroactivity Clause of the Ohio Constitution. The Court, however, declined to reach the constitutional question, instead finding that the General Assembly had not expressly made this housing provision retroactive. Because that provision did not apply to conduct before its effective date, there was no viable retroactivity claim. *Id.* ¶ 24.

C. Congress enacts the Adam Walsh Act.

In 2006, Congress passed the Adam Walsh Child Protection and Safety Act ("AWA") "[i]n order to protect the public from sex offenders and offenders against children." 42 U.S.C. § 16901. In an effort to create national uniform standards in classification and reporting, Congress instructed all fifty states and the territories to "maintain a jurisdiction-wide sex offender registry conforming to the requirements of [the Act]." *Id.* § 16912.

The AWA requires all sex offenders to register the address of their residence, school, and employment with law enforcement in their jurisdiction upon leaving prison or beginning a probationary sentence. *Id.* § 16913(a)-(b). The offender must also provide his social security number and license plate number of the time of registration, *id.* § 16914(a), and he must update any changes to that information within three business days, *id.* § 16913(c). Furthermore, the States must enact felony criminal penalties for an offender's failure to register. *Id.* § 16913(e).

The AWA also mandates a three-tiered system for sex offender classification. The law determines a sex offender's tier solely by his offense of conviction. *Id.* § 16911(2)-(4). The tier determines the frequency and duration for which the offender must verify his information with law enforcement. A Tier I offender must register annually for 15 years, a Tier II offender must register bi-annually for 25 years, and a Tier III offender must register quarterly for life. *Id.* §§ 16915, 16916.

The AWA requires all jurisdictions to publish sex offender information (other than social security numbers) on a publicly accessible Internet website. *Id.* § 16918. Jurisdictions must also notify a number of entities—the U.S. Attorney General, local law enforcement, area schools, public housing agencies, social services organizations, volunteer groups that have contact with minors, and any person or organization that requests such notification—whenever an offender registers or revises his information. *Id.* § 16921(b).

The AWA directed the States to comply within three years of the Act's effective date. *Id.* § 16924. A jurisdiction that fails to implement the AWA shall lose ten percent of its annual federal law-enforcement grant money. *Id.* § 16925(a) (citing 42 U.S.C. § 3750).

D. The General Assembly passes S.B.10 to comply with the AWA.

In June 2007, the General Assembly passed S.B.10 to align Ohio's sex offender laws with the AWA. S.B.10 imposes the same type of obligations on sex offenders—the periodic verification of personal, residency, employment, and other information with the county sheriffs—as Megan's Law did. R.C. 2950.06(A). And like the old law, S.B.10 imposes a duty on the offenders to notify the county sheriff of any changes to that information. R.C. 2950.05.

S.B.10 repealed the old Megan's Law classifications and replaced it with the three-tiered system outlined in the AWA. Each adult sex offender is assigned a tier based on his offense of conviction. As the severity of the crime increases, the offender's tier increases. R.C. 2950.01(E)-(G); see also Ohio Offense Tiers, Adam Walsh Act (attached as Exhibit A).

An offender's tier level determines the frequency and duration of his registration duties: Tier I offenders must register annually with their county sheriffs for 15 years, Tier II offenders must register bi-annually for 25 years, and Tier III offenders must register quarterly for life. R.C. 2950.06(B); R.C. 2950.07(B). The statutory classification is automatic; no judicial determinations are involved in placing an offender within a particular tier.

S.B.10 further requires victim and community notification for Tier III offenders. R.C. 2950.10(B)(1), R.C. 2950.11(F)(1). When an offender first registers with his sheriff under R.C. 2950.04, or when he changes his registration information under R.C. 2950.05, the sheriff must provide the offender's victim and certain members of the community—local law enforcement, neighbors, school districts, day care centers, children's services agencies, and certain volunteer organizations—with notice of his name, address, offense, and photograph, R.C. 2950.10, 2950.11. An offender subject to community notification may, after 20 years, file a motion to suspend the requirement. R.C. 2950.11(H).

In addition, S.B.10 retains the 1,000-foot housing restriction from the prior version of the law, but expands it to include preschools and daycare centers. R.C. 2950.034. The provision is otherwise identical to the provision reviewed by this Court in *Hyle*.

The new tier classifications became effective on January 1, 2008. S.B.10 also applies retroactively to sex offenders who, as of July 1, 2007, were subject to registration under the old system. R.C. 2950.033. For this group of some 26,000 sex offenders, the law directed the Attorney General to identify each offender's tier classification under the statute and then provide written notice of his new obligations under S.B.10. R.C. 2950.031; R.C. 2950.032. The offender could then file a petition to contest the Attorney General's determination. R.C. 2950.031(E); R.C. 2950.032(E). Furthermore, if the offender received a Tier III classification, the law permits him to contest the need for community notification, and the trial court must conduct a hearing and evaluate the merits of that request. R.C. 2950.11(F)(2).

Many sex offenders filed legal challenges, claiming that the retroactive application of S.B.10 violates several constitutional provisions: the Ex Post Facto, Contract, Double Jeopardy, Due Process, and Cruel and Unusual Punishment Clauses of the United States Constitution, the

Retroactivity and Contract Clauses of the Ohio Constitution, and separation of powers. But for a few fractured panels of the Eleventh District, the state appellate courts have repeatedly affirmed the constitutionality of S.B.10.[1] A federal district court also affirmed the constitutionality of the law under the Ex Post Facto, Due Process, and Equal Protection Clauses. See *Valentine v Strickland* (N.D. Ohio Aug. 19, 2009), No. 5:08-cv-993, Mem. Op.

STATEMENT OF CASE AND FACTS

Three sex offenders challenged their S.B.10 classifications in the Huron County Court of Common Pleas, claiming that the retroactive application of the law to their conduct violated the United States and Ohio Constitutions. The Sixth District consolidated their cases on appeal. Although the offenders' legal arguments are the same, the facts of their cases vary.

1. Christian Bodyke

Christian Bodyke pled no contest to one count of breaking and entering and one count of sexual battery. See Plea of No Contest, *State v. Bodyke*, No. CRI-99-463 (Oct. 18, 1999) (attached as Exhibit B-1). In exchange for the plea, the State agreed to drop two other charges in the indictment. *Id.* at p.3. No other promises were made—and specifically, no promises were made regarding Bodyke's offender classification. *Id.*

The trial court sentenced Bodyke to six years imprisonment on the breaking and entering count and two years imprisonment on the sexual battery count, and it ordered the terms to run concurrently. See Judgment Entry, *State v. Bodyke*, No. CRI-99-463, at p. 3 (Dec. 20, 1999)

[1] See, e.g., *Sewell v. State* (1st Dist.), No. C-080503, 2009-Ohio-872; *State v. Desbiens* (2d Dist.), No. 22489, 2008-Ohio-3375; *Holcomb v. State* (3d Dist.), No. 8-08-23, 2009-Ohio-782; *State v. Randlett* (4th Dist.), No. 08-CA-3046, 2009-Ohio-112; *Sigler v. State* (5th Dist.), No. 08-CA-79, 2009-Ohio-2010; *State v. Bodyke* (6th Dist.), No. H-07-040, 2008-Ohio-6387; *State v. Byers* (7th Dist.), No. 07-CO-39, 2008-Ohio-5051; *Gildersleeve v. State* (8th Dist.), No. 91515, 2009-Ohio-2031; *State v. Honey* (9th Dist.), No. 08-CA-0018, 2008-Ohio-4943; *State v. Gilfillan* (10th Dist.), No. 08AP-317, 2009-Ohio-1104; *State v. Swank* (11th Dist.), No. 2008-L-019, 2008-Ohio-6059; *State v. Williams* (12th Dist.), No. 2008-02-029, 2008-Ohio-6195; but see *State v. Ettenger* (11th Dist), No. 2008-L-054, 2009-Ohio-3525.

(attached as Exhibit C-1). The parties jointly stipulated that Bodyke was a "sexually oriented offender" under Megan's Law. *Id.* at p.3-4. Based on those representations, the trial court "determine[d] that [Bodyke] is a Sexually Oriented Offender" and "informed [him] of his responsibilities to register for ten (10) years verified annually." *Id.* at p.4.

2. David Schwab

David Schwab pled guilty to one count of attempted rape. See Plea of Guilty, *State v. Schwab*, No. CRI-99-256 (May 28, 1999) (attached as Exhibit B-2). No other promises were made between the parties—and specifically, no promises were made regarding Schwab's offender classification. *Id.* at p.3.

The trial court sentenced Schwab to five years imprisonment. See Judgment Entry, *State v. Schwab*, No. CRI-99-256, at p.3 (June 2, 1999) (attached as Exhibit C-2). The parties jointly stipulated that Schwab was a "habitual sex offender" under Megan's Law. *Id.* at p. 4. Based on those representations, the trial court "determine[d] that [Schwab] is an Habitual Sexual Offender" and "informed [him] of his responsibilities to register with the Sheriff of his county of residence upon his release from prison for the next twenty (20) years." *Id.* The trial court further determined that community notification was not required for Schwab. *Id.*

3. Gerald Phillips

Gerald Phillips pled guilty to one count of gross sexual imposition and one count of sexual battery. See Judgment Entry, *State v. Phillips*, No. CRI-93-630 (Nov. 23, 1993) (attached as Exhibit B-3). In exchange, the State agreed to drop three other charges in the indictment. *Id.* at p.1. No other promises were made between the parties—and specifically, no promises were made regarding Phillips' offender classification.

The trial court sentenced Phillips to two years imprisonment on the gross sexual imposition charge and three to ten years on the sexual battery charge, with the sentences to run concurrently.

See Judgment Entry, *State v. Phillips*, No. CRI-93-630, at p.1 (Jan. 28, 1994) (attached as Exhibit C-3). In 1997, Megan's Law took effect, and it applied retroactively to Phillips. The State chose not to seek a "sexual predator" designation for Phillips, and he was thereafter classified as a "sexually oriented offender." Under that classification, Phillips had to register annually with his county sheriff for ten years.

On November 26, 2007, the Attorney General notified all three men that their classification and registration duties had changed under S.B.10. Bodyke, Schwab, and Phillips were now Tier III offenders; they had to register with their county sheriff every 90 days for life, and they were now subject to community notification. The Attorney General further informed the men that they a right to challenge the Tier III classification under R.C. 2950.031(E), and that they could ask the trial court to remove the community notification requirement under R.C. 2950.11(F)(2). See Notice of New Classification and Registration Duties (Nov. 26, 2007) (attached as Exhibit D). All three filed motions to that effect.[2]

The trial court conducted a hearing. The court found that the Attorney General correctly classified Bodyke, Schwab, and Phillips as Tier III offenders under S.B.10, and it ordered them to comply with their new duties. The court, however, granted their petitions to remove the community notification requirement.

Bodyke, Schwab, and Phillips appealed the trial court's decision, but the Sixth District affirmed. The Sixth District held that "[S.B.10] is civil and remedial in nature." *Bodyke*, 2008-Ohio-6387 at ¶ 19. This finding undercut all of the offenders' constitutional clams. See *id.* ¶¶ 19-24.

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[2] Bodyke, Schwab, and Phillips were represented by the same trial counsel, and their motions and arguments with respect to S.B.10's constitutionality were identical.

ARGUMENT

All "statutes enacted in Ohio are presumed to be constitutional" and Appellants bear the difficult burden of "prov[ing] beyond that a reasonable doubt that [S.B.10] is clearly unconstitutional." *State v. Williams*, 88 Ohio St.3d 513, 521, 2008-Ohio-428. They have not done so. Appellants' invitation to invalidate S.B.10 is not only legally unsound under this Court's precedents, but perilously irresponsible. Because the General Assembly completely repealed Megan's Law, the invalidation of S.B.10 would effectively terminate *all sex offender registration and notification requirements* for the tens of thousands of convicted sex offenders like Appellants who received S.B.10 reclassifications. Such a severe outcome should not occur absent clear proof of unconstitutionality—a burden that Appellants have not met.

Attorney General's Proposition of Law No. I:

Retroactive application of S.B.10 does not violate the Ex Post Facto Clause because S.B.10 is a civil, remedial law.

The Ex Post Facto Clause of the U.S. Constitution prohibits the enactment of "'[a]ny statute which punishes as a crime an act previously committed.'" *State v. Cook*, 83 Ohio St.3d 404, 414, 1998-Ohio-291 (citation omitted). When evaluating an Ex Post Facto claim, this Court uses the "intent-effects test." *Id.* at 415. First, the Court "determine[s] whether the General Assembly . . . 'indicated either expressly or impliedly a preference for'" the civil label or the criminal label. *Id.* (citation omitted). If the legislature intended a criminal penalty, the law cannot be applied retroactively to conduct before its effective date. But if the legislature "'indicated an intention to establish a civil penalty,'" the Court then asks "'whether the statutory scheme [is] so punitive either in purpose or effect as to negate that intention.'" *Id.* (citation omitted).

Applying this two-step framework, Appellants claim that "[b]oth the purpose and the effect of S.B.10" evidence a criminal objective. (Br. 8). They are wrong. S.B.10 is a civil law, whose purpose is remedial. Therefore, the law can be applied retroactively to sex offenders like Bodyke, Schwab, and Phillips.

A. The General Assembly intended to create a civil, remedial scheme.

When determining legislative intent, this Court "look[s] to the language and purpose of the statute." *Cook*, 83 Ohio St.3d at 416; accord *Smith v. Doe* (2003), 538 U.S. 84, 92 (upholding the constitutionality of Alaska's sex offender law after examining "the statute's text and its structure to determine the legislative objective").

The General Assembly's intent to create a civil, remedial scheme is found on the face of S.B.10. The legislature declared that when "the public is provided adequate notice and information about offenders and delinquent children who commit sexually oriented offenses," they "can develop constructive plans to prepare themselves and their children." R.C. 2950.02(A)(1). It further stated that the "protection of members of the public from sex offenders . . . is a paramount governmental interest," and that "[t]he release of information about sex offenders . . . to public agencies and the general public will further [that] interest[]." R.C. 2950.02(A)(2), (A)(6). Finally, the General Assembly declared its "intent to protect the safety and general welfare of the people of this state" through S.B.10. R.C. 2950.02(B).

In *Cook*, this Court cited to nearly identical statements in Megan's Law as conclusive proof that the legislature intended to create a civil, remedial scheme. 83 Ohio St.3d at 416-17. The same conclusion must be reached here. See *Kansas v. Hendricks* (1997), 521 U.S. 346, 361 (upholding constitutionality of state Sexually Violent Predator Act and observing that "[n]othing *on the face of the statute* suggests that the legislature sought to create anything other than a civil commitment scheme designed to protect the public from harm") (emphasis added).

Appellants nevertheless argue that the General Assembly had a hidden retributive purpose that negates its stated intention to pass a civil, remedial law. First, they argue that S.B.10 is "clearly criminal" because the law is placed "squarely within Ohio's Criminal Code." (Br. 8). But this observation has no significance. Megan's Law was codified in the same code section—R.C. Chapter 2950—and it was deemed to be a civil law. Furthermore, Title 29 contains many statutes that do not involve criminal punishments. See, e.g., R.C. 2930.01 *et seq.* (Victim's Rights); R.C. 2953.01 *et seq.* (Post-Conviction Remedies); R.C. 2981.05 (Civil Forfeiture). As the U.S. Supreme Court has ruled, the codification of a sex offender law "in the State's criminal procedure code is not sufficient to support a conclusion that the legislative intent was punitive." *Smith*, 538 U.S. at 95.

Second, Appellants complain that S.B.10's tier classification is imposed at the time of sentencing and, therefore, "is part and parcel of the criminal punishment." (Br. 8). This argument is equally unpersuasive. Megan's Law also required that the trial court inform the offender of his registration obligations at sentencing. See Former R.C. 2950.03(A)(2). Because the State must provide notice to the sex offender of his obligations, "it is effective to make it part of the plea colloquy or the judgment of conviction." *Smith*, 538 U.S. at 96. That "does not render the statutory scheme itself punitive." *Id.*

Third, Appellants characterize the General Assembly's intent as punitive by virtue of the fact that S.B.10 attaches criminal penalties for an offender's noncompliance. (Br. 8). But these are not penalties for the underlying sex offense. Rather, they attach to violations of the registration laws, and require the institution of *new* criminal proceedings before punishment is imposed. See R.C. 2950.99. Megan's Law operated in the exact same fashion, imposing criminal penalties for noncompliance, see Former R.C. 2950.99, as did the sex offender law in

Smith, see 538 U.S. at 96 (noting that Alaska's law "is enforced by criminal penalties"). Both these laws were deemed to be civil, remedial schemes.

Fourth, Appellants reference a quote from Senator Lance Mason as evidence that "the General Assembly did not enact the law to protect the public," but rather to "stiffen penalties." (Br. 9). This argument is unpersuasive. Appellants have cast Senator Mason's statement in the most negative light possible. When stating that S.B.10 "stiffens penalties," Senator Mason was likely referring to the fact that S.B.10 increases the criminal penalties in R.C. 2950.99 for sex offenders who fail to comply with their registration obligations and who are then criminally prosecuted. Nothing in his floor statement suggests his belief that sex offender registration and notification itself is criminal punishment. In fact, quite the opposite. Senator Mason noted how much care the Senate had undertaken in drafting S.B.10, and that he was voting "on the side of protecting our children" and "protecting our community." Senate Session (May 16, 2007). And more important than a lone legislator's floor comment is the language of S.B.10 itself, which evidences no intent to punish, but rather to promote public safety.

Fifth, Appellants argue that the old Megan's Law classifications "were based on judicial determinations of future dangerousness," and "[t]he only possible legislative motivation" for removing that mechanism in S.B.10 "is a desire to punish persons who have committed sex offenses." (Br. 9, 11). Both this premise and this assumption are wrong. As discussed above, two of the Megan's Law classifications ("sexually oriented offender" and the "habitual sex offender" designations) were automatically imposed based on the offender's crimes of conviction. That the General Assembly has now opted to define the most severe classification, Tier III, using the offense of conviction does not demonstrate *a fortiori* a hidden retributive motive. Moreover, as the U.S. Supreme has recognized, "[t]he State's determination to legislate

with respect to convicted sex offenders as a class, rather than require individual determination of their dangerousness, does not make the statute a punishment." *Smith*, 538 U.S. at 104. There are many explanations for that decision. As the lead sponsor of S.B.10 observed, the old Megan's Law classifications were "very confusing" and "very complex" to understand, "not just to the general public . . ., but to law enforcement." Senate Session (May 16, 2007) (Statement of Sen. Austria). And it was reasonable for the legislature to believe that the most severe sex offenses in Tier III (e.g., rape, sexual battery, kidnapping of a minor for sexual activity) are probative of the offender's future dangerousness.

In fact, the impetus behind S.B.10 further underscores the General Assembly's intent to pass a civil, remedial scheme. As noted by Appellants, the General Assembly's "primary motivation" was to comply with the federal Adam Walsh Act or risk a loss of annual federal law enforcement funds. (Br. 9). In that law, Congress created national uniform standards for sex offender classification and reporting, and it then *ordered* the States to "maintain a jurisdiction-wide sex offender registry conforming to the requirements of [the Act]." 42 U.S.C. § 16912. The preamble of S.B.10 reflects this purpose: "An Act . . . to revise Ohio's Sex Offender Registration and Notification Law and conform it to recently enacted requirements of federal law contained in the Adam Walsh Child Protection and Safety Act of 2006."

The lead sponsor of S.B.10, Senator Austria, repeated that objective in his floor presentation. The purpose of the AWA was "to protect the public, in particular, protect our children, their families, their neighborhoods . . . via a more comprehensive, more nationalized system for registered sex offenders." Senate Session (May 16, 2007). He noted that the AWA "creates a national sex offender registry to ensure that law enforcement and members of the public have access to the same information across the United States." *Id.*; see also 152 Cong.

Rec. S8012 (July 20, 2006) (Statement of Sen. Hatch) ("[The Adam Walsh Act] is critical to sew together the patch-work quilt of 50 different State attempts to identity and keep track of sex offenders."). Senator Austria urged passage of S.B.10 to "bring[] Ohio into compliance with the federal Adam Walsh Child Protection and Safety Act by restructuring Ohio's sex offender registration and community notification laws . . . so that they can be consistent with federal law." Senate Session (May 16, 2007).

The General Assembly's clear objective—to protect the public and to bring Ohio's sex offender classification and notification laws into conformity with federal standards—evinces no hidden retributive purpose. The legislature was simply following a mandatory federal law that created uniform standards across the country in an effort to improve the overall efficacy of the system.

B. S.B.10 has a civil, remedial effect.

In light of the General Assembly's clear intent to create a civil, remedial law when enacting S.B.10, this Court must proceed to the second step of Ex Post Facto analysis. Here, "only the clearest proof will be adequate to show that a statute has a punitive effective so as to negate a declared remedial intention." *Cook*, 83 Ohio St.3d at 418.

When conducting this inquiry, the Court uses the seven guideposts outlined in *Kennedy v. Mendoza-Martinez* (1963), 372 U.S. 144, all of which confirm that S.B.10 is a civil law. Appellants' arguments to the contrary are nothing but conclusory, unsupported assertions.

1. S.B.10 does not impose an affirmative disability or restraint.

Appellants first observe that S.B.10 increased the frequency and period of registration for many sex offenders. (Br. 12). Appellants must now register quarterly with their county sheriff for life.

The relevant inquiry, however, turns on whether this duty constitutes an affirmative disability or restraint. Megan's Law imposed the same quarterly registration and verification obligations on offenders with a "sexual predator" classification. Former R.C. 2950.06(B)(1); Former R.C. 2950.07(B)(1) (1998). In *Cook*, this Court held that such requirements were *not* an affirmative disability or restraint: "The act of registering does not restrain the offender in any way." 83 Ohio St.3d at 418. Rather, it "is a *de minimus* administrative requirement" "comparable to renewing a driver's license." *Id.*; accord *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169, ¶ 14. It is true that S.B.10 imposes this quarterly registration requirement on a greater number of offenders, but that does not change the analysis of whether the requirement itself is an affirmative disability or restraint. Under *Cook*, this Court held that such a requirement—quarterly registration with the county sheriff for life—is not an affirmative disability or restraint.

Appellants next complain that S.B.10 restrains the housing choices of sex offenders, since the law precludes sex offenders from residing within 1,000 feet of a school, preschool, or day-care center. R.C. 2950.034. But this provision operates prospectively only. See *Hyle v. Porter*, 117 Ohio St.3d 165, 2008-Ohio-542, ¶ 24. It does not apply retroactively to Appellants or any reclassified sex offender. As such, the residency restrictions in R.C. 3950.034 are irrelevant to this inquiry. When determining whether a law violates the Ex Post Facto Clause, the inquiry looks to those provisions of the law that operate *retroactively*. See *Lynce v. Mathis* (1997), 519 U.S. 433, 441 ("To fall within the ex post facto prohibition, a law must be retrospective.").

Finally, Appellants suggest that the community notification provisions of S.B.10 constitute an affirmative disability and restraint on the offender. (Br. 12-13). As a threshold matter, S.B.10's community notification provisions do not violate *these* appellants' rights under the Ex

Post Facto Clause, because none of them is subject to community notification. In any event, this Court has already held that community notification is not an affirmative disability or restraint because "the burden of dissemination is not imposed on the defendant, but rather on law enforcement." *Cook*, 83 Ohio St.3d at 418; accord *Cutshall v. Sundquist* (6th Cir. 1999), 193 F.3d 466, 474-75 (holding that "the public notification provisions" of Tennessee's sex offender law "impose[] no restraint whatever upon the activities of a registrant").

2. S.B.10's registration and notification provisions do not resemble historical punishments.

As to the second *Kennedy* factor, Appellants contend that S.B.10's provisions resemble historical criminal punishments. They initially claim that sex offender registration laws "resemble conditions of probation or parole." (Br. 13). But the U.S. Supreme Court has squarely rejected that comparison. Registration laws are not "parallel to probation or supervised release," the Court said, because there is no ongoing supervisory element and no "supervising officer" who may "seek the revocation of probation or release in case of infraction." *Smith*, 538 U.S. at 101. Rather, any infraction must be handled in a separate prosecution. *Id.* at 102.

Appellants next complain that S.B.10's community notification provisions "resemble shaming punishments intended to inflict public disgrace." (Br. 13). This argument has several flaws. First, as discussed above, *these* appellants are not subject to community notification. As such, they cannot argue that they are being "punished" by those provisions of S.B.10.

Second, even if those provisions were at issue, they do not resemble historical shaming punishments. The community notification provision requires that sheriffs distribute certain information—the offender's name, photograph, home address, addresses of employer or school, and identity of offense—to certain members of the community when an offender relocates. R.C. 2950.10, 2950.11. The community notification provision in Megan's Law required that the *same*

information be distributed to those *same* people. See Former R.C. 2950.11(B) (2006) (notice must contain name, address of residence, employment, or school, offense of conviction, and photograph); *Cook*, 83 Ohio St.3d at 585 ("Dissemination of the information required by R.C. 2950.11 is restricted to those most likely to have contact with the offender, *e.g.*, neighbors, the director of children's services, school superintendents, and administrators of preschool and day care centers."). And this Court upheld that notification provision in *Cook* and *Ferguson*.

Third, the U.S. Supreme Court has already rejected the merits of Appellants' argument, finding that community notification laws are not analogous to historical shaming devices. In *Smith*, the Court reviewed Alaska's sex offender law, which mandated the publication of a sex offender's name, aliases, address, photograph, physical description, license plate number, employment address, date of birth, crime of conviction, date of conviction, place of conviction, and length of sentence. 538 U.S. at 91. Rejecting the comparison to shaming, the Court held that "our system does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment." *Id.* at 98. The Court then found that "[t]he purpose and the principal effect of notification are to inform the public for its own safety, not to humiliate the offender." *Id.* at 99. "Although the public availability of the information may have a lasting and painful impact on the convicted sex offender," the Court concluded that "these consequences flow not from the Act's registration and dissemination provisions, but from the fact of conviction, already a matter of public record." *Id.* at 101. (It further observed that "the use of routine background checks by employers and landlords" would have uncovered the offender's criminal record anyway. *Id.* at 100.).

This Court has likewise reviewed and rejected the public shaming analogy. In *Cook*, the Court noted that although the dissemination of truthful information from a public criminal record

"is obviously detrimental to the reputation of the defendant," it "'has never been regarded as punishment when done in furtherance of a legitimate governmental interest.'" *Cook*, 83 Ohio St.3d at 419 (citation omitted); accord *Cutshall*, 193 F.3d at 475 ("Dissemination of information is fundamentally different from traditional forms of punishment."). The Court repeated that conclusion in *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824: "[T]he General Assembly's purpose for requiring the dissemination of an offender's information is the belief that education and notification will help inform the public so that it can protect itself." *Id.* ¶ 38. Such "'[w]idespread public access is necessary for the efficacy of the scheme,'" and any "'attendant humiliation is but a collateral consequence of a valid regulation.'" *Id.* (quoting *Smith*, 538 U.S. at 99).

3. S.B.10 does not contain a scienter requirement.

Appellants do not address the third *Kennedy* factor, which asks whether there is a "scienter requirement indicated in [the law]" itself. *Cook*, 83 Ohio St.3d at 419; see also *Cutshall*, 193 F.3d at 475 (scienter requirement must be found in the statute "on its face"). The language of S.B.10, like its predecessors, contains no scienter requirement.

4. S.B.10 does not promote the traditional aims of punishment.

As to the fourth *Kennedy* factor, Appellants claim that S.B.10 furthers the traditional aims of punishment—retribution and deterrence. They argue that, "[b]y placing offenders into tiers based on the offenses of conviction, and without reference to the likelihood that they will commit other sexual offenses, the General Assembly attempts both to punish the offenders and, prospectively, to deter the commission of other crimes by them." (Br. 14.) "Automatic classification," they contend, "is simple retribution." (Br. 14.)

Appellants ignore two key facts. First, the U.S. Supreme Court has approved the use of such automatic classifications for sex offenders: "The State's determination to legislate with

respect to convicted sex offenders as a class, rather than require individual determination of their dangerousness, does not make the statute a punishment under the Ex Post Facto Clause." *Smith*, 538 U.S. at 104. Second, Megan's Law employed automatic classifications for two of its three designations. Any individual convicted of a "sexually oriented offense" was automatically classified as a "sexually oriented offender," and any offender with a prior history of sexually oriented offenses was automatically classified as a "habitual sex offender." Former R.C. 2950.01(B),(D). There were no individualized judicial determinations for these two Megan's Law classifications; the trial court "'merely engage[d] in the ministerial act of rubber-stamping the registration requirement on the offender.'" *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169, ¶ 16 (citation omitted). By these measures, offense-based classification of sex offenders is well established in constitutional jurisprudence as an appropriate remedial tool.

To be sure, S.B.10's registration and notification procedures (like those in Megan's Law) have some collateral deterrent effect. Nevertheless, "'the mere presence of a deterrent purpose'" does not transform a valid regulatory scheme into a criminal punishment. *Smith*, 538 U.S. at 102 (quoting *Hudson v. United States* (1997), 522 U.S. 93, 105). As this Court has noted, any deterrent effect from sex offender registration and notification is minimal when juxtaposed with the deterrent effect of traditional criminal punishments. *Cook*, 83 Ohio St.3d at 420. In this case, Ohio law provides for a potential five-year sentence on a sexual battery charge and a ten-year sentence on a rape charge.

5. Any punishment under S.B.10 flows from a new violation.

Appellants do not discuss the fifth *Kennedy* factor, which asks whether S.B.10 applies to behavior that is already a crime. The decisions in *Smith* and *Cook* foreclose their reliance on this factor. It is true that "[t]he regulatory scheme applies only to past conduct, which was, and is, a crime." *Smith*, 538 U.S. at 105. But S.B.10 does not impose new punishment on that past

conduct. Rather, "[t]he obligations the statute imposes are the responsibility of registration, a duty not predicated upon some present or repeated violation." *Id.* And "any . . . punishment flows from a failure to register, a new violation of the statute, not from a past sex offense." *Cook*, 83 Ohio St.3d at 421; accord *Cutshall*, 193 F.3d at 476.

6. S.B.10 serves the remedial purpose of protecting the public.

Appellants also do not address the sixth *Kennedy* factor—whether S.B.10 serves a remedial purpose. And for good reason. The U.S. Supreme Court has concluded that sex offender laws advance "a legitimate nonpunitive purpose of 'public safety, which is advanced by alerting the public to the risk of sex offenders in their community.'" *Smith*, 538 U.S. at 102-03 (citation omitted); accord *Cutshall*, 193 F.3d at 476 (sex offender laws "aid law enforcement and protect the public"). This Court in *Cook* likewise recognized that sex offender registration "allows local law enforcement to collect and maintain a bank of information on offenders" and that community notification "allow[s] dissemination of relevant information to the public for its protection." 83 Ohio St.3d at 421. In *Ferguson*, the Court re-emphasized that sex offender registration and notification helps protect and educate the public. See 2008-Ohio-4824, ¶¶ 35-38.

S.B.10 advances an additional remedial purpose not found in the old Megan's Law—it ensures that Ohio's system is coordinated at the national level with all the other states. Under the old regimes, States were losing track of sex offenders due to a lack of coordination and standards among their different registration systems. See 152 Cong. Rec. S8012 (July 20, 2006) (Statement of Sen. Hatch). Congress passed the AWA in an effort "sew together the patch-work quilt of 50 different State attempts to identity and keep track of sex offenders." *Id.* at 8013. It created uniform standards for sex offender registration and community notification, 42 U.S.C. §§ 16913-16918, 16921, and it established one national repository within the Department of Justice, *id.* § 16919. S.B.10 therefore advances a legitimate nonpunitive purpose of complying

with those federal standards, thereby enhancing the efficacy of Ohio's own registration and notification system.

7. S.B.10 is not excessive in relation to that purpose.

The seventh *Kennedy* factor asks whether the provisions of S.B.10 are excessive in relation to the law's remedial purpose. This "is not an exercise in determining whether the legislature has made the best choice possible to address the problem it seeks to remedy," but "whether the regulatory means chosen are reasonable in light of the nonpunitive objective." *Smith*, 538 U.S. at 105. Appellants do not explicitly address this factor, nor do they identify the provisions in S.B.10 that are purportedly excessive.

This Court has already endorsed periodic registration for sex offenders, and S.B.10 employs such a mechanism. A lifetime registration requirement is needed "to monitor the whereabouts of the most dangerous classification of sexual offender." *Cook*, 83 Ohio St.3d at 421. Shorter registration periods are appropriation for lesser crimes. *Id.* at 422. Further, the registration requirement in S.B.10 is not excessive in relation to that purpose. The law uses that same "*de minimus* administrative requirement" as Megan's Law, requiring the offender to appear in person at the county sheriff's office at periodic intervals. *Cook*, 83 Ohio St.3d at 418. And S.B.10 does not stray above the maximum ceiling—quarterly registration with the county sheriff—upheld in *Cook*.

Community notification advances a different purpose; it fosters community awareness and it empowers individuals, parents, and neighborhoods to take precautions as they so desire. See *Ferguson*, 2008-Ohio-4824 at ¶ 38 ("[E]ducation and notification will help inform the public so that it can protect itself."); accord R.C. 2950.02(A)(1) ("[M]embers of the public and communities can develop constructive plans to prepare themselves and their children."). This Court has already held that community notification is not excessive in relation to that purpose if

it is "restricted to those most likely to have contact with the offender." *Cook*, 83 Ohio St.3d at 422. The community notification provisions in S.B.10 are limited in just that way. Notification is provided to neighbors, children's services agencies, local schools, day-care centers, local law enforcement, and area children's volunteer organizations. R.C. 2950.11(A)(1). Furthermore, S.B.10 allows reclassified sex offenders like Appellants to petition for the immediate removal of community notification. R.C. 2950.11(F)(2). All three Appellants here exercised that option, and the trial court removed their community notification requirements. Accordingly, the community notification provisions in S.B.10 are properly tailored.

Finally, the General Assembly's decision to adopt an automatic classification system in S.B.10 was prompted by federal legislation. As discussed above, Congress sought to standardize sex offender classification across the fifty states in an effort to facilitate coordination in tracking and registering sex offenders. A key aspect of that effort was a congressionally mandated offense-based classification system. See 42 U.S.C. § 16911.

The U.S. Supreme Court has approved the use of automatic classification so long as it employs "reasonable categorical judgments" about the "particular regulatory consequences" that attach to a conviction for a specified sex crime. *Smith*, 538 U.S. at 103. The categorical judgments in S.B.10 are indeed "reasonable." The tiers are commensurate with the severity of the offender's conduct: Tier I consists of lesser offenses (e.g., importuning, voyeurism, pandering), Tier II consists of more serious offenses (e.g., compelling prostitution, pandering involving a minor, illegal use of a minor for nudity-oriented material), and Tier III consists of the most severe crimes (e.g., rape, sexual battery, aggravated murder with sexual motivation, kidnapping of a minor for sexual activity). See Ohio Offense Tiers (attached as Exhibit A). As

the severity of the crime increases, the registration period lengthens. That is an eminently logical correlation.

In short, because the tiers in S.B.10 are reasonably calibrated to an offender's level of dangerousness, the law is not unconstitutionally excessive.

C. Amici's policy arguments do not change the analysis under the *Kennedy* factors.

Two groups of amici, led by the Ohio Public Defender ("OPD") and the Iowa Coalition Against Sexual Assault ("Iowa Coalition"), argue that sex offender registration and notification will not reduce recidivism and will result in a number of adverse consequences to sex offenders.

Two overriding deficiencies undercut their analyses. First, they "urge this Court to consider not just the words of the statute" when determining whether S.B.10 is a civil, remedial law or a criminal punishment. (OPD Br. 9). But that is exactly how the inquiry works. The seven *Kennedy* factors "must be considered in relation to the statute on its face." *Kennedy*, 372 U.S. at 169. Amici's reliance on statistical data and social science research is not relevant for deciding whether a retroactive law is civil or criminal.

Second, amici present many broad claims that sex offender registration and notification laws do not reduce recidivism or protect public safety. Most of their criticisms are not tailored to S.B.10, but to sex offender registration and notification laws in general. As such, they are asking this Court not just to invalidate S.B.10, but to revisit its decisions in *Cook* and *Ferguson*. See OPD Br. 14 ("Amici urge this Court to adopt Justice Lanzinger's well-reasoned dissent in *Ferguson*."). This invitation is deficient on its face, as amici do not discuss (much less identify) any of the factors for overruling an earlier precedent of this Court. See *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, ¶ 48.

Even setting aside these threshold problems, amici's specific arguments are unpersuasive.

1. The OPD's collateral consequences argument is not relevant to whether S.B.10 is a civil or criminal law.

The OPD urges the Court to consider "the damaging effects . . . from the widespread dissemination of [an individual's] status as a registered sex-offender to the community." (Br. 8). It first offers statistics showing that sex offenders have difficulty locating housing because federally funded landlords are prohibited from renting to them, and private landlords do not want to rent to them. (OPD Br. 9-10). It then describes how "[b]eing publicly identified through online registries (i.e., E-SORN) as a sex offender can restrict employment." (Br. 10-11).

This argument is without relevance. S.B.10 does not itself restrict Appellants from any housing or employment opportunity.[3] And any collateral consequences from a sex offender registration and notification law "flow not from the Act's registration and dissemination provisions, but from the fact of conviction, already a matter of public record." *Smith*, 538 U.S. at 101. As the U.S. Supreme Court has held, the "dissemination of truthful information in furtherance of a legitimate governmental objective" is not "punishment." *Id.* at 98; see also *Cook*, 83 Ohio St. 3d at 419 (same). Furthermore, the OPD presents no evidence that these hardships would abate if S.B.10 is repealed. Indeed, many landlords and employers ask prospective applicants whether they have prior felony convictions or require applicants to pass a criminal background check. Either way, a landlord or employer would easily locate information about an applicant's criminal history because it is already in the public domain. *Smith*, 538 U.S. at 100; see also *Cook*, 83 Ohio St. 3d at 413 ("[A] conviction has always been public record.").

The OPD also references several unfortunate instances of private vigilantism against registered sex offenders in New York, New Jersey, and Washington. (Br. 12-13). But it provides no evidence of a systemic problem in Ohio, nor does it establish that law enforcement is

[3] S.B.10's housing restriction has prospective application only. See *Hyle*, 2008-Ohio-542.

either unable or unwilling to respond to such problems when they occur. Additionally, the cited instances occurred under the old Megan's Law regimes of the other states. Therefore, the OPD's argument is not tailored to S.B.10 at all, but is an argument that all sex offender registries and community notification laws are unconstitutional due to the risk that someone might use the information for criminal activity. There is no legal support for that position.

2. The Iowa Collation's empirical claims are flawed, unsupported, and irrelevant to whether S.B.10 is a civil or criminal law.

The Iowa Coalition attempts to cast doubt on the effectiveness of sex offender registration and notification laws generally, and S.B.10's offense-based approach specifically. These policy arguments are neither persuasive nor pertinent to the question at hand, which is whether S.B.10 is a criminal or civil law under the *Kennedy* factors.

First, the Iowa Coalition argues that S.B.10 "creates needless significant burdens on law enforcement" and "affects the usefulness of the sex offender database" due to the significant numbers of individuals who are Tier III sex offenders. (Br. 5, 7). It does not identify the relevance of these claims. The General Assembly is tasked with weighing the relative benefits and burdens on a particular statute on law enforcement. Moreover, the Attorney General is the State's chief law officer and views S.B.10 as vital to protecting Ohio's citizens, and not as creating "needless significant burdens" on law enforcement.[4]

Second, the Iowa Coalition argues that the offense-based classification system in S.B.10 is irrational because it may place certain high-risk sexual offenders into low offense tiers. (Br. 6). The Coalition offers no evidence to demonstrate that this has actually occurred. And even if there is a possibility that S.B.10 might not identify every single high-risk offender, the General Assembly could have rationally decided that the benefits of an offense-based system—notably,

[4] The Iowa Coalition's argument is premised on a belief that it cost the State $18.6 million to implement S.B.10. (Br. 5 n.2). That figure is incorrect. The true cost was $ 406,308.

that aligning Ohio's system with federal standards would improve the reliability of the system and allow coordination with other states—outweighed that speculative risk.

Third, the Iowa Coalition asserts that community notification laws are "antithetical" to public policy because "the stresses of notification (shame, isolation, anxiety, and depression) can trigger recidivism in some offenders" and drive other "offenders underground." (Br. 8). Again, these are policy arguments. The Coalition also ignores the fact that S.B.10 contains an important safety valve. Under R.C. 2950.11(F)(2), reclassified offenders like Appellants can petition for removal of community notification, and in fact, all three appellants here did so, and the trial court granted their requests. The inclusion of this safety valve further demonstrates that, in retroactively applying S.B.10 to offenders like Appellants, the General Assembly enacted a remedial law, carefully balancing the interests of the offender with those of the community.

Fourth, the Iowa Coalition argues that sex offender laws "miss the heart of the problem of sex-based crimes: protecting potential victims from attackers that they know." (Br. 10). To the contrary, Ohio's sex offender laws strike at the heart of that problem. Amici observe that "the vast majority (79%) of recidivists selected victims with whom they had a previous relationship—whether social or biological." (Br. 10). But this statistic hardly counsels *against* sex offender laws; it affirms their utility. By providing notice that a registered sex offender is living in their community, S.B.10 allows neighbors, parents, and children to refrain from developing a social relationship with the offender if they so choose.

Fifth, the Iowa Coalition presents several studies to support its assertion that sex offenders do not have disproportionably high recidivism rates. There are multiple flaws in that presentation, notably its disregard of *Ferguson*. In that case, the Court acknowledged a vigorous ongoing dispute about sex offender recidivism, but emphasized that "[o]ur role is not to

determine which view is the better-reasoned or more empirically accurate one, or to judge the wisdom of the General Assembly's conclusions about the debate." *Ferguson*, 2008-Ohio-4824 at ¶7 n.2.

The Coalition's statistical claims are equally flawed. It relies on multiple studies highlighting low re-arrest or re-incarceration rates for sex offenders. (Br. 10-11). But it is well documented that "official arrest rates do not reflect the actual number of acts committed by any paraphilic individual." *Dangerous Sex Offenders: A Taskforce Report of the American Psychiatric Association* (1999), at 132-33. Indeed, "[t]here is very little disagreement among researchers that official records of sexual offenses are *gross underrepresentations* of the actual number of crimes that are committed." *Id.* at 132 (emphasis added). Furthermore, the Coalition's cited studies were published between 1998 and 2009, when sex offender registration and notification laws *were in wide effect across the county*. A reasonable observer might conclude that those laws contributed to a decrease in sex crimes, and that conclusion is supported by empirical research. See J.J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?* (2008), at 4 ("The registration of released sex offenders alone is associated with a significant decrease in the frequency of crime. . . . due primarily to reductions in attacks against 'local' victims who are known to an offender (i.e., a family member, friend, acquaintance, or neighbor)."). Finally, the Coalition also ignores other studies showing higher recidivism rates. See *Smith*, 538 U.S. at 106; *Dangerous Sex Offenders*, at 136-45 (summarizing different studies). This does not necessarily resolve the debate, but it certainly confirms why such disputes are properly left to the legislature. See *Ferguson*, 2008-Ohio-4824 at ¶ 7 n.2 ("Our role is not to determine which view is the better-reasoned or more

empirically accurate one, or to judge the wisdom of the General Assembly's conclusions about the debate.").

Finally, even if one blindly accepts the Coalition's main study indicating "a 14% recidivism rate among all sex offenders," (Br. 10), the implications are still staggering. Of the 18,568 registered sex offenders in the Ohio sex offender database as of September 1, 2009, this recidivism rate would mean an additional 2,600 sex offenses across Ohio from this population. For these reasons, the General Assembly was certainly entitled to decide that sex offender recidivism is still a serious issue, and that sex offender registration and notification are appropriate responses.

The General Assembly declared its intent in S.B.10 to create a civil, remedial scheme "to protect the safety and general welfare of the people of this state" from sexually abusive behavior. R.C. 2950.02(B). As this Court has stated, "only the clearest proof will be adequate" under the *Kennedy* factors "to negate a declared remedial intention" and "show that a statute has a punitive effect." *Cook*, 83 Ohio St.3d at 418. Appellants have failed to meet that burden here. S.B.10 aligns Ohio's sex offender registration and notification laws with mandatory federal standards, and it uses the same type of registration and notification tools deployed in Megan's Law and approved in *Cook*, *Ferguson*, and *Smith*. As such, S.B.10 is a civil law, and it can be retroactively applied to sex offenders like Bodyke, Schwab, and Phillips.

Attorney General's Proposition of Law No. II:

Retroactive application of S.B.10 does not violate the Retroactivity Clause of the Ohio Constitution because the law is remedial, not substantive or punitive.

The Retroactivity Clause of the Ohio Constitution provides that "[t]he general assembly shall have no power to pass retroactive laws." Ohio Const., Art. II, § 28. When evaluating a Retroactivity Clause claim, the Court first determines "whether the General Assembly expressly

made the statute retroactive." *Hyle v. Porter*, 117 Ohio St.3d 165, 2008-Ohio-542, ¶ 8. If so, then the Court assesses "whether the statutory restriction is substantive or remedial in nature." *Id.*

There is no question that the General Assembly intended for the registration and notification requirements in S.B.10 to apply retroactively to sex offenders who, as of July 1, 2007, were subject to registration under the old system. R.C. 2950.033. The question, then, is whether S.B.10 is remedial or substantive. *Cook*, 83 Ohio St.3d at 411. A remedial law does not violate Article II, § 28 of the Ohio Constitution, even if applied retroactively. *Id.*

A statute is "'substantive' if it impairs or takes away vested rights, affects an accrued substantive right, imposes new or additional burdens, duties, obligation or liabilities as to a past transaction, or creates a new right." *Id.* A statute is "remedial" if it "affect[s] only the remedy provided" or "merely substitutes[s] a new or more appropriate remedy." *Id.* This Court has found that the Retroactivity Clause "does not prohibit all increased burdens; it prohibits only increased *punishment*," *Ferguson*, 2008-Ohio-4824 at ¶ 39 (emphasis added), and therefore, to the extent it has already been demonstrated that S.B.10 is civil, not criminal, it does not violate the Retroactivity Clause.

As explained above, the General Assembly's intent to create a civil, remedial scheme is plain on the face of S.B.10. See Prop. of Law No. I, A. The legislature's intent was to provide the public with "adequate notice and information" about sex offenders so that they can develop "constructive plans to prepare themselves and their children." R.C. 2950.02(A)(1). Also, "[i]t is presumed that the General Assembly is fully aware of any prior judicial interpretation of an existing statute when enacting an amendment." *Ferguson*, 2008-Ohio-4824 at ¶ 22 (quotation and citation omitted). Certainly, the General Assembly was aware that this Court previously

found that the purpose behind the registration and notification requirements in R.C. Chapter 2950 is remedial, not substantive or punitive. See *Cook*, 83 Ohio St.3d at 411-14. Indeed, in the face of this Court's precedent finding that R.C. Chapter 2950 is remedial in nature, the General Assembly reiterated that intent in S.B.10, making only procedural, non-substantive changes to the language in R.C. 2950.02.

Appellants contend that the law is unconstitutionally retroactive because it effectuates a change in sex offender classification and in the duration and frequency of their reporting requirements. (Br. 16). But even beyond the General Assembly's express intent that S.B.10 is civil and remedial, not substantive or punitive, this Court has already considered Appellants' arguments and rejected them.

First, this Court has already held that reclassifying a sex offender does not affect a vested right or relate to a prior transaction. *Cook*, 83 Ohio St.3d at 411-12. Both Megan's Law and S.B.10 involve a three-tier system; accordingly, there has been no change in the number of classifications. More importantly, mere *re*-classification does not affect a vested right or relate to a prior transaction because, "'except with regard to constitutional protections against *ex post facto* laws . . . felons have no reasonable right to expect that their conduct will never thereafter be made the subject of legislation.'" *Id.* at 412 (quoting *State ex rel. Matz v. Brown* (1988), 37 Ohio St.3d 279, 281-82) (emphasis omitted). Moreover, an offender's classification is simply "a collateral consequence of the offender's criminal acts rather than a form of punishment per se," and there is no "reasonable expectation of finality in a collateral consequence." *Ferguson*, 2008-Ohio-4824 at ¶ 34. Absent such an expectation, the Retroactivity Clause is not implicated. *Id.*

Second, the fact that S.B.10 imposes additional registration requirements on Appellants does not render the law substantive. Indeed, this Court has already rejected the retroactivity

challenge mounted here, where "the frequency and duration of the registration requirements have changed." *Cook*, 83 Ohio St.3d at 411. As this Court properly stated in *Cook*, "it is generally true that laws that relate to procedures are ordinarily remedial in nature." *Id.* Modifying an offender's registration and verification requirements are simply procedural changes, and registration and residency verification are "*de minimis* procedural requirements that are necessary to achieve the goals of" the registration structure. *Id.* at 412. In *Cook*, as here, "[f]requency of registration ha[d] increased to, in some cases, once every ninety days. Duration ha[d] increased from ten years to, in some cases, life." *Id.* (citations omitted). These increases were constitutional. Indeed, in *Cook*, an increase to quarterly registration for life—the exact same increase in the registration requirement for Appellants here—was held to be strictly remedial in nature and therefore not in violation of the ban on retroactive laws in Article II, § 28 of the Ohio Constitution. Appellants offer no basis for this Court to revisit that ruling.

Attorney General's Proposition of Law No. III:

Retroactive application of S.B.10 does not violate the separation of powers principle because it does not disturb or upset a previous judicial determination.

Appellants next argue that S.B.10 violates separation of powers because it "vacates existing court judgments regarding sex offenders' classifications, and reverses final court judgments setting the duration of registration." (Br. 18). This, they say, "unconstitutionally infring[es] on the powers of the judicial branch." (Br. 17).[5]

This reasoning misinterprets both the separation of powers doctrine, and the role of the courts in administering the old Megan's Law framework. "[I]t is a judicial function to hear and

[5] This claim has been accepted by a few fractured Eleventh District panels. See *State v. Ettenger* (11th Dist.), No. 2008-L-54, 2009-Ohio-3525, ¶ 92 (Grendell, J., concurring in judgment); but see *State v. Swank* (11th Dist.), No. 2008-L-19, 2008-Ohio-6059, ¶¶ 98-100 (no separation of powers violation). All other districts have rejected these claims. See, e.g., *State v. Coburn* (4th Dist.), No. 08-CA-3062, 2009-Ohio-632, ¶ 18; *State v. Byers* (7th Dist.), No. 07-CO-39, 2008-Ohio-5051, ¶ 73; *State v. Williams* (12th Dist.), No. 2008-02-29, 2008-Ohio-6195, ¶ 102.

determine a controversy between adverse parties, to ascertain the facts, and applying the law to the facts, to render a final judgment." *Fairview v. Giffee* (1905), 73 Ohio St. 183, 190. Once a court adjudicates a controversy between two parties and issues a final judgment, the General Assembly cannot legislatively disturb that judgment.

To show an infringement on judicial powers, Appellants must establish that S.B.10 disturbs or upsets a final judgment, and they cannot. Under the previous Megan's Law regime, all three Appellants were "automatically classified" as sex offenders upon their convictions. *Hayden*, 2002-Ohio-4169 at ¶ 15. Bodyke and Phillips were "sexually oriented offenders" by virtue of their convictions for a sexually oriented offense, and Schwab was a "habitual sex offender" by virtue of his conviction for a sexually oriented offense and his criminal record. The trial court took no evidence and made no legal determinations during this process, nor could it impose a greater or lesser classification because, under Megan's Law, Appellants' classifications "attache[d] as a matter of law." *Id.* at ¶ 18. Or, as this Court described the process, the trial court "'merely engage[d] in *the ministerial act* of rubber-stamping the registration requirement on the offender.'" *Id.* at ¶ 16 (emphasis added).

Therefore, when the trial court originally informed Bodyke, Schwab, and Phillips of their Megan's Law classifications, the court was engaged in "a ministerial, not a judicial function." *State v. Warner* (1990), 55 Ohio St.3d 31, 45. As such, Appellants cannot show that the legislature "improperly interfere[d] with the exercise of a court's judicial functions" when it adopted a new classification system in S.B.10. *State v. Hochhausler* (1996), 76 Ohio St.3d 445, 464.

Attorney General's Proposition of Law No. IV:

Retroactive application of S.B.10 does not violate double jeopardy because it does not impose a second criminal punishment.

Appellants next claim that the retroactive application of S.B.10 violates double jeopardy because their new "registration and notification requirements operate as a second punishment." (Br. 20). That is wrong.

The Double Jeopardy Clause protects against three events: (1) "a second prosecution for the same offense after acquittal," (2) "a second prosecution for the same offense after conviction," and (3) "multiple punishments for the same offense." *North Carolina v. Pearce* (1969), 395 U.S. 711, 717. S.B.10 does not authorize a second prosecution for an offender's past crimes. Therefore, the sole question for this Court is whether S.B.10 imposes a second criminal punishment on sex offenders like Bodyke, Schwab, and Phillips. See *State v. Williams*, 88 Ohio St.3d 513, 528, 2000-Ohio-428 ("The threshold question in a double jeopardy analysis . . . is whether the government's conduct involves criminal punishment.").

When determining whether a law imposes a second *criminal* punishment under the Double Jeopardy Clause, courts use the seven-factor test outlined in *Kennedy v. Mendoza-Martinez*, 372 U.S. at 165-69. These are the same seven factors employed in the Ex Post Facto inquiry under Proposition No. I. Therefore, Appellants' double jeopardy claim hinges on the merits of their Ex Post Facto claim. As the Attorney General explained above, S.B.10 is a civil, remedial law under the seven *Kennedy* factors, and for those reasons—which the Attorney General incorporates here by reference—Appellants' double jeopardy claim fails.

Attorney General's Proposition of Law No. V:

Retroactive application of S.B.10 is not cruel and unusual punishment, nor does it violate the Due Process Clause.

Appellants raise the novel argument that sex offender registration and notification constitutes cruel and usual punishment because they are "excessive sanctions." (Br. 22).

Appellants' claim has no merit because they cannot show that sex offender registration and community notification are "punishments," much less "cruel and unusual punishments." First, "the original design of the Cruel and Unusual Punishments Clause was to limit *criminal* punishments." *Ingraham v. Wright* (1977), 430 U.S. 651, 668 (emphasis added). As discussed above, Appellants cannot establish that S.B.10 is a "criminal" law under the *Kennedy* factors. Nor have they cited any authority to support an extension of that prohibition beyond the criminal sphere.

Second, Appellants have not cited any support for the claim that sex offender registration and community notification requirements are "cruel and unusual." It is well established that, "[o]utside the context of capital punishment, successful challenges to the proportionality of particular sentences have been exceedingly rare." *Rummel v. Estelle* (1980), 445 U.S. 263, 272. If a State can sentence a defendant convicted of felony theft to life imprisonment, see *id.* at 266; *Ewing v. California* (2003), 538 U.S. 11, 19-20, then Ohio can require convicted sex offenders like Appellants to appear four times a year at their county sheriff's office as part of a civil, remedial scheme of protecting the public.

Appellants also argue that S.B.10 is "arbitrary and capricious in violation of the Due Process Clause of the Fourteenth Amendment." (Br. 23). As a procedural matter, Appellants have not preserved this claim. They did not raise an arbitrary and capricious argument in their merit briefs to the Sixth District, nor did they include it in their jurisdictional memoranda to this

Court. On the merits, the claim fares no better. Appellants do not assert an entitlement to strict scrutiny. Rather, the claim is subject to the rational basis standard, under which this Court "grant[s] substantial deference to the predictive judgment of the General Assembly." *Williams*, 88 Ohio St.3d at 531. S.B.10 passes muster under that low threshold. The State has a legitimate governmental interest in "protecting the general public from released sex offenders," *Cook*, 83 Ohio St.3d at 421, and S.B.10's registration and notification provisions unquestionably advance that interest because "the dissemination of an offender's information . . . will help inform the public so that it can protect itself," *Ferguson*, 2008-Ohio-4824 at ¶ 38.

Attorney General's Proposition of Law No. VI:

Retroactive application of S.B.10 does not impair the obligation of contracts.

In their final proposition of law, Appellants contend that reclassifying sex offenders who pled guilty or no contest unconstitutionally impairs the obligation of contracts. (Br. 23). According to Appellants, when a defendant enters a plea agreement that specifies his sentence or classification, the State has a constitutional obligation to ensure that his registration requirements never change from those in effect at the time of the plea. Appellants' arguments fail for multiple reasons.

First and foremost, none of the Appellants entered into a plea agreement that contemplated *anything* about his registration obligations. Both Bodyke and Phillips received only the State's agreement to drop other charges in exchange for their pleas, and Schwab pled guilty without *any* return promise from the State whatsoever. See Bodyke Plea of No Contest, at p.3 (attached as Exhibit B-1); Schwab Plea of Guilty, at p.1, (attached as Exhibit B-2); Phillips Judgment Entry, at p.1 (attached as Exhibit B-3). Simply put, nowhere do any of the plea documents provide *any* guarantees about Appellants' registration obligations. Therefore, no Appellant possesses any "contract" on which to base a claim under the Contracts Clauses. *State ex rel. Horvath v. State*

Teachers Retirement Bd. (1998), 83 Ohio St.3d 67, 78 (no violation of state or federal Contract Clauses where no contractual rights are present).

Nor is there a basis for claiming that, because of the offender-classification system in existence at the time of the Appellants' pleas, the State "implied" that the Defendants' registration requirements would not change. Courts do not "imply" terms of a plea agreement. See *United States v. Benchimol* (1985), 471 U.S. 453, 456. "In order to declare the existence of a contract, both parties must consent to its terms, there must be a meeting of the minds of both parties; and the contract must be definite and certain." *Episcopal Retirement Homes v. Ohio Dept. of Indus. Relations* (1991), 61 Ohio St.3d 366, 369 (internal citations omitted). Without express terms stipulating to unalterable registration requirements, there simply is no contract as to the registration requirements. And where there is no contract, there can be no claim that a contract was impaired.

Despite the lack of a contract—either express or implied—as to the Appellants' future registration obligations, Appellants contend that reclassification under S.B.10 breaks the terms of their plea agreements. In support, they argue that "'the law in effect at the time a plea agreement is entered is part of the contract.'" (Br. 23) (citation omitted). That is true enough, but the law in effect at the time of Appellants' plea agreements contained no provision guaranteeing that the registration and notification requirements were not subject to future amendment. See *Sigler v. State* (5th Dist.), No. 08-CA-79, 2009-Ohio-2010, ¶ 84. "[E]xisting laws [are] read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order." *El Paso v. Simmons* (1965), 379 U.S. 497, 508. The "sovereign power" retained includes the power to amend the law, especially when, as here, the amendments are deemed necessary to protect the

general welfare of the people and where they are civil and remedial in nature, not criminal or punitive. See *id.* at 508-09. Thus, the State acted fully within its power—and without trenching on Appellants' contractual rights—when it passed S.B.10 and reclassified Appellants under the new system.

In short, the State never promised Appellants that their registration requirements would remain unaltered. Nor did the former statutory regime guarantee that Appellants' registration requirements were cemented for all time by the law in effect at the time of their plea. Indeed, this Court has said that "'felons have no reasonable right to expect that their conduct will never thereafter be made the subject of legislation.'" *Cook*, 83 Ohio St.3d at 412 (citation and emphasis omitted). It follows, then, that because nothing about the plea agreements or the laws previously in effect gave Appellants a "'reasonable expectation of finality'" as to their registration requirements, Appellants have no basis for claiming that they had a contract that the State unconstitutionally impaired. *Id.* (citation omitted).

CONCLUSION

For all of the foregoing reasons, the Court should affirm the decision below.

Respectfully submitted,

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I certify that a copy of the foregoing Merit Brief of *Amicus Curiae* Ohio Attorney General Richard Cordray in Support of Appellant State of Ohio was served by U.S. mail this 1st day of September, 2009, upon the following counsel:

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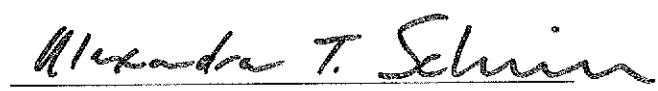

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EXHIBIT A

OHIO OFFENSE TIERS

TIER 1

1. **2907.07** Importuning
2. **2907.04** Unlawful Sexual Conduct with a Minor, non-consensual and offender less than 4 years older than victim, not previously convicted of 2907.02, 2907.03, or 2907.04, or former 2907.12 (FSP)**
3. **2907.08** Voyeurism
4. **2907.06** Sexual Imposition
5. **2907.05 (A)(1)-(3), (5)** Gross Sexual Imposition
6. **2907.323 (A)(3)** Illegal Use of a Minor in Nudity-oriented Material or Performance
7. **2905.05 (B)** Child Enticement with sexual motivation *{new under SB 10}*
8. **2907.32** Pandering Obscenity
9. **2903.211 (A)(3)** Menacing by Stalking with sexual motivation *{new under SB10}*
10. **2905.03(B)** Unlawful Restraint with sexual motivation *{new under SB 10}*
11. Includes an attempt, complicity or conspiracy to commit any of these offenses
12. Child-victim offender not in Tier II or III.

TIER 2

1. **2907.21** Compelling Prostitution
2. **2907.321** Pandering Obscenity Involving a Minor
3. **2907.322** Pandering Sexually Oriented Material Involving a Minor
4. **2907.323 (A)(1) and (2)** Illegal Use of a Minor in Nudity-oriented Material or Performance
5. **2907.04** when offender is at least 4 years older; or when the offender is less than 4 years older and has prior conviction for 2907.02, 2907.03, 2907.04, or former 2907.12 (FSP)
6. **2907.05 (A)(4)** Gross Sexual Imposition victim under 13
7. **2919.22 (B)(5)** Child Endangering
8. **2905.01 (A)(1)-(3), (5)** Kidnapping with sexual Motivation
9. **2905.01 (A)(4)** Kidnapping victim over 18
10. **2905.02 (B)** Abduction with sexual motivation *{new under SB 10}*
11. Any sexual offense that occurs after the offender has been classified as a Tier I offender.
12. Includes an attempt, complicity or conspiracy to commit any of these offenses
13. Pre-AWA Habitual offenders, unless re-classified after hearing under ORC 2950.031 or 2950.032

TIER 3

1. **2907.02** Rape
2. **2907.03** Sexual Battery
3. **2903.01** Agg. Murder with sexual motivation
4. **2903.02** Murder with sexual motivation
5. **2903.04(A)** Unlawful Death or termination of pregnancy as a result of committing or attempt to commit a felony with sexual motivation
6. **2905.01 (A)(4)** Kidnapping of minor to engage in sexual activity
7. **2905.01 (B)** Kidnapping of minor, not by parent
8. **2907.05 (B)** ***{New section of GSI}***
9. **2903.11** Felonious Assault with sexual motivation
10. Pre-AWA predators unless re-classified after hearing under ORC 2950.031 or 2950.032
11. Any sexual offense that occurs after the offender is classified as a Tier II or III offender.
12. Automatic classification after SVP specification 2971.03
14. Includes an attempt, complicity or conspiracy to commit any of these offenses

** Any law from another jurisdiction that is comparable to these offenses shall fall within that same tier.*
*** This offense should be removed in future.*

Created by the Special Prosecutions Section of the Ohio Attorney General's Office Revised 8-29-07

EXHIBIT B

FILED
HURON COUNTY
COMMON PLEAS COURT
99 OCT 18 PM 4:08
KATHLEEN L. WALCKER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF HURON COUNTY, OHIO

STATE OF OHIO,	:	
Plaintiff,	:	Case No. CRI-99-463
vs.	:	Judge Earl R. McGimpsey
CHRISTIAN N. BODYKE,	:	**PLEA OF NO CONTEST**
Defendant.	:	JOURNALIZED 10-18-99 VOL. 339 PG. 817

This case was called upon for hearing on October 18, 1999, and after going on the record in open court, the Defendant informed the Court he was prepared to enter a plea.

Present were the Defendant and his counsel K. Ronald Bailey and Huron County Prosecutor Richard R. Woodruff represented the State of Ohio.

The parties informed the Court that the Defendant would plead No Contest to the following:

Count of Specification	Offense/Specification	O.R.C. Section	Level
Amended Count I	Breaking and Entering	2911.13(A)	F5
Count IV	Sexual Battery	2907.03(A)(3)	F3

Maximum Penalty. I understand that the maximum penalty as to each count is as follows:

Offense/ Specification	Maximum Stated Prison Term (Yrs/Mos)	Maximum Fine	Mandatory Fine	License Suspension
Breaking And Entering	6,7,8,9,10,11, or 12 months	$2,500.00	No	No
Sexual Battery	1,2,3,4, or 5 years	$10,000.00	No	No

HURON COUNTY
PROSECUTOR'S OFFICE
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Norwalk, Ohio 44857
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Fax (419) 663-3844

EXHIBIT B-1

20

339
818

Prison Term is Mandatory/Consecutive	Prison Term is Presumed Necessary
No	No

Court costs, restitution and other financial sanctions including fines, day fines, and reimbursement for the cost of any sanctions may also be imposed.

I understand that if I am now on felony probation, parole, under a community control sanction, or under post release control from prison, this plea may result in revocation proceedings and any new sentence could be imposed consecutively. I know any prison term stated will be served without good time credit.

Bad Time. In addition, possible "Bad Time" is part of the maximum possible penalty. Therefore, additional prison time may be added to the stated prison term by the Parole Board for any rule violation I commit while in prison that is a crime under Ohio or United States Laws. This time can be added administratively under Revised Code Section 2967.11 and may be for 15, 30, 60, or 90 day periods for each violation while I am in prison, up to ½ of my total stated prison term. I understand that bad time is part of any prison sentence imposed on me.

Post Release Control. In addition, a period of supervision by the Adult Parole Authority after release from prison is (mandatory/optional) in this case. If I am sentenced to prison for a felony 1 or felony sex offense, after my prison release I will have 5 years of post release control under conditions determined by the Parole Board. If I am sentenced to prison for a felony 2 or a felony 3 which involved causing or threatening physical harm, I will have mandatory post release control of 3 years. If I receive prison for a felony 3, 4, or 5, I may be given up to 3 years of post release control. A violation of any post-release control rule or condition can result in a more restrictive

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sanction while I am under post release control, and increased duration of supervision or control, up to the maximum term and reimprisonment even though I have served the entire stated prison term imposed upon me by this Court for all offenses. If I violated conditions of supervision while under post release control, the Parole Board could return me to prison for up to nine months for each violation, for a total of ½ of my originally stated prison term. If the violation is a new felony, I could receive a prison term of the greater of one year or the time remaining on post release control, in addition to any other prison term imposed for the offense.

Community Control. If this Court is not required by law to impose a prison sanction, it may impose community control sanctions or non-prison sanctions upon me. I understand that if I violate the terms or conditions of a community control sanction, the Court may extend the time for which I am subject to this sanction up to a maximum of 5 years, impose a more restrictive sanction, or imprison me for up to the maximum stated term allowed for the (offense/offenses) as set out above.

I understand the nature of these charges and the possible defense I might have. I am satisfied with my attorney's advice and competence. I am not under the influence of drugs or alcohol. No threats have been made to me. No promises have been made except as part of this plea agreement stated entirely as follows: The Defendant will plead No Contest to Amended Count I charging Breaking and Entering contrary to Ohio Revised Code Section 2911.13(A), a felony of the fifth degree and ~~guilty~~ no contest to Count IV charging Sexual Battery, a violation of Ohio Revised Code Section 2907.03(A)(3), a felony of the third degree in exchange for the dismissal of Count II and Count III of the Indictment by the State of Ohio.

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Fax (419) 663-3644

339
820

I understand by pleading No Contest I give up my right to a jury trial or court trial, where I could confront and have my attorney question witnesses against me, and where I could use the power of the court to call witnesses to testify for me. I know at trial I would not have to take the witness stand and could not be forced to testify against myself and that no one could comment if I chose not to testify. I understand I waive my right to have the prosecutor prove my guilt beyond a reasonable doubt on every element of each charge.

By pleading No Contest I do not contest the truth of the charge. I know the judge may either sentence me today or refer my case for a presentence report. I understand my right to appeal a maximum sentence, my other limited appellate rights and that any appeal must be filed within 30 days of my sentence. I understand the consequences of a conviction upon me if I am not a U.S. citizen. I enter this No Contest plea voluntarily.

Signed and Dated: 10-18-99

Signature of Defendant

Attorney for Defendant

Prosecuting Attorney

THE STATE OF OHIO, HURON COUNTY, ss
I, the undersigned, Clerk of Courts of said County, hereby certify that the foregoing is a true and correct copy of the Plea filed with me on 10-18-99
WITNESS my signature and official seal this 4 day of May 20 01
SUSAN S. HAZEL, Clerk
by [signature] Deputy

HURON COUNTY
OSECUTOR'S OFFICE

85 Benedict Avenue
Norwalk, Ohio 44857
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Fax (419) 663-3844

339
821

JUDGMENT ENTRY ACCEPTING PLEA

The Court finds that this day the Defendant, in open court, was advised of all constitutional rights and made a knowing, intelligent, and voluntary waiver of those rights pursuant to Criminal Rule 11. The No Contest plea is accepted and a finding of Guilty is made based upon the State's explanation of the facts. The Court finds the Defendant guilty of each offense to which Defendant has entered this plea. A sentencing hearing is scheduled for December 15, 1999, at 8:45

Bond is hereby continued.

Earl R. McGimpsey JUDGE
EARL R. McGIMPSEY

Date:
Oct 18, 1999

Approved By:

Richard R. Woodruff, #0031377
Assistant Huron County Prosecutor

K. Ronald Bailey, #0009637
Attorney at Law

cc: Richard R. Woodruff
K. Ronald Bailey
Huron County Adult Probation
Defendant
Huron Co. Sheriff

HURON COUNTY
OSECUTOR'S OFFICE

85 Benedict Avenue
Norwalk, Ohio 44857
Phone (419) 668-8215
Fax (419) 663-3844

FILED
HURON COUNTY
COMMON PLEAS COURT
99 MAY 28 AM 9:54
KATHLEEN L. WALCHER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF HURON COUNTY, OHIO

STATE OF OHIO,	:	
Plaintiff,	:	Case No. CRI-99-256
vs.	:	Judge Earl R. McGimpsey
DAVID SCHWAB ,	:	**PLEA OF GUILTY** JOURNALIZED 05-28-99 VOL. 331 PG. 99
Defendant.	:	

This case was called upon for hearing on April 19, and May 28, 1999 and after going on the record in open court, the Defendant informed the Court he was prepared to enter a plea of guilty to an amended bill of information.

Present were the Defendant and his counsel John Allton and Huron County Prosecutor Russell V. Leffler represented the State of Ohio.

The parties informed the Court that the Defendant would change his plea from not guilty to guilty to the following offense:

Count of Specification	Offense/Specification	O.R.C. Section	Level
Count I	Attempted Rape	2923.02(A) 2907.02(A)(1)(b)	F2

Maximum Penalty. I understand that the maximum penalty as to each count is as follows:

Offense/ Specification	Maximum Stated Prison Term (Yrs/Mos)	Maximum Fine	Mandatory Fine	License Suspension
Attempted Rape	2,3,4,5,6,7,8 Yrs.	$15,000.00	No	No

HURON COUNTY
PROSECUTOR'S OFFICE

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Fax (419) 663-3844

THE STATE OF OHIO, HURON COUNTY, ss
I, the undersigned, Clerk of Courts of said County, hereby certify that the foregoing is a true and correct copy of the Plea filed with me on 5-28-99
WITNESS my signature and official seal this 28 day of May 20 99
SUSAN S. HAZEL, Clerk
by Susan Hazel Deputy

EXHIBIT B-2

331/98

Prison Term is Mandatory/Consecutive	Prison Term is Presumed Necessary
No	Yes

Court costs, restitution and other financial sanctions including fines, day fines, and reimbursement for the cost of any sanctions may also be imposed.

I understand that if I am now on felony probation, parole, under a community control sanction, or under post release control from prison, this plea may result in revocation proceedings and any new sentence could be imposed consecutively. I know any prison term stated will be served without good time credit.

Bad Time. In addition, possible "Bad Time" is part of the maximum possible penalty. Therefore, additional prison time may be added to the stated prison term by the Parole Board for any rule violation I commit while in prison that is a crime under Ohio or United States Laws. This time can be added administratively under Revised Code Section 2967.11 and may be for 15, 30, 60, or 90 day periods for each violation while I am in prison, up to ½ of my total stated prison term. I understand that bad time is part of any prison sentence imposed on me.

Post Release Control. In addition, a period of supervision by the Adult Parole Authority after release from prison is (mandatory/optional) in this case. If I am sentenced to prison for a felony 1 or felony sex offense, after my prison release I will have 5 years of post release control under conditions determined by the Parole Board. If I am sentenced to prison for a felony 2 or a felony 3 which involved causing or threatening physical harm, I will have mandatory post release control of 3 years. If I

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331/99

receive prison for a felony 3, 4, or 5, I may be given up to 3 years of post release control. A violation of any post-release control rule or condition can result in a more restrictive sanction while I am under post release control, and increased duration of supervision or control, up to the maximum term and reimprisonment even though I have served the entire stated prison term imposed upon me by this Court for all offenses. If I violated conditions of supervision while under post release control, the Parole Board could return me to prison for up to nine months for each violation, for a total of ½ of my originally stated prison term. If the violation is a new felony, I could receive a prison term of the greater of one year or the time remaining on post release control, in addition to any other prison term imposed for the offense.

Community Control. If this Court is not required by law to impose a prison sanction, it may impose community control sanctions or non-prison sanctions upon me. I understand that if I violate the terms or conditions of a community control sanction, the Court may extend the time for which I am subject to this sanction up to a maximum of 5 years, impose a more restrictive sanction, or imprison me for up to the maximum stated term allowed for the (offense/offenses) as set out above.

I understand the nature of these charges and the possible defense I might have. I am satisfied with my attorney's advice and competence. I am not under the influence of drugs or alcohol. No threats have been made to me. No promises have been made except as part of this plea agreement stated entirely as follows: The Defendant will plead Guilty to Count I charging Attempted Rape contrary to Ohio Revised Code Section 2923.02(A)(1), 2907.02(A)(1)(b), a felony of the second degree.

HURON COUNTY
PROSECUTOR'S OFFICE

85 Benedict Avenue
Norwalk, Ohio 44857
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331/100

I understand by pleading guilty I give up my right to a jury trial or court trial, where I could confront and have my attorney question witnesses against me, and where I could use the power of the court to call witnesses to testify for me. I know at trial I would not have to take the witness stand and could not be forced to testify against myself and that no one could comment if I chose not to testify. I understand I waive my right to have the prosecutor prove my guilt beyond a reasonable doubt on every element of each charge.

By pleading guilty I admit committing the offense and will tell the Court the facts and circumstances of my guilt. I know the judge may either sentence me today or refer my case for a presentence report. I understand my right to appeal a maximum sentence, my other limited appellate rights and that any appeal must be filed within 30 days of my sentence. I understand the consequences of a conviction upon me if I am not a U.S. citizen. I enter this plea voluntarily.

Signed and Dated:

Signature of Defendant

Attorney for Defendant

Prosecuting Attorney

HURON COUNTY
PROSECUTOR'S OFFICE

65 Benedict Avenue
Norwalk, Ohio 44857
Phone (419) 668-6215
Fax (419) 663-3844

331
101

JUDGMENT ENTRY OF GUILTY

The Court finds that this day the Defendant, in open court, was advised of all constitutional rights and made a knowing, intelligent, and voluntary waiver of those rights pursuant to Criminal Rule 11. The plea is accepted and is ordered filed. The Court finds the Defendant guilty of each offense to which Defendant has entered this plea. A sentencing hearing is scheduled for May 28, 1999.

Bond is continued.

JUDGE
EARL R. McGIMPSEY

Date:
May 28, 1999

Approved By:

Russell V. Leffler, #0026024
Huron County Prosecutor

John Allton
Attorney for Defendant

cc: ✓copies Russell Leffler
✓John Allton
✓HC Sheriff
✓Probation

HURON COUNTY
PROSECUTOR'S OFFICE

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Norwalk, Ohio 44857
Phone (419) 668-8215
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COPY

KATHLEEN L. WALCHER
CLERK

IN THE COURT OF COMMON PLEAS, HURON COUNTY, OHIO

93 NOV 23 AM 11:19

HURON COUNTY
COMMON PLEAS COURT
FILED

STATE OF OHIO,	:	
Plaintiff,	:	Case No. CRI-93-630
vs.	:	JOURNALIZED 11-23-93 VOL 247 PG 873
GERALD E. PHILLIPS,	:	**JUDGMENT ENTRY**
Defendant.	:	

This case was called upon for hearing, and after going on the record in open court, the defendant informed the Court he was prepared to enter a change of plea.

Present were the defendant and his counsel, Neil McKown and Russell V. Leffler representing the State of Ohio.

The parties informed the Court that in exchange for dismissal by the State of Ohio of Counts II, III, and IV, of the indictment in this case, the defendant would change his plea from not guilty to guilty of Count I, Gross Sexual Imposition, a felony of the third degree and violation of Ohio Revised Code Section 2907.05(A)(4) and guilty to Amended Count V, Sexual Battery with physical harm specification, a felony of the third degree and violation of Ohio Revised Code Section 2907.03(A)(5) and 2941.143.

The Court then did advise the defendant that the offenses to which he proposed to plead guilty to, Gross Sexual Imposition, a felony of the third degree, is punishable by an definite term of incarceration of 1, 1½, or 2 years and the defendant would be subject to a fine of up to $5,000.00 and

HURON COUNTY
PROSECUTOR'S OFFICE
CRIMINAL DIVISION
35 Benedict Avenue
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Phone (419) 668-8215

EXHIBIT B-3

Sexual Battery with physical harm specification, a felony of third degree is punishable by an indefinite term of incarceration of 2, 2½, 3, 4 to 10 years and the defendant would be subject to a fine of up to $5,000.00.

The defendant stated that he understood and then did enter a plea of guilty to Count I and amended Count V with the physical harm specification.

The Court then personally addressed the defendant, and:

(1) Determined that he is making the plea voluntarily, understanding the nature of the charge and the maximum penalty involved, and that he is eligible for probation;

(2) Informed him of and determined that he understood the effect of his plea of **guilty** and that the Court upon acceptance of the plea may proceed with judgment and sentence;

(3) Informed him and determined that he understood that by his plea of **guilty** he is waiving his rights to jury a trial, to confront witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to require the State to prove his guilt beyond a reasonable doubt at trial at which he cannot be compelled to testify against himself.

The Court being satisfied from the total circumstances, found that the defendant had **KNOWINGLY, INTELLIGENTLY, VOLUNTARILY** and **UNDERSTANDINGLY** made and entered his plea of guilty to Count I and Count V with specification of the indictment.

JRON COUNTY
ECUTOR'S OFFICE
IMINAL DIVISION
Benedict Avenue
rwalk, Ohio 44857
one (419) 668-8215

875

It is therefore **ORDERED, ADJUDGED** and **DECREED** that the defendant's guilty plea to the charge shall be and hereby is accepted; that the defendant shall be and hereby is adjudicated **GUILTY**, and that the defendant shall be and hereby is **CONVICTED** thereof accordingly, of Gross Sexual Imposition, a violation of Ohio Revised Code Section 2907.05(A)(4) and Sexual Battery, with the specification, a violation of Ohio Revised Code Section 2907.03(A)(5).

It is further **ORDERED** that a pre-sentence investigation and report be made in this case and that the defendant appear before this Court for sentencing upon January 21, 1994, at 1:00 P.M.

The defendant's bond is Continued.

SO ORDERED, ADJUDGED and **DECREED.**

PHILLIP M. WHITE, JR., JUDGE

Approved:

Russell V. Leffler
Huron County Prosecutor

Neil McKown
Attorney for Defendant

HURON COUNTY
PROSECUTOR'S OFFICE
CRIMINAL DIVISION
5 Benedict Avenue
Norwalk, Ohio 44857
Phone (419) 668-8215

EXHIBIT C

FILED
HURON COUNTY
COMMON PLEAS COURT

99 DEC 20 AM 8:42

KATHLEEN L. WALCHER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF HURON COUNTY, OHIO

STATE OF OHIO,	:	
Plaintiff,	:	Case No. CRI-99-463
vs.	:	Judge Earl R. McGimpsey
CHRISTIAN N. BODYKE, DOB: SSN:	:	**JUDGMENT ENTRY OF SENTENCING**
Defendant.	:	JOURNALIZED 12-20-99 VOL. 343 PG. 818

On December 15, 1999, this matter came on for sentencing. The Defendant was present with his counsel, K. Ronald Bailey, and Huron County Prosecutor Russell V. Leffler represented the State of Ohio.

The Court considered the record, oral statements, pre-sentence report dated November 19, 1999 including the victim impact statement as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism factors in Ohio Revised Code Section 2929.12.

Counsel was afforded an opportunity to speak on behalf of the Defendant and counsel did speak. The Court personally addressed the Defendant and afforded the Defendant the opportunity to make a statement on his own behalf and the Defendant did speak. The State of Ohio spoke.

THE STATE OF OHIO, HURON COUNTY, ss
I, the undersigned, Clerk of Courts of said County, hereby certify that the foregoing is a true and correct copy of the JE filed with me on 12-20-99
WITNESS my signature and official seal this 1 day of January 20 99
SUSAN S. HAZEL, Clerk
by [signature] Deputy

HURON COUNTY
OSECUTOR'S OFFICE

83 Benedict Avenue
Norwalk, Ohio 44857
Phone (419) 668-8215
Fax (419) 663-3844

EXHIBIT C-1

343
819

The Court finds that the Defendant pled No Contest to Amended Count I, Breaking and Entering, a violation of Section 2911.13(A) of the Ohio Revised Code, a felony of the fifth degree and No Contest to Count IV, Sexual Battery, a violation of Section 2907.03(A)(3) of the Ohio Revised Code, a felony of the third degree.

The Court has considered the factors under Section 2929.12(B) of the Ohio Revised Code and finds that the victim suffered serious psychological harm.

The Court considered the factors under Ohio Revised Code Section 2929.12(C) and finds that none exist.

The Court considered the factors under Ohio Revised Code Section 2929.12(D) and finds that the Defendant has an alcohol/drug abuse pattern related to the offense but the offender does acknowledge the pattern or refuses treatment.

The Court considered the factors under Ohio Revised Code Section 2929.12(E) and finds that:

1. The Defendant has no prior delinquency adjudications.
2. The Defendant has no prior conviction.
3. The Defendant has led a law-abiding life for a significant number of years.
4. The Defendant has shown genuine remorse.

The Court considered the factors under Ohio Revised Code Section 2929.13(B)(1) and finds that it was a sex offense.

The Court considered the factors under Ohio Revised Code Section 2929.13(B)(2)(a) and finds that after weighing seriousness and recidivism factors and finds prison is consistent with purposes/principles and the offender is not amenable to an available community sanction.

HURON COUNTY
OSECUTOR'S OFFICE

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343
880

It is therefore ORDERED that the Defendant serve a stated prison term of six (6) months for Amended Count I, Breaking and Entering, a felony of the fifth degree and two (2) years on Count IV, Sexual Battery, a felony of the third degree. These sentences are to be served concurrently.

The Court considered the factors under Ohio Revised Code Section 2929.14(A) and finds that the because of the seriousness of the offense the shortest prison term cannot be imposed or it would demean the seriousness of the offense.

Bad Time: There is no good time credit in prison. If you commit any offense in prison, in addition to or in lieu of any prosecution for any crime committed, your sentence for this offense can be increased by bad time in intervals of 15, 30, 60, 90 days up to a maximum for all offenses of 50% of the sentence imposed by this Court, or 9 months whichever is less.

Post Release Control: When you are released from prison you will be placed on post release control for 5 years for sex offenses. If you violate the conditions of your post release control, you could return to prison for up to 9 months or 50% of your original term, whichever is less. If you commit a felony on post release control, you may be returned to prison for remainder of post release control or 12 months, whichever is longer, in addition to sentence imposed for the felony.

The Court explained in detail to the Defendant the meaning of sexual predator status as defined in Ohio Revised Code Section 2950.09, and all registration and potential notification requirements pursuant to Ohio Revised Code Sections 2950.02, 2950.03, 2950.04, 2950.05, 2950.06, 2950.07, 2950.08, 2950.09, 2950.10, and 2950.11 at his Sexual Predator hearing on December 18, 1999. Defendant and State stipulated the PSI

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343
821

and Forensic Evaluation reports are evidence for the purposes of the predator hearing, and made a joint recommendation that the Defendant be classified a Sexually Oriented Offender.

Based on the foregoing, the Court determines that the Defendant is a Sexually Oriented Offender and is so adjudicated. As such the Court informed the Defendant of his responsibilities to register for ten (10) years verified annually. Further the Defendant is required to register with the sheriff in his county of residence within seven (7) days after his release from prison and seven (7) days before changing his address and register with the sheriff in his new county of residence within seven (7) days of moving to that county.

The Court informed the Defendant he is not eligible for judicial release until after serving one hundred eighty (180) days.

The Court informed the Defendant of his right to appeal and that the notice ~~to~~ of appeal must be filed within thirty (30) days of date of this judgment entry of sentencing.

It is further ORDERED that the pre-sentence investigation report be sealed and made a part of the record.

The Court finds that the Defendant is entitled to one (1) days jail time credit as of December 15, 1999.

The Defendant is remanded to the custody of the Huron County Sheriff's Department for his transportation to the Department of Rehabilitation and Corrections.

HURON COUNTY
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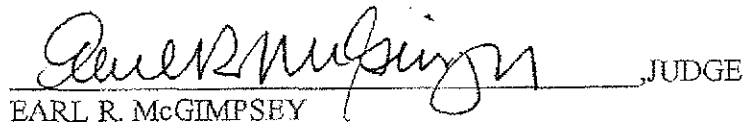
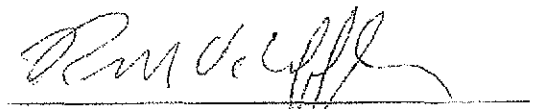
343
822

Bond is released and the Defendant is ordered to pay court costs.



JUDGE
EARL R. McGIMPSEY

Prepared By:



Russell V. Leffler, #0026024
Huron County Prosecutor

cc: Russell V. Leffler
✓K. Ronald Bailey
✓Huron County Sheriff's Department
✓Defendant (w/copy cost bill)
✓Institution (certified)
✓Probation
✓Bookkeeper

HURON COUNTY
PROSECUTOR'S OFFICE

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Phone (419) 668-8215
Fax (419) 663-3844

Iss. Warrant to Convey to HC Sheriff 12-20-99

FILED
HURON COUNTY
COMMON PLEAS COURT

99 JUN -2 PM 1:01

CHARLEEN L. KALCHER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF HURON COUNTY, OHIO

JOURNALIZED 06-02-99
VOL. 331 PG. 305

STATE OF OHIO,	:	
Plaintiff,	:	Case No. CRI-99-256
vs.	:	Judge Earl R. McGimpsey
DAVID A. SCHWAB, DOB: SSN:	:	**JUDGMENT ENTRY OF SENTENCING**
Defendant.	:	

On May 28, 1999, this matter came on for sentencing. The Defendant was present with his counsel, John D. Allton, and Huron County Prosecutor Russell V. Leffler represented the State of Ohio.

The Court considered the record, oral statements, pre-sentence report dated May 18, 1999 as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism factors in Ohio Revised Code Section 2929.12.

Counsel was afforded an opportunity to speak on behalf of the Defendant and counsel did speak. The Court personally addressed the Defendant and afforded the Defendant the opportunity to make a statement on his own behalf and the Defendant did speak. The State of Ohio spoke.

HURON COUNTY
OSECUTOR'S OFFICE

85 Benedict Avenue
Norwalk, Ohio 44857
Phone (419) 668-8215
Fax (419) 663-3844

THE STATE OF OHIO, HURON COUNTY, ss
I, the undersigned, Clerk of Courts of said County, hereby certify that the foregoing is a true and correct copy of the JE filed with me on 6-2-99
WITNESS my signature and official seal this 4 day of May 20 99
SUSAN S. HAZEL, Clerk
by [signature] Deputy

EXHIBIT C-2

331/306

The Court finds that the Defendant pled Guilty to Amended Count I , Attempted Rape, a violation of Ohio Revised Code Sections 29~~23~~2 ERM .02(A) and 2907.02(A)(1)(b), a felony of the second degree.

The Court has considered the factors under Section 2929.12(B) of the Ohio Revised Code and finds that:

1. The injury was exacerbated by physical/mental conditions and the age of the victim.

2. The victim suffered serious psychological harm.

3. The relationship with the victim facilitated the offense.

The Court considered the factors under Ohio Revised Code Section 2929.12(C) and finds that none exist.

The Court considered the factors under Ohio Revised Code Section 2929.12(D) and finds that none exist.

The Court considered the factors under Ohio Revised Code Section 2929.12(E) and finds that:

1. That there is no prior delinquency adjudications.

2. That there is no prior convictions.

3. The Defendant led a law-abiding life for a significant number of years.

4. The Defendant has shown genuine remorse.

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307

The Court considered the factors under Ohio Revised Code Section 2929.13(D) and finds that the presumption for prison is supplied by the evidence.

The Court considered the factors under Ohio Revised Code Section 2929.13(B)(1) and finds that none exist.

The Court considered the factors under Ohio Revised Code Section 2929.13(B)(2)(a) and finds that after weighing seriousness and recidivism factors and prison is consistent with purposes/principles and the offender is not amenable to an available community sanction.

It is therefore ORDERED that the Defendant serve a stated prison term of 5 years for Amended Count I, Attempted Rape, a felony of the second degree.

The Court considered the factors under Ohio Revised Code Section 2929.14(A) and finds that a longer prison sentence than the minimum is necessary to protect the public and further the shortest term would demean the seriousness of the offense.

Bad Time: There is no good time credit in prison. If you commit any offense in prison, in addition to or in lieu of any prosecution for any crime committed, your sentence for this offense can be increased by bad time in intervals of 15, 30, 60, 90 days up to a maximum for all offenses of 50% of the sentence imposed by this Court, or 9 months whichever is less.

Post Release Control: When you are released from prison you will be placed on post release control for 5 years for sex offenses. If you violate the conditions of your post release control, you could return to prison for up to 9 months or 50% of your

HURON COUNTY
PROSECUTOR'S OFFICE

85 Benedict Avenue
Norwalk, Ohio 44857
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Fax (419) 663-3844

331
308

original term, whichever is less. If you commit a felony on post release control, you may be returned to prison for remainder of post release control or 12 months, whichever is longer, in addition to sentence imposed for the felony.

The Court explained in detail to the Defendant the meaning of sexual predator status as defined in Ohio Revised Code Section 2950.09, and of the meaning of habitual sexual offender status, and all registration and potential notification requirements pursuant to Ohio Revised Code Sections 2950.02, 2950.03, 2950.04, 2950.05, 2950.06, 2950.07, 2950.08, 2950.09, 2950.10, and 2950.11 at his Sexual Predator hearing on May 28, 1999. The Defendant and the State jointly stipulated that the Defendant is an habitual Sexual Offender.

Based on the foregoing, the Court determined that the Defendant is an Habitual Sexual Offender pursuant to Section (B) of 2950.09. As such the Court informed the Defendant of his responsibilities to register with the Sheriff of his county of residence upon his release from prison for the next twenty (20) years and upon each change of residence seven (7) days prior to changing residence. A copy of the Responsibilities of Sexual Predator is attached hereto. ~~All community notifications requests will apply.~~ The Court determined that community notification is not required. EPM

The Court informed the Defendant of ~~his~~ the law pertaining to judicial release and that the Defendant may apply for judicial release after three years and six months.

The Court informed the Defendant of his right to appeal and that the notice to appeal must be filed within thirty (30) days of date of this judgment entry of sentencing.

It is further ORDERED that the pre-sentence investigation report be sealed and made a part of the record.

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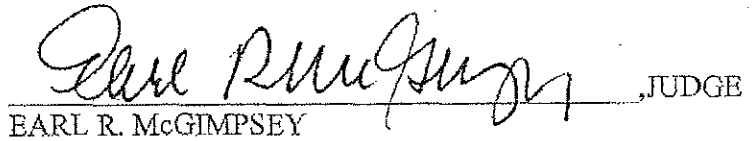
The Court finds that the Defendant is entitled to three (3) days jail time credit as of June 1, 1999.

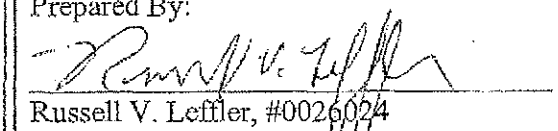
The Defendant is remanded to the custody of the Huron County Sheriff's Department for his transportation to the Department of Rehabilitation and Corrections.

Bond is released and the Defendant is ordered to pay court costs.



JUDGE
EARL R. McGIMPSEY

Prepared By:



Russell V. Leffler, #0026024
Huron County Prosecutor

cc: Russell V. Leffler
✓John D. Allton
✓Huron County Sheriff's Department
✓Defendant (w/ copy cost bill)
✓Institution (certified)
✓Probation

HURON COUNTY
PROSECUTOR'S OFFICE

65 Benedict Avenue
Norwalk, Ohio 44857
Phone (419) 668-8215
Fax (419) 663-3844

FILED
HURON COUNTY
COMMON PLEAS COURT

IN THE COURT OF COMMON PLEAS, HURON COUNTY, OHIO

94 JAN 28 AM 11:21

KATHLEEN L. WALCHER
CLERK OF COURTS

STATE OF OHIO,	:	
Plaintiff,	:	Case No. CRI-93-630
vs.	:	JOURNALIZED 01-28-94 VOL 249 PG 849
GERALD E. PHILLIPS,	:	**JUDGMENT ENTRY**
Defendant.	:	

On January 28, 1994, this matter came on for sentencing. The defendant was present with his counsel, Neil A. McKown and Russell V. Leffler representing the State of Ohio.

Counsel was afforded an opportunity to speak on behalf of the defendant. The Court personally addressed the defendant and afforded the defendant the opportunity to make a statement in his own behalf, or present any evidence in mitigation of punishment and the defendant did present evidence in mitigation.

It is therefore ORDERED, ADJUDGED, and DECREED that the defendant shall be and hereby is sentenced to a definite term of imprisonment of 2 years in the Department of Rehabilitation and Corrections for Count I of the Indictment, Gross Sexual Imposition, contrary to Ohio Revised Code Section 2907.05(A)(4), a felony of the fourth degree and 3 to 10 years in the Department of Rehabilitation and Corrections for Count V of the Indictment, Sexual Battery, contrary to Ohio Revised Code Section 2907.03(A)(5) and 2941.143, a felony of the third degree, to be served concurrently with Count I.

HURON COUNTY
PROSECUTOR'S OFFICE
CRIMINAL DIVISION
85 Benedict Avenue
Norwalk, Ohio 44857
Phone (419) 668-8215

THE STATE OF OHIO, HURON COUNTY, ss
I, the undersigned, Clerk of Courts of said County, hereby certify that the for
true and correct copy of the
filed with me on
WITNESS my signature and offic
day of
SUSAN S. HAZEL, Cle
by

EXHIBIT C-3

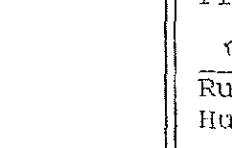
It is further ORDERED that the Huron County Sheriff's Department shall transport the defendant to the Department of Rehabilitations and Corrections.

The Court finds that the defendant is entitled to four days jail time credit as of January 28, 1994.

Bond is revoked and the defendant is ordered to pay court cost.

PHILLIP M. WHITE, JR., JUDGE

Prepared By:



Russell V. Leffler #0026024
Huron County Prosecutor

cc: Russell V. Leffler
Neil McKown
Huron County Sheriff's Department
Institution
Deft

HURON COUNTY
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CRIMINAL DIVISION
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Norwalk, Ohio 44857
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EXHIBIT D

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
MARC DANN, ATTORNEY GENERAL

November 26, 2007

Christian Nicholas Bodyke

NOTICE OF NEW CLASSIFICATION AND REGISTRATION DUTIES
TIER III SEX OFFENDER (ADULT)

This letter is to notify you of changes to Ohio's Sex Offender Registration and Notification Act (Ohio Revised Code Chapter 2950, "SORN"). Your classification and registration duties have changed due to Ohio Senate Bill 10, passed to implement the federal Adam Walsh Child Protection and Safety Act of 2006.

Classification:

Beginning January 1, 2008, your new classification is Tier III Sex Offender. You are required to register personally with the local sheriff's office every ninety (90) days for Life.

Duties:

You are required to register, in person, with the sheriff of the county in which you establish residency within **3 days** of coming into that county or if temporarily domiciled for more than **3 days**. You are also required to register, in person, with the sheriff of the county in which you establish a place of education immediately upon coming into that county. If you establish a place of education in another state but maintain a residence or temporary domicile here, you are also required to register, in person, with the sheriff or other appropriate official in that other state immediately upon coming into that state. You are also required to register, in person, with the sheriff of the county in which you establish a place of employment if you have been employed for more than **3 days** or for an aggregate of **14 days** in a calendar year. If you establish a place of employment in another state but maintain a residence or temporary domicile here, you are also required to register, in person, with the sheriff or other appropriate official in that other state if you have been employed for more than **3 days** or for an aggregate of **14 days** in a calendar year.

After the date of initial registration, you are required to periodically verify your residence address, place of employment and/or place of education, in person, at the county sheriff's office no earlier than **10 days** prior to your verification date.

If you change residence address, place of employment and/or place of education, you shall provide written notice of that change to the sheriff with whom you most recently registered, and to the sheriff in the county in which you

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EXHIBIT D-1

intend to reside, or establish a place of employment and/or place of education at least **20 days** prior to any change and no later than **3 days** after change of employment.

You shall provide written notice, within **3 days**, of any change in vehicle information, email addresses, internet identifiers or telephone numbers registered to or used by you, to the sheriff with whom you have most recently registered.

Duty to Register scheduled to terminate between July 1, 2007 and January 1, 2008

If your duty to comply with the registration requirements was scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of Ohio Revised Code § 2950.07 that is in effect prior to January 1, 2008, notwithstanding that scheduled termination of those duties, your duties under those sections did not terminate as scheduled pursuant to Ohio Revised Code §2950.033, effective July 1, 2007. You are required to comply with the new registration requirements unless otherwise modified by Court order.

Community Notification

As a Tier III Sex Offender, you are subject to the community notification requirements under Ohio Revised Code § 2950.11. If you were previously not subject to community notification prior to January 1, 2008, pursuant to Ohio Revised Code § 2950.11 (F)(2), the Court may make a determination that removes this requirement.

Right to Contest application of new classification and registration requirements

Under Ohio Revised Code §2950.031(E), you have the right to challenge the new classification and registration requirements. You have sixty (60) days after receipt of this letter to file a petition in the Court of Common Pleas in the county where you reside in Ohio, or if you reside outside the state, the county in which you work or attend school. You must also send a copy of the petition to the county prosecutor in that county. If you fail to file your petition within the sixty (60) day period, you have waived your right to contest the application of the new classification and registration requirements. You are required to comply with the new registration requirements unless otherwise modified by Court order.

AFTER JANUARY 1, 2008, CONTACT YOUR LOCAL SHERIFF'S OFFICE TO DETERMINE YOUR REGISTRATION DATE.

Sincerely,

Steven Raubenolt
Deputy Superintendent of BCI&I

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
MARC DANN, ATTORNEY GENERAL

November 26, 2007

12/5/07 service

David Alan Schwab

NOTICE OF NEW CLASSIFICATION AND REGISTRATION DUTIES
TIER III SEX OFFENDER (ADULT)

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EXHIBIT D-2

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Sincerely,

Steven Raubenolt
Deputy Superintendent of BCI&I

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
MARC DANN, ATTORNEY GENERAL

November 26, 2007

Gerald Eugene Phillips

NOTICE OF NEW CLASSIFICATION AND REGISTRATION DUTIES
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EXHIBIT D-3

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Sincerely,

Steven Raubenolt
Deputy Superintendent of BCI&I