

In the
Supreme Court of Ohio

ORIGINAL

STATE OF OHIO,

Plaintiff-Appellee,

v.

GEORGE D. WILLIAMS,

Defendant-Appellant.

Case No. 2009-0088

On Appeal from the
Warren County
Court of Appeals,
Twelfth Appellate District

Court of Appeals Case
No. CA2008-02-029

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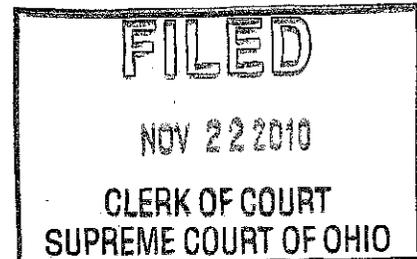


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INTRODUCTION

On July 1, 2007, the Ohio General Assembly passed Senate Bill 10 (S.B.10) to revise Ohio's sex offender registration and notification law. The key feature of S.B.10 is its classification method: It automatically places every adult sex offender into one of three tiers based on his crime of conviction. The more severe the crime, the higher the tier. The tier designation then determines the frequency and duration of the offender's registration requirement—that is, his obligation to verify his contact information periodically with the county sheriff. The tier designation also determines whether the offender will be subject to community notification. Sheriffs must notify victims and certain community members whenever a Tier III offender—those persons convicted of the most severe sex crimes (among them, rape, sexual battery, and murder with a sexual motivation)—moves into a neighborhood.

The General Assembly revised Ohio's sex offender law for a reason. Megan's Law, the State's old sex offender registration and community notification system, contained a glaring deficiency: It was one of fifty different systems across the county. These systems had different standards, provisions, and classification methods, and the States did not communicate with each other. Due to that lack of coordination, the States collectively lost track of some 150,000 of the estimated 550,000 sex offenders by 2006.

To address that deficiency, Congress passed the Adam Walsh Child Protection and Safety Act of 2006. The Walsh Act urged States to adopt national standards for sex offender classification, registration, and community notification so that States could coordinate their systems through uniform standards and one national database. The Ohio General Assembly agreed with that objective—"a more comprehensive, more nationalized system for registered sex offenders" would better "protect our children, their families, [and] their neighborhoods." Senate

Session (May 16, 2007) (Statement on Sen. Austria). The General Assembly then passed S.B.10 to align Ohio's system with the Walsh Act.

The appellant here, George Williams, had sex with and impregnated a fourteen-year-old girl in May 2007. He pled guilty to one count of felonious sexual conduct with a minor, and was sentenced on January 31, 2008—nearly seven months after the effective date of S.B.10. Consistent with that law, the trial court informed Williams that he was a Tier II offender and instructed him to register biannually with his county sheriff for twenty-five years. Williams now objects, claiming that S.B.10 is a criminal, punitive law that violates his rights under the Ex Post Facto, Retroactivity, and Due Process Clauses of the U.S. and Ohio Constitutions.

Williams's contentions lack merit. First, S.B.10 is a civil law and therefore poses no Ex Post Facto issue. It uses the same remedial tools as Megan's Law, which this Court upheld in *State v. Cook* (1998), 83 Ohio St. 3d 404, and *State v. Ferguson*, 120 Ohio St. 3d 7, 2008-Ohio-4824. S.B.10 requires that sex offenders periodically verify their contact information with the county sheriff—"a *de minimus* administrative requirement" "comparable to renewing a driver's license." *Cook*, 83 Ohio St. 3d at 418. The community notification provision is also tailored narrowly. It applies only to Tier III offenders, notification "is restricted to those most likely to have contact with the offender," *id.* at 422, and trial courts have broad discretion to remove the requirement under R.C. 2950.11(F)(2). Williams, as a Tier II offender, is not affected by the community notification provision.

Second, S.B.10 does not offend the Retroactivity Clause. That constitutional provision is triggered only when a "past transaction or consideration create[s] at least a reasonable expectation of finality." *Cook*, 83 Ohio St. 3d at 412. (citation omitted). But a criminal transaction does not (and cannot) create such an expectation. See *id.* ("[F]elons have no

reasonable right to expect that their conduct will never thereafter be made the subject of legislation.”) (citation and emphasis omitted). Because Williams had no reasonable expectation of finality with respect to his sex offense, he has no rights under the Retroactivity Clause to vindicate.

Third, S.B.10’s residency restriction—which prohibits sex offenders from residing within 1,000 feet of a preschool or day-care center does not apply to Williams, thus he has no standing to challenge it.

At bottom, Williams objects to the automatic, offense-based manner in which S.B.10 classifies sex offenders. The problem with that position is two fold. First, automatic classification was a staple of the old Megan’s Law regime, which this Court upheld as constitutional. In two of the three Megan’s Law classifications, “[t]he 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). Second, the U.S. Supreme Court has expressly approved the constitutionality of automatic, offense-based classification systems for sex offenders. See *Smith v. Doe* (2003), 538 U.S. 84, 104.

Under this Court’s well-established precedents, S.B.10 is a constitutional enactment.

STATEMENT OF AMICUS INTEREST

The Ohio Attorney General is the chief law officer for the State. R.C. 109.02. The Attorney General has a strong interest in defending the legislative actions of the General Assembly and in ensuring the proper administration of Ohio’s sex offender laws.

THE HISTORY OF SEX OFFENDER LAWS IN OHIO

Ohio first enacted a sex offender registration law in 1963. Any person “convicted two or more times, in separate criminal actions, for commission of any of the [enumerated] sex offenses” was deemed a “habitual sex offender.” Former R.C. 2950.01(A) (1996). Upon

entering a jurisdiction, he had to provide his name, photograph, and fingerprints with the police chief or the county sheriff. Former R.C. 2950.07 (1996). The offender also had ten days to inform law enforcement of any changes to his address. Former R.C. 2950.05 (1996).

The General Assembly revised the law on three occasions. 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 modified that system. And in 2007, the General Assembly passed Senate Bill 10 (“S.B.10”)—the subject of this action—to align Ohio’s classification and registration system with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006.

A. The General Assembly enacted Megan’s Law to create a comprehensive sex offender registration and notification system in Ohio.

Under the old Megan’s Law, sex offenders were divided into three categories: The “sexually oriented offender” designation—the default category—was placed on any individual convicted of a “sexually oriented offense” listed in former R.C. 2950.01(D).

The “habitual sex offender” designation—the middle category—was given to “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 designation, “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 lower classifications—the “sexually oriented offender” designation and the “habitual offender” designation—attached automatically by operation of law. If the defendant’s criminal

history met the statutory criteria, the trial court had to impose the classification. The process did not require a hearing or judicial fact-finding. See *State v. Hayden*, 96 Ohio St. 3d 211, 2002-Ohio-4169, ¶ 16.

The “sexual predator” designation was different—in some cases, it attached automatically; in others, it attached at the judge’s discretion. 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 prosecutor could seek—and the trial court could affix—a sexual predator designation on a convicted offender through a special statutory process. The court would schedule a hearing at which 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), (C)(2) (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).

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, a photograph, a signature and any other information requested by the bureau of criminal investigation. Former R.C. 2950.04(B)-(C) (1998). Offenders with “sexual predator” designations were also required to disclose 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 R.C. 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 for certain offenders—all sexual predators and those habitual sex offenders designated by the trial court. Former R.C. 2950.10(A), 2950.11(A) (1998). 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, children's agencies, day care centers, and the like—of the offender's name, address, and offense of conviction. Former R.C. 2950.10, 2950.11 (1998). These notification provisions did not apply to sexually oriented offenders.

Under Megan's Law, offenders with "sexual predator" designations could, at certain intervals, petition the trial court to remove the designation. 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 prison on or after July 1, 1997. Former R.C. 2950.04(A)(1)-(2) (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* (1998), 83 Ohio St. 3d 404, the Court unanimously rejected claims that the retroactive application of the law violated the Retroactivity Clause of the Ohio Constitution or the Ex Post Facto Clause of the U.S. Constitution. The Court held that the registration and notification

requirements in Megan's Law were civil in nature, not criminal penalties, and that they were remedial, not substantive. In *State v. Williams* (2000), 88 Ohio St. 3d 513, the Court unanimously held that Megan's Law complied with the Double Jeopardy, Bill of Attainder, and Equal Protection Clauses of the U.S. 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 in *Cook*. The 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 General Assembly revised Megan's Law in S.B.5.

In 2003, the General Assembly revised Megan's Law through the enactment of S.B.5. 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)(11) (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, this Court rejected claims that such retroactive application violated the Retroactivity Clause of the Ohio Constitution and the Ex Post Facto Clause of the U.S. 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 residency 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, determined that the constitutional question was misplaced, as the General Assembly had not expressly made this residency provision retroactive. Because that provision does not "appl[y] to acts committed or facts in existence prior to the effective date," *id.* ¶ 19, there was no viable retroactivity claim, *id.* ¶ 24.

C. Congress enacted the Adam Walsh Act to create a national system for sex offender registration and notification.

Ohio was not alone in enacting Megan's Law. In the 1990s, "all fifty states . . . enacted sex offender registration laws of varying degrees." *Cook*, 83 Ohio St. 3d at 406. But each State used different standards and requirements, frustrating the ability to coordinate the systems across state lines. Of the estimated 550,000 sex offenders nationwide in 2006, the States had lost track of 150,000 of them. 152 Cong. Rec. S 8012, 8014 (July 20, 2006) (Statement of Sen. Biden, quoting statistics from the National Center for Missing and Exploited Children).

In 2006, Congress passed the Adam Walsh Child Protection and Safety Act “to sew together the patch-work quilt of 50 different State attempts to identify and keep track of sex offenders.” *Id.* at 8012 (Statement of Sen. Hatch). 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].” 42 U.S.C. § 16912.

The Walsh Act 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 name, aliases, 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 shall provide felony criminal penalties for an offender’s failure to register. *Id.* § 16913(e).

The Walsh Act also mandates a three-tiered system for sex offender classification. The law sets an offender’s tier solely by his offense of conviction. *Id.* § 16911(2)-(4). The tier determines the frequency and duration of the sex offender’s reporting requirement: A Tier I offender must register annually for 15 years, a Tier II offender must register biannually for 25 years, and a Tier III offender must register quarterly for life. *Id.* §§ 16915, 16916.

The Walsh Act 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 Walsh Act originally directed the States to comply within three years of its effective date. *Id.* § 16924(a). The U.S. Attorney General has since extended that deadline. *Id.* § 16924(b). A jurisdiction that fails to implement the Act risks losing ten percent of its annual federal law-enforcement grant money. *Id.* § 16925(a) (citing 42 U.S.C. § 3750). At present, four states—Delaware, Florida, Ohio, and South Dakota—have fully implemented the Act.

D. The General Assembly passed S.B.10 to comply with the Walsh Act.

In June 2007, the General Assembly overwhelmingly passed S.B.10 to align Ohio’s sex offender laws with the Walsh Act. The legislature’s motive was “to protect the public, in particular . . . our children, their families, their neighborhoods.” Senate Session (May 16, 2007) (Statement of Sen. Austria). S.B.10 “restructur[ed] Ohio’s sex offender registration and community notification laws . . . so they can be consistent with federal law.” *Id.* It created “a more comprehensive, more nationalized system for registered sex offenders,” thereby “ensur[ing] that law enforcement and members of the public have access to the same information across the United States.” *Id.*

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 them with the three-tiered system outlined in the Walsh Act. 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).

An offender's tier level determines the frequency and duration of his registration duties: Tier I offenders register annually with their county sheriffs for 15 years, Tier II offenders register bi-annually for 25 years, and Tier III offenders 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. The trial court, however, "provide[s] the notice to the offender at the time of sentencing" of his tier classification. R.C. 2950.03(A)(2).

S.B.10 further requires community notification for Tier III offenders (but not Tier I or Tier II offenders). R.C. 2950.11(F)(1). When a Tier III 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 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. 2950.11. Community notification is *not* mandatory for every Tier III offender: S.B.10 grants broad discretion to trial courts to suspend the requirement under R.C. 2950.11(F)(2); accord *State v. McConville*, 124 Ohio St. 3d 556, 2010-Ohio-958.

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

S.B.10's effective date was July 1, 2007. The new tier classifications, and the accompanying registration responsibilities, came into force on January 1, 2008.

On September 23, 2009, the Department of Justice announced that the State of Ohio had successfully implemented the Walsh Act. See Department of Justice, Office of Justice Programs, at <http://www.ojp.gov/smart/pdfs/smart09154.pdf>. That certification permits the State to seek

federal assistance in improving its registration and notification system. For instance, the Attorney General recently acquired federal funding to implement an automatic message system that will contact an offender and remind him of an approaching registration date.

E. The General Assembly applied S.B.10 retroactively to offenders who committed their crimes before July 1, 2007.

The General Assembly applied S.B.10 retroactively to offenders who committed their crimes before July 1, 2007—the effective date of the statute. These offenders received tier classification in two ways.

For those offenders who had been convicted and sentenced *before* July 1, 2007, the law instructed the Attorney General to reclassify them from Megan’s Law into the Walsh Act. R.C. 2950.031; R.C. 2950.032. For this group of some 26,000 sex offenders, the Attorney General identified each offender’s tier classification under the Walsh Act and then provided him written notice of his new obligations under S.B.10.

For those offenders who were convicted and sentenced *after* July 1, 2007, the trial court imposed the Walsh Act tier classification at the time of sentencing. R.C. 2950.03(A). Appellant Williams fell into this category. The trial court informed him of his Tier II classification at his sentencing hearing on January 31, 2008.

F. In *State v. Bodyke*, this Court found that S.B.10’s reclassification provisions violated separation of powers as to those offenders who had previously been classified through judicial orders.

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.

In *State v. Bodyke*, 126 Ohio St. 3d 266, 2010-Ohio-2424, the Court entertained the last claim. It held that the reclassification provisions of S.B.10, R.C. 2950.031 and R.C. 2950.032, violated the separation-of-powers doctrine. The General Assembly could not “require the attorney general to reclassify sex offenders” (1) “who have already been classified by court order under [Megan’s] law”; or (2) “whose classifications have already been adjudicated by a court and made the subject of a final order.” *Id.* at syl. ¶¶ 2, 3.

The Attorney General has complied expeditiously with that mandate. To date, his office has reviewed the records of some 19,000 offenders and removed Walsh Act classifications for those offenders who fall within the parameters of *Bodyke*. Consistent with this Court’s mandate, the Attorney General instructed these offenders to comply with the registration requirements from their original Megan’s Law classifications. *Id.* at ¶¶ 2, 66.

Two significant classes of sex offenders were not impacted by the *Bodyke* decision. First, there is the group of sex offenders who were incarcerated before July 1, 1997 (the effective date of Megan’s Law) and received lengthy prison terms that extended *past* July 1, 2007 (the effective date of S.B.10). These offenders never received a Megan’s Law classification from a trial court. This Court will resolve their status in *State v. Dehler*, No. 2009-1974.

Second, there is the group of offenders who committed crimes before July 1, 2007 (the effective date of S.B.10), but were convicted and sentenced after that date. These offenders never received any Megan’s Law classification. Rather, the trial judge imposed an S.B. 10 classification on them in the first instance at sentencing. Appellant Williams falls into this class.

STATEMENT OF CASE AND FACTS

In May 2007, George Williams engaged in unlawful sexual conduct with a fourteen-year-old girl. See *State v. Williams* (12th Dist.), No. 2008-02-29, 2008-Ohio-6195, ¶ 2. In December 2007, he pled guilty to a violation of R.C. 2907.04(A). *Id.* On January 31, 2008, the trial court

sentenced Williams to sixty days imprisonment with credit for time served and three years of community control. See Judgment Entry of Sentence, *State v. Williams*, No. 07-cr-24610 (Warren C.P. Feb. 1, 2008) (attached as Ex. A).

The trial court also informed Williams that he was a Tier II sex offender with community notification, and instructed him to register with his county sheriff biannually for 25 years. See Explanation of Duties to Register as a Sex Offender (Feb. 1, 2008) (attached as Ex. B). At no point did Williams object to his sex offender classification on constitutional grounds. See *Williams*, 2008-Ohio-6195, at ¶ 6.

For the first time on appeal, Williams argued that S.B.10 violated his rights under the Ex Post Facto Clause of the U.S. Constitution and the Retroactivity Clause of the Ohio Constitution. He also alleged a violation of separation of powers, cruel and unusual punishment, due process, and double jeopardy. *Id.* at ¶ 5. Williams did not assert any other assignments of error. Nor has he ever contested the trial court's imposition of community notification, although he should have done so. S.B.10 requires community notification for Tier III offenders only. See R.C. 2950.11(F)(1). Trial courts lack statutory authority to impose community notification on Tier II offenders like Williams. That error should have been appealed, and corrected below.

The Twelfth District rejected Williams's constitutional claims. *Williams*, 2008-Ohio-6195, at ¶ 112. Williams appealed the decision to this Court, and the case was initially stayed for *Bodyke*. The Court's separation-of-powers holding, however, did not implicate Williams because he had not previously been classified by a court under Megan's Law. The Court accordingly lifted the stay and ordered briefing on the unresolved constitutional issues.

ARGUMENT

All "statutes enacted in Ohio are presumed to be constitutional," and Williams bears the difficult burden of "prov[ing] beyond a reasonable doubt that [S.B.10] is clearly

unconstitutional.” *State v. Williams* (2000), 88 Ohio St. 3d 513, 521. He has not done so here. Well-worn precedents from this Court and the U.S. Supreme Court confirm that S.B.10 does not violate the Ex Post Facto Clause of the U.S. Constitution, the Retroactivity Clause of the Ohio Constitution, or substantive due process.

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 (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’” a civil purpose or a criminal purpose. *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, Williams claims that both the intent and effect of S.B.10 is punitive. He is wrong, and his ex post facto claim fails.

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 (examining “the statute’s text and its structure to determine the legislative objective”).

“Nothing on the face of [S.B.10] suggests that the legislature sought to create anything other than a civil scheme designed to protect the public from harm.” *Kansas v. Hendricks*

(1997), 521 U.S. 346, 361. The General Assembly 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 expressed its “intent to protect the safety and general welfare of the people of this state.” R.C. 2950.02(B).

In *Cook*, this Court construed 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 with respect to S.B.10.

Williams nevertheless urges this Court to look past the General Assembly’s plain words and divine a hidden retributive purpose to the legislature. His evidence is unavailing.

First, Williams notes that S.B.10 “is placed within Title 29, Ohio’s Criminal Code.” Br. at 13. But Ohio has codified its sex offender registration law in the same code section—R.C. Chapter 2950—since 1963, and this Court consistently characterized the law as civil in nature. 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 observed, 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, Williams observes that S.B.10’s “classification and registration duties are directly related to the offense committed”; “there is no . . . independent determination as to the likelihood

that a given offender would commit another crime.” Br. at 13, 17. This is irrelevant. As discussed above, two of the Megan’s Law classifications (the “sexually oriented offender” and “habitual offender” designations) were automatically tied to the offender’s crimes of conviction. “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). That the General Assembly now defines the most severe classification, Tier III, solely by offense of conviction does not establish a retributive motive. As the U.S. Supreme Court has recognized, “[t]he State’s determination to legislate with respect to convicted sex offenders as a class, rather than require individual determinations of their dangerousness, does not make the statute a punishment.” *Smith*, 538 U.S. at 104.

Third, Williams highlights S.B.10’s penalty provision, noting that “the failure to comply with registration, verification, or notification requirements subjects an individual to criminal prosecution and penalties.” Br. at 13. That feature does not transform S.B.10 into a punitive law. Many regulatory laws contain similar penalty provisions. For instance, Ohio courts have authority to issue *civil* protection orders, see R.C. 3113.31(E), and individuals who violate those orders are subject to *criminal* prosecution, see R.C. 2919.27. This background threat of prosecution does not defeat the “civil” nature of the protective order. Furthermore, the penalty provision in S.B.10 is not a recent innovation. Ohio’s original sex offender law (passed in 1963) included a criminal sanction for non-registration, as did both Megan’s Law, see *Cook*, 83 Ohio St. 3d at 421, and Alaska’s sex offender law at issue in *Smith*, 538 U.S. at 96. Those laws were deemed to be civil, remedial schemes, and S.B.10 is no different.

Fourth, Williams complains that S.B.10’s tier classification is imposed at the time of sentencing. Br. at 13. But Megan’s Law also instructed the trial court to 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.*

Fifth, Williams argues that S.B.10’s disclosure requirements reveal the General Assembly’s retributive purpose. Br. at 15. But what he fails to acknowledge is that nearly all of the listed requirements were innovations of Megan’s Law. It was Megan’s Law that first required an offender to disclose his name, photograph, signature, residential address, employer’s address, school address, license plate numbers, and other information requested by the bureau of criminal investigation. Former R.C. 2950.04(C) (2006). It was Megan’s Law that first opened this information up to public inspection. Former R.C. 2950.081 (2006). And it was Megan’s Law that instructed the Attorney General to create an Internet sex offender registry. Former R.C. 2950.13(A)(11) (2006). The Court has already recognized the remedial nature of these provisions. See *State v. Ferguson*, 120 Ohio St. 3d 7, 2008-Ohio-4824, ¶ 36. While the General Assembly added several more disclosure requirements in S.B.10—e-mail addresses, Internet identifiers, telephone numbers, and the like—to reflect changing technology, Williams puts forward no evidence to show that these additional requirements were “designed to . . . punish the offender” rather than “protect the public.”¹ *Id.* at ¶ 38.

Neither the text nor the structure of S.B.10 reveals a hidden retributive purpose. The General Assembly’s purpose in enacting the law was civil—to protect the public and to bring Ohio’s sex offender classification and notification laws into conformity with national standards.

¹ S.B.10 requires offenders to provide a social security number, but federal and state laws prohibit disclosure of that information to the public. See 42 U.S.C. § 16918(b); R.C. 149.45.

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 the 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, z 168-69, all of which confirm that S.B.10 is a civil law. Williams's arguments to the contrary are nothing but conclusory, unsupported assertions.

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

To satisfy the first *Kennedy* factor, Williams must show that S.B.10 imposes "an affirmative disability or restraint" on him—that is, "some sanction approaching the infamous punishment of imprisonment." *Cutshall v. Sundquist* (6th Cir. 1999), 193 F.3d 466, 474 (citation omitted). His brief fails to identify a single example.

First, Williams complains that S.B.10 obligates him to register periodically with, and disclose personal information to, his county sheriff "under the threat of criminal prosecution." Br. at 20. Megan's Law imposed the same type of periodic registration and verification obligations. 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 *Doe v. Bredesen* (6th Cir. 2007), 507 F.3d 998, 1005 (Tennessee's sex offender "registration, reporting, and surveillance components . . . do not constitute an affirmative disability or restraint").

Second, Williams observes that certain county sheriffs "have instituted a fee that must be paid each time an individual registers." Br. at 20. That is irrelevant to the question at hand.

These fees are creatures of *county* ordinance or policy. S.B.10 does not impose, authorize, or contemplate such fees for sex offender registration. Thus, these fees have nothing to do with the issue of S.B.10's constitutionality.

Third, Williams argues that S.B.10 “impose[s] significant restraints with respect to where registrants may lawfully reside.” Br. at 20. It is true that S.B.10 prohibits sex offenders from residing within 1,000 feet of a school, preschool, or day-care center. R.C. 2950.034. But as Williams himself acknowledges (Br. at 22), this provision operates prospectively only. See *Hyle v. Porter*, 117 Ohio St. 3d 165, 2008-Ohio-542, ¶ 24. It does not apply retroactively to Williams or any other sex offender who committed his “acts . . . prior to the effective date of the statute.” *Id.* at ¶ 19. As such, S.B.10's residency restrictions are irrelevant to the *Kennedy* factors. When determining whether a law violates the Ex Post Facto Clause, the inquiry looks only to those provisions of the law that operate *retrospectively*. See *Lynce v. Mathis* (1997), 519 U.S. 433, 441 (“To fall within the ex post facto prohibition, a law must be retrospective.”).

Fourth, Williams argues that S.B.10's community notification provision “must be construed as [a] substantial disability[y] for reclassified offenders.” Br. at 21. He is wrong. S.B.10's community notification provision mirrors the Megan's Law community notification provision. In fact, S.B.10 is less aggressive because it affords discretion to trial courts to remove community notification for individual Tier III offenders. See R.C. 2950.11(F)(2). (By contrast, trial courts had no discretion under Megan's Law to remove community notification for sexual predators.) In any event, this Court has already held that community notification is not an affirmative disability or restraint under the first *Kennedy* factor 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*, 193 F.3d at 474-75 (the “public notification provisions” of a sex offender law “impose[] no restraint whatever upon the activities of a registrant”).

Simply put, Williams has not shown that he is laboring under an affirmative disability or restraint due to S.B.10. This first *Kennedy* factor cuts against him.

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

To prevail under the second *Kennedy* factor, Williams must establish that S.B.10 imposes a sanction that, “from a historical perspective . . . has been viewed as punishment.” *Cutshall*, 193 F.3d at 475. None of his three comparisons satisfies that requirement.

First, Williams contends that S.B.10’s community notification provisions, coupled with the State’s use of an Internet sex offender database, “share a common thread with traditional shaming punishments.” Br. at 21. That assertion ignores well-settled precedent.

This Court has twice rejected the public shaming analogy. In *Cook*, the Court reviewed a community notification provision of near-identical scope.² The Court held that “dissemination of such information in and of itself . . . has never been regarded as punishment when done in furtherance of a legitimate governmental interest.” 83 Ohio St. 3d at 419 (citation omitted). Later, in *Ferguson*, the Court reviewed a Megan’s Law amendment that required the Attorney General to maintain an Internet database displaying the offender’s name, photograph, address, and description. That provision, the Court said, was not “akin to colonials’ clearly punitive responses to similar offenses, which ranged from public shaming to branding and exile.” 2008-Ohio-4824, at ¶ 37. After all, “[t]he information at issue”—Williams’s criminal history—“is a

² Compare Former R.C. 2950.11(A) (1998) (requiring notice to neighbors, law enforcement, public schools, charter schools, children’s agencies, day-care centers, and higher education institutions), with R.C. 2950.11(A) (expanding notice to include building manager, other occupants if offender lives in a multi-unit building, and child volunteer organizations).

public record, and its characteristic as such does not change depending on how the public gains access to it.” *Williams*, 88 Ohio St. 3d at 526.

The U.S. Supreme Court has also eschewed the public shaming analogy. In *Smith*, the Court reviewed an Alaska sex offender law that mandated 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 “[o]ur system does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment.” *Id.* at 98. Rather, the Court 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.

Second, *Williams* argues that S.B.10’s residency restrictions match the historical punishment of expulsion. Br. at 21. But in the very next breath, he recognizes that S.B.10’s residency “restrictions currently may only be enforced prospectively.” Br. at 22; accord *Hyle*, 2008-Ohio-542 at ¶ 24. Simply put, S.B.10 does not restrict the housing choices of *Williams* or any sex offender who committed his crime before July 1, 2007—the effective date of the law. Because such prospective laws do not implicate the ex post facto prohibition, this provision of S.B.10 is not relevant to the *Kennedy* analysis.

Recognizing that deficiency, *Williams* states that several members of the 128th General Assembly have sought “to pass a new bill in which the residency restrictions will be enforced retroactively.” Br. at 22 (citing S.B.42 (2009)). If that new bill becomes law, *Williams* is free to challenge it under the ex post facto prohibition. But *Williams* does not explain how a piece of proposed, but un-enacted legislation has any relevance to the instant dispute—whether S.B.10 is a constitutional statute.

Third, Williams complains that “the registration and reporting scheme” in S.B.10 “is virtually indistinguishable from probation, parole, and other forms of supervised release.” Br. at 23. 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. This Court has also rejected the analogy, see *Cook*, 83 Ohio St. 3d at 418 (“Registration has long been a valid regulatory technique with a remedial purpose.”), as has the Sixth Circuit, see *Bredesen*, 507 F.3d at 1005 (“[R]egistration . . . components are not of a type that we have traditionally considered as punishment.”).

In sum, nothing in S.B.10 mirrors historical punishment.

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

In referencing the third *Kennedy* factor, Williams briefly asserts that S.B.10 “comes into play only upon a finding of scienter.” Br. at 23. He is wrong. This factor 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”).

S.B.10, like its predecessors, contains no scienter requirement. It “applies to persons convicted of any one of the sex offenses listed in the statute, without inquiry into the offender’s state of mind.” *Cutshall*, 193 F.3d at 475. This third factor therefore favors the State.

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

Discussing the fourth *Kennedy* factor, Williams argues the S.B.10 was “designed in large part to have both a retributive and deterrent effect” due to “the substantial restraints on physical liberty and the ostracism associated with sex-offender registration and notification.” Br. at 23.

That conclusory statement contains two errors. First, S.B.10 does not impose any physical restraints on Williams. That Williams must register with his county sheriff twice a year is an

“inconvenience . . . comparable to renewing a driver’s license,” but it “does not restrain [him] in any way.” *Cook*, 83 Ohio St. 3d at 418. And “the burden of dissemination” from S.B.10’s community notification program “is not imposed on [Williams], but rather on law enforcement.” *Id.*

Second, public opprobrium is a consequence of every sex offender law. This Court has openly acknowledged that fact: “Widespread public access is necessary for the efficacy of the scheme, and the attendant humiliation is but a collateral consequence of a valid regulation.” *Ferguson*, 2008-Ohio-4824, at ¶ 38 (quoting *Doe*, 538 U.S. at 99). But this Court has also affirmed the “remedial, regulatory” nature of these notification laws, emphasizing that “the sting of public censure does not revert a remedial statute into a punitive one.” *Id.* at ¶ 36-37.

To be sure, S.B.10’s registration and notification provisions (like those in Megan’s Law) will have some collateral deterrent effect on offenders. 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); accord *Cutshall*, 193 F.3d at 475. As this Court has noted, any deterrent effect from sex offender registration and notification is minimal when juxtaposed with the threat of traditional criminal punishments. *Cook*, 83 Ohio St. 3d at 420 (“[S]tatutes with a much lesser penal effect than incarceration, such as the notification provisions of R.C. Chapter 2950, will have little deterrent effect, if any.”).

Given the nominal nexus between S.B.10 and the traditional aims of punishment, this fourth *Kennedy* factor tilts to the State.

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

With respect to the fifth *Kennedy* factor, Williams argues that S.B.10 “applies only to behavior which is already a crime.” Br. at 24. The decisions in *Smith* and *Cook* foreclose his

reliance on this factor. It is true that S.B.10’s “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 criminal 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.

On the sixth *Kennedy* factor, Williams acknowledges that S.B.10 “advance[s] a legitimate, regulatory purpose: the protection of the public from dangerous sexual offenders.” Br. at 25.

He is right. The U.S. Supreme Court has recognized 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—it aligns Ohio’s system with the national sex offender registry and other state systems. Under the old Megan’s Law regimes, the States were losing track of over twenty percent of sex offenders due to a lack of coordination and standards among their different registration systems. See 152 Cong. Rec. S 8012 (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 identify and keep track of sex offenders.” *Id.* 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 aligning Ohio's sex offender registration and notification scheme with those national standards, thereby enhancing its efficacy.

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. Williams offers only two arguments on this score.

Williams first contends that S.B.10 is excessive because his "classification is tied solely to the fact of conviction as opposed to any finding of future dangerousness." Br. at 25. To the contrary, there is nothing unreasonable about the General Assembly's decision to classify Williams as a Tier II offender solely by reference to his criminal offense.

This Court has already said so. Two classifications under the old Megan's Law—the "sexually oriented offender" designation and the "habitual offender" designation—were tied solely to the offender's convictions. "The trial court [did] not 'determine' anything. It merely engage[d] in the ministerial act of rubber-stamping the registration requirement on the offender." *Hayden*, 2002-Ohio-4169, at ¶ 16 (citation omitted). Notwithstanding the automatic nature of those classifications, this Court affirmed their constitutionality in *Cook* and *Ferguson*.

The U.S. Supreme Court has said so as well. In *Smith*, it found no constitutional deficiency in Alaska's offense-based sex offender classification system: "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.” 538 U.S. at 104.

In S.B.10, the General Assembly “ma[de] reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences.” *Id.* at 103-04. The Walsh Act 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). As the severity of the crime increases, the frequency and duration of the offender’s reporting period lengthens. Given the pronouncements from this Court and the U.S. Supreme Court, such an offense-based calibration is eminently reasonable.

Williams next asserts that S.B.10 is “excessive in relation to any public safety goal” because “empirical evidence . . . demonstrates the inefficacy of sex-offender registration laws in actually protecting the public from harm.” Br. at 25. But Williams’s own evidence undercuts that empirical claim.

On page 24 of his brief, Williams offers two empirical studies. In the first, the authors examined rape statistics in ten states with various sex offender laws. See Bob E. Vasquez et al., *The Influence of Sex Offender Registration and Notification Laws in the United States* (2008), 54 *Crime & Delinq.* 175. They next analyzed whether a statistically significant change occurred in the monthly incidences of rapes after the effective date of each law. *Id.* at 184. Although some state laws did not prompt a change, Ohio’s did: “The rape incidences in Hawaii, Idaho, and Ohio . . . significantly decreased after the introduction of the sex offender notification laws.” *Id.* at

186 (emphasis added). In Williams’s second study, the authors compared trends in national crime data to the effective date of sex offender laws in various states—including Ohio. See J.J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?* (2008). They found “evidence that sex offender registration and notification laws decreased the total frequency of sex offenses in the states . . . examine[d].” *Id.* at 4. Notably, the authors concluded that “[t]he registration of released sex offenders alone is associated with a *significant decrease* in the frequency of crime.” *Id.* (emphasis added). Therefore, Williams’s own studies confirm—or, at the very least, support—the General Assembly’s view that S.B.10 promotes public safety.

Simply put, Williams has not substantiated his empirical claim that sex offender registration and notification “do[] very little to advance public safety.” Br. at 25. Plenty of evidence—*anecdotal and empirical*—exists to the contrary. Because S.B.10 has “a rational connection to a nonpunitive purpose,” and because “the means chosen”—an offense-based classification system—“are reasonable,” *Bredesen*, 507 F.3d at 1006-07, this final *Kennedy* factor provides further proof of S.B.10’s constitutionality.

Examining the same seven *Kennedy* factors, all the federal circuit courts—including the Sixth Circuit—have “consistently and repeatedly rejected *ex post facto* challenges to state statutes that retroactively require sex offenders convicted before their effective date to comply with similar registration, surveillance, or reporting requirements.” *Bredesen*, 507 F.3d at 1007 (collecting cases). Williams has offered this Court no basis for going in the opposite direction.

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 uses a two-part test. It first determines “whether the General Assembly expressly made the statute retroactive.” *Hyle*, 2008-Ohio-542, at ¶ 8. If so, the Court then assesses “whether the statutory restriction is substantive or remedial.” *Id.* A remedial law does not violate the Retroactivity Clause, even if applied retroactively. *Id.* at ¶ 7.

The parties do not dispute the first prong of this test. The General Assembly intended the registration and notification requirements in S.B.10 to apply retroactively to sex offenders who committed their crimes before July 1, 2007. (S.B.10’s residency restriction is the exception; it applies prospectively only.)

As to the second prong, 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.” *Cook*, 83 Ohio St. 3d at 411. A statute is “remedial” if it “affect[s] only the remedy provided” or “merely substitute[s] a new or more appropriate remedy.” *Id.*

Williams offers two arguments for why S.B.10 is a “substantive” law. First, he contends that S.B.10’s classification and notification system is “a form of punishment,” and thus “affect[s] [his] substantive right to due process and the prohibition against double jeopardy.” Br. at 29. This is a rehash of his Ex Post Facto argument. The line between a civil, remedial statute and a criminal punishment in the double jeopardy context turns on the same seven *Kennedy* factors. See *State v. Martello*, 97 Ohio St. 3d 398, 2002-Ohio-6661, ¶ 21 (referencing *Kennedy* factors in

assessing whether a sanction is civil or criminal for double jeopardy purposes); see also *Williams*, 88 Ohio St. 3d at 528 (same). As explained above, those factors demonstrate that S.B.10 is a civil remedial, law.

Second, Williams asserts that, even if it is a civil law, S.B.10 “imposes new or additional burdens as to a past transaction.” Br. at 29. When he committed his sex offense against a fourteen-year-old child in May 2007, Williams argues that he “had a reasonable expectation that his classification and attendant requirements would have lasted a finite period of ten years,” as set out in Megan’s Law. Br. at 32. Instead, he received a twenty-five-year reporting requirement under S.B.10.

This Court addressed—and rejected—that very argument in *Cook*. In June 1996, Tony Cook engaged in sexual activity with two minor children. He pled guilty to one count of gross sexual imposition. 83 Ohio St. 3d at 404. Under the law then in effect, Cook had *no* sex offender registration or notification duties. That law reached only those persons “convicted two or more times, in separate criminal actions” of a sex offense. Former R.C. 2950.01(A) (1996). The General Assembly then enacted Megan’s Law. Beginning July 1, 1997, all sex offenders had a legal duty to register with the county sheriffs. See *Cook*, 83 Ohio St. 3d at 408. The General Assembly also applied Megan’s Law retroactively to those individuals, like Cook, who committed their crimes before the statute’s effective date. *Id.* at 410.

At sentencing, the trial court classified Cook as a sexual predator under Megan’s Law and ordered him to register quarterly with his county sheriff for the rest of his life. *Id.* at 404. Cook objected to the classification under the Retroactivity Clause, arguing that the General Assembly had “significantly changed the law as it existed when [his] offense was committed” and “impos[ed] additional duties and attach[ed] new disabilities to past transactions.” *Id.*

This Court disagreed. It first held that Cook had “no vested right” in the prior sex offender law. *Id.* at 412.

The Court then rejected Cook’s argument that the General Assembly “had attached a new disability” to his past conduct. *Id.* It reaffirmed the rule that “a later enactment will not burden or attach a new disability to a past transaction or consideration in the constitutional sense, unless the past transaction or consideration created at least *a reasonable expectation of finality.*” *Id.* (emphasis added and citation omitted). The Court then found that Cook lacked such an expectation of finality with respect to his felonious conduct: “[E]xcept 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 (emphasis and citation omitted). Thus, the General Assembly’s decision to apply Megan’s Law retroactively to Cook “d[id] not violate the ban on retroactive laws.” *Id.* at 413.

Williams stands in the same shoes as Cook. He committed his sex offense before the effective date of S.B.10, and he now claims that retroactive application of S.B.10 “imposes new or additional burdens as to [that] past transaction.” Br. at 29. This argument fails because, like Cook, Williams has no reasonable expectation of finality with respect to his crime. See *Cook*, 83 Ohio St. 3d at 412. Therefore, S.B.10 did “not burden or attach a new disability to [that] past transaction . . . in the constitutional sense.” *Id.* (citation omitted).

In response, Williams compares himself to a litigant who has “a reasonable expectation of finality” in the outcome of a “case [that has] come[] to a conclusion.” Br. at 31. That analogy is off base. Had Williams received a prior Megan’s Law classification from a court, he would have a reasonable expectation of finality in that classification. As this Court said in *Bodyke*, “the

General Assembly cannot annul, reverse, or modify *a judgment of a court already rendered.*" 2010-Ohio-2424, at ¶ 56 (emphasis added and citation omitted).

In this case, however, Williams never received a sex offender classification from a court. Instead, he claims that, at the moment of his sexual encounter with a fourteen-year-old girl, he had a reasonable expectation that Megan's Law would apply. Br. at 32. As *Cook* establishes, however, Williams could not have a "reasonable expectation of finality" that his criminal transaction would be immune from future legislation. 83 Ohio St. 3d at 412. As such, he cannot prevail on his claim that S.B.10 violates the Retroactivity Clause.

Attorney General's Proposition of Law No. III:

The residency restrictions in S.B.10 do not apply retroactively and therefore cannot be challenged by an individual who committed his offense before S.B. 10's effective date.

Under Megan's Law, 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). S.B.10 expanded that restriction to include preschools and daycare centers. R.C. 2950.034(A).

Williams attacks S.B.10's residency provision as violating his substantive due process rights under the U.S. and Ohio Constitutions. Br. at 32. That argument is a non-starter here. Williams lacks standing to challenge S.B. 10's residency requirements because the new requirements contained in the bill do not apply retroactively to sex offenders (like him) who committed their crimes before July 1, 2007. Indeed, in a different part of his brief, Williams acknowledges that S.B.10's residency restriction "may only be enforced prospectively." Br. at 22.

Under this Court's standing doctrine, "the constitutionality of a state statute may not be brought into question by one who is not within the class against whom the operation of the statute is alleged to have been unconstitutionally applied and who has not been injured by its

alleged unconstitutional provision.” *Palazzi v. Estate of Gardner* (1987), 32 Ohio St. 3d 169, 175. That requirement flows from this Court’s steadfast refusal to “indulge in advisory opinions” on constitutional disputes. *State ex rel. White v. Koch* (2002), 96 Ohio St. 3d 395, 399.

Williams does not fall within the class of individuals regulated by S.B.10’s residency restriction. In *Hyle*, the Court held that the residency restriction in Megan’s law “d[id] not feature a clear declaration of retroactivity”—the General Assembly “d[id] not proclaim [the statute’s] applicability to acts committed or facts in existence prior to the effective date of the statute.” 2008-Ohio-542, at ¶ 19. Thus, the residency restriction in Megan’s Law did not apply to an offender “who bought his home and committed his offense before the effective date of the statute.” *Id.* at ¶ 24.

The language of S.B.10’s residency restriction tracks the language of the Megan’s Law provision. Compare S.B.10 (no sex offender “shall establish a residence or occupy residential premises within one thousand feet of any . . . preschool or child day-care center premises”), with Former R.C. 2950.031(A) (no sex offender “shall establish a residence or occupy residential premises within one thousand feet of any school premises”) (recodified as 2950.034(A)). Under *Hyle* then, this S.B.10 provision has only a prospective application.

Because Williams committed his offense before S.B.10’s effective date, he is not impacted by the preschool and day-care restrictions and, thus, is “not within the class against whom the operation of [S.B.10] is alleged to have been unconstitutionally applied.” *Palazzi*, 32 Ohio St. 3d at 175.

* * * * *

As a final matter, the Texas Association Against Sexual Assault and the Cleveland Rape Crisis Center, as amici, advance a host of *policy* arguments against sex offender laws. These policy disagreements are unsupported by evidence and irrelevant to the constitutional analysis.

Amici's brief is deficient on its face. Amici make no attempt to discuss the relevance of those arguments to this Court's *legal* analysis. Nor could they. Their assertions have no obvious bearing on the *Kennedy* factors, the Retroactivity Clause, or substantive due process. Moreover, amici offer a broad indictment of *all* sex offender laws. The majority of their criticisms are not tailored to S.B.10, and thus are not helpful for evaluating its constitutionality.

Setting aside these threshold deficiencies, amici's specific attacks are meritless.

A. Amici's empirical claims are unsubstantiated.

Amici present several empirical studies to prove that sex offenders do not have disproportionately high recidivism rates. Br. at 4. That effort is flawed in both methodology and substance.

First, their studies rely on "official recidivism data"—that is, official arrest rates. Br. at 4. 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).

Second, amici'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.”).

Third, amici ignore other evidence showing higher recidivism rates among sex offenders. For instance, in recent Iowa litigation, the clinical psychologist retained by the plaintiff-sex offenders *as their expert* “estimated that the recidivism rate for sex offenders is between 20 and 25 percent.” *Miller*, 405 F.3d at 707; see also *Smith*, 538 U.S. at 106; *Dangerous Sex Offenders*, at 136-45 (summarizing different studies).

Fourth, amici highlight a New York study that “found no changes in the sex crime rates of either convicted sex offenders or first time offenders before or after registry laws were passed in New York.” Br. at 8. As discussed above, however, *two empirical studies cited by Williams reached the opposite conclusion*. Those authors found statistically significant decreases in sex offenses after the introduction of registration and notification laws in Ohio and other states. See Prescott, *supra*, at 4; Bob E. Vasquez et al., *The Influence of Sex Offender Registration and Notification Laws in the United States* (2008), 54 *Crime & Delinq.* 175, 186.

Simply put, the recidivism rate of sex offenders and the efficacy of sex offender laws are subject to ongoing empirical debate. For that reason—and because ample studies support the General Assembly’s policy choice—this Court has correctly left such policy calls 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.”).

B. Amici’s assertion that sex offender laws impair public safety misstates the purpose and scope of Ohio’s law.

Amici broadly attack sex offender law as antithetical to public safety. None of their claims withstand scrutiny.

First, they say that sex offender laws “miss[] the heart of the problem of sex-based crimes: protecting potential victims from attackers that they know.” Br. at 3. To the contrary, Ohio’s sex offender laws strike at the heart of that problem.

As amici observe, “the vast majority (79%) of recidivists selected victims with whom they had a previous relationship—whether social or biological.” *Id.* Far from counseling *against* sex offender laws, that statistic 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 identify sex offenders and then refrain from developing a social relationship with them. See Prescott, *supra*, at 4 (“[T]he drop in the overall frequency of reported sex offenses associated with [sex offender] registration is due primarily to reductions in attacks against ‘local’ victims who are known to an offender (i.e., a family member, friend, acquaintance, or neighbor).”). An individual is far less likely to be victimized by a sex offender who remains a stranger.

Second, amici emphasize the importance of gainful employment in decreasing the likelihood of recidivism for adult offenders generally, and sex offenders specifically. Br. at 5-6. The Attorney General agrees with that statement, but it has no bearing on the present dispute. “There is no express language in the provisions of R.C. Chapter 2950 . . . that prohibits convicted sex offenders from pursuing an occupation.” *Williams*, 88 Ohio St. 3d at 527.

To be sure, an offender’s status as an ex-felon will hinder his employment choices. But that consequence “flow[s] not from [S.B.10’s] registration and dissemination provisions, but from the fact of conviction, already a matter of public record.” *Smith*, 538 U.S. at 101. Amici present no evidence that these hardships would abate if S.B.10 is repealed. Employers routinely ask prospective applicants whether they have prior felony convictions or require applicants to

pass a criminal background check.³ Either way, employers 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.").

Third, amici complain that "[b]lanket community notification . . . drive[s] sex offenders underground, and away from treatment programs, gainful employment, and law enforcement monitoring and supervision." Br. at 6. That statement mischaracterizes the scope of Ohio's law. Community notification under S.B.10 is not "blanket." It applies only to Tier III offenders—the most serious sex offenders. R.C. 2950.11(F)(1). Moreover, S.B.10 contains an important safety value. The law gives the trial court broad discretion to remove the community notification requirement for individual offenders. See R.C. 2950.11(F)(2); *State v. McConville*, 124 Ohio St. 3d 556, 2010-Ohio-958.

C. Amici's preference for individualized risk assessments is a policy argument that should be addressed to the General Assembly.

In the final section of their brief, amici express a clear preference for individualized, judicial determinations of a sex offender's future dangerousness. Br. at 7. That position is again informed by a number of inaccurate or irrelevant considerations.

First, amici mistakenly commend "Ohio's former sex offender laws" for using "individualized, risked-based judicial determinations." Br. at 7. But as discussed above, Megan's Law used automatic offense-based classifications for two of its three designations—the "sexually oriented offender" and "habitual offender" categories. "The trial court . . . merely engage[d] in the ministerial act of rubber-stamping the registration requirement on the offender." *Hayden*, 2002-Ohio-4169, at ¶ 16 (citation omitted). This Court has affirmed the

³ In Ohio, employers can request a routine criminal background check of a job applicant for \$22 from the Bureau of Criminal Investigation. See Ohio Attorney General, Background Checks, at <http://www.ohioattorneygeneral.gov/Services/Business/WebCheck> (last visited Nov. 17, 2010).

constitutionality of that system twice—first in *Cook*, and later in *Ferguson*. The U.S. Supreme Court has likewise endorsed a State’s decision “to legislate with respect to convicted sex offenders as a class.” *Smith*, 538 U.S. at 104.

Second, amici urge the adoption of “actuarial tools such as the Static 99,” which, they say, “yield[] a more accurate prediction” of sex offender recidivism. Br. at 7. That position should be pressed to the General Assembly—the branch “responsible for weighing policy concerns and making policy decisions.” *Kaminski v. Metal & Wire Prods. Co.*, 125 Ohio St. 3d 250, 2010-Ohio-1027, ¶ 61 (alteration and citation omitted). The constitutionality of S.B.10 does not turn on whether it uses the best possible classification method for sex offenders. See, e.g., *Smith*, 538 U.S. at 105 (“The excessiveness inquiry of our ex post facto jurisprudence is not an exercise in determining whether the legislature has made the best choice possible to address the problem it seeks to remedy.”); *Menefee v. Queen City Metro* (1990), 49 Ohio St. 3d 27, 29 (“Whether the state’s classification best achieves its purposes is not our inquiry. In a rational-basis analysis, we must uphold the statute unless the classification is wholly irrelevant to achievement of the state’s purpose.”).

Third, amici claim that the offense-based classification system in S.B.10 is irrational because of “the possibility that high risk, likely re-offenders will be classified into one of the lower tiers,” thus placing the community at risk. Br. at 8. Amici offer no evidence that this has actually occurred. The best they can do is reference speculative statements by the Ohio Public Defender’s public information officer. Br. at 9. 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—including, 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.

The General Assembly had sound reasons for adopting an automatic offense-based classification system. The old Megan's Law system embraced by amici had serious flaws. As of 2006, 150,000 of the 550,000 sex offenders nationwide had seeped through its cracks. Following the lead of Congress, the General Assembly reasonably determined that an offense-based classification system was better suited for the task. And the General Assembly had every reason to believe that such an approach would pass constitutional muster. Both this Court and the U.S. Supreme Court had affirmed automatic offense-based sex offender classifications under the very constitutional provisions that Williams now invokes. Amici's policy arguments carry no weight against those established legal precedents.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

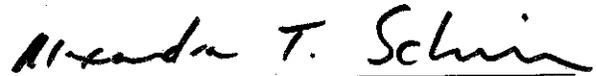
I certify that a copy of the foregoing Merit Brief of *Amicus Curiae* Ohio Attorney General Richard Cordray in Support of Appellant State of Ohio was served by U.S. mail this 22nd day of November, 2010, upon the following counsel:

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APPENDIX

09 FEB -1 AM 11:47

DAVID L. SPAETH
CLERK OF COURTS

STATE OF OHIO, WARREN COUNTY
COMMON PLEAS COURT

STATE OF OHIO,

Plaintiff,

vs.

GEORGE WILLIAMS,

Defendant.

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CASE NO. 07CR24610

548 004

600

JUDGMENT ENTRY OF SENTENCE
(Community Control)

On January 31, 2008, the Defendant appeared in Court with his attorney, Andrea Ostrowski, to be sentenced for the following offense(s): UNLAWFUL SEXUAL CONDUCT WITH A MINOR, R.C. 2907.04(A), a felony in the fourth degree.

The Defendant was previously found guilty pursuant to a guilty plea by Defendant.

The Court inquired if the Defendant had anything to say in mitigation regarding the sentence. The Court has considered the record, oral statements, any victim impact statement and presentence report prepared, as well as the principles and purposes of sentencing under R.C. §2929.11, and has balanced the seriousness and recidivism factors under R.C. §2929.12.

The Court has considered the factors under R.C. §2929.13.

It is hereby **ORDERED** that Defendant be sentenced to 3 years of community control, specifically to include:

- A. Warren County Jail for 60 days with 60 days credit for time served
- B. **Community Corrections Work Release Program** _____
- C. a fine of \$ _____ (\$ _____ is mandatory)
- D. a license suspension of _____
- E. community service of _____ days
- F. electronic monitoring for _____ (term)
- G. Restitution _____
- H. Completion of inpatient treatment program as arranged by probation
- I. Complete program at T.A.S.C.
- I. Other Complete Sex Offender Evaluation and any recommended treatment or conditions

(2d)



EXHIBIT A

The Court finds that the defendant has or is reasonably expected to have the means to pay the financial sanctions, fines, and court appointed attorney's fees imposed herein.

Defendant shall receive 60 days jail time credit.

Any defendant sentenced to the Warren County Jail for a non-violent offense may serve his/her time in the MSJ Pod. Any work release afforded the defendant shall be monitored through the Community Corrections Program.

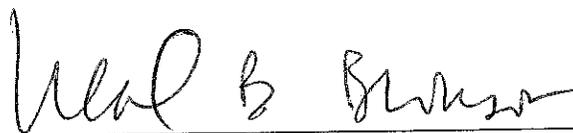
The defendant shall be monitored by the Warren County Adult Probation Department and is subject to the attached rules and conditions. Every defendant convicted of a felony offense shall submit a DNA sample pursuant to R.C. §2901.07. Any Temporary Protection Order issued in this case is hereby terminated. Violation of this sentence may lead to a longer or more restrictive sanction, or may impose a prison term of 9 months PRISON.

Defendant is therefore ORDERED to report to the Warren County Adult Probation Department forthwith. Defendant is ordered to pay any restitution, all prosecution costs, court appointed counsel costs and any fees permitted pursuant to R.C. §2929.18(A)(4), for which execution is hereby ordered.

In addition a period of control or supervision by the Adult Parole Authority after release from prison is mandatory in this case. The control period may be a maximum term of 5 years. A violation of any post-release control rule or condition can result in a more restrictive sanction while released, an increased duration of supervision or control, up to the maximum set out above and/or re-imprisonment even though you have served the entire stated prison sentence imposed upon you by this court for all offenses set out above. Re-imprisonment can be imposed in segments of up to 9 months but cannot exceed a maximum of $\frac{1}{2}$ of the total term imposed for all of the offenses set out above.

If you commit another felony while subject to this period of control or supervision you may be subject to an additional prison term consisting of the maximum period of unserved time remaining on post-release control as set out above or 12 months whichever is greater. This prison term must be served consecutively to any term imposed for the new felony you are convicted of committing.

The sentence imposed by the Court automatically includes any extension of the stated prison term by the Parole Board.



JUDGE BRONSON

Warren County Common Pleas Court

copy
MS
2/1/08
JH

COMMUNITY CONTROL
RULES AND CONDITIONS

548 006

DEFENDANT GEORGE D. WILLIAMS (III)

CASE # 07CR24610

In consideration of having been granted Community Control on 01/31/2008, I agree to comply with the following rules and conditions:

- GW1. I will obey federal, state, and local laws and ordinances, and all rules and regulations of the Warren County Common Pleas Court.
- GW2. I will keep my Community Control Officer informed of my residence. I will not change my place of employment or residence without my Community Control Officer's permission. I will maintain full-time employment approved by my Community Control Officer. I will not quit or change my employment without the approval of my Community Control Officer. I understand that it is a violation of these conditions if I should be fired from my employment for just cause.
- GW3. I will not leave the State without written permission of my Community Control Officer.
- GW4. I will not enter upon the grounds of any correctional facility, nor attempt to visit any prisoner without the written permission of my Community Control Officer, nor will I communicate with any prisoner without first informing my Community Control Officer of the reason for such communication.
- GW5. I will comply with all orders given to me by my Community Control Officer or other authorized representative of the Court, including any written instructions issued at any time during the period of supervision.
- GW6. I will not purchase, possess, own, use, or have under my control any firearms, deadly weapons, ammunition, or dangerous ordnance.
- GW7. I will not purchase, possess, use, or have under my control any narcotic drug or other controlled substance, including any instrument, device or other object used to administer drugs or to prepare them for administration, unless it is lawfully prescribed for me by a licensed physician. I agree to inform my Community Control Officer promptly of any such prescription. In addition, I will not consume, purchase or have at my residence any alcohol. I agree to submit to drug testing at my own expense, as directed by my Community Control Officer. **This might include daily call-ins for testing instructions.**
- GW8. I will report any arrest, citation of a violation of the law, conviction or any other contact with a law enforcement officer to my Community Control Officer no later than the next business day, and I will not enter into any agreement or other arrangement with any law enforcement agency which might place me in the position of violating any law or condition of my supervision unless I have obtained permission in writing from the Court for which I am on Probation.

- 9. I agree to a search without warrant of my person, my motor vehicle or my place of residence by a Community Control Officer at any time.
- 10. I agree to sign a release of confidential information from any public or private agency if requested to do so by a Community Control Officer.
- 11. I agree to waive extradition if I should be arrested in any other state or territory of the United States or any foreign country. No other formalities will be required for authorized agents of the State of Ohio to bring about my return to this State for revocation proceedings.
- 12. I agree to give all information regarding my financial status to assist in determining my ability to pay specific financial obligations, to my Community Control Officer.
- 13. I agree to follow all rules and regulations of treatment facilities or programs of any type in which I am placed or ordered to attend while under the jurisdiction of the Court, and/or Ohio Department of Rehabilitation and Correction.
- 14. I also agree to the following "Special Conditions": _____

I have read or had read to me, the foregoing conditions of my Community Control Supervision. I fully understand these conditions, I agree to comply with them, and I understand that a violation of any of these conditions may result in the revocation of my Community Control. In addition, I understand that I will be subject to the foregoing conditions until I have received a Journal Entry from the Court stating that I have been discharged from Community Control supervision.

George Williams
 SIGNATURE OF DEFENDANT

1-31-08
 DATE

SPECIAL CONDITIONS

543 008

- a. Secure written permission of the Community Control Officer before leaving the county of residence.
- b. Secure written permission before leaving geographic area prescribed by the Community Control Officer. _____
- c. Avoid association with any person who is on probation or parole.
- d. Avoid association with (Specific Individual(s): _____

- e. At no time enter _____ County, Ohio unless given written permission by the Community Control Officer.
- f. Secure written permission of the Community Control Officer before entering into marriage.
- g. Secure the written permission of the Community Control Officer before purchasing an automobile.
- h. Secure the written permission of the Community Control Officer before operating an automobile.
- i. Secure the written permission of the Community Control Officer before entering into a contract, which requires installment payments.
- j. Secure the written permission of the Community Control Officer before entering into any type of contractual relationship.
- k. At no time enter or remain in any establishment where alcohol is sold or consumed on the premises.
- l. Will undergo and successfully complete a program of alcohol/drug treatment as directed by my Community Control Officer. _____
- m. Will undergo and successfully complete a program of mental health treatment as directed by my Community Control Officer. _____

n. Will pay the fine, costs of prosecution, restitution, and attorney fees in accordance with a payment plan establishment by my Community Control Officer.

o. _____

X George Williams
Defendant's Signature

Chf A Fields /
Community Control Officer's Signature

1-31-08
Date

1-31-08
Date

SEX OFFENDER SPECIAL CONDITIONS

548 010

17. I agree to fully participate in or successfully complete the Sanctions or Special conditions indicated below:

- A. I will register with the Sheriff's Department in the counties that I reside, work, or attend school, in accordance with state law.
- B. I will have no contact with the victim(s) of my offense: _____
- C. I will have no contact with offenders involved in my sex offense: _____
- D. I will successfully complete a program for sex offenders as ordered by my Community Control Officer. Program: AWARE
- E. I will abide by all rules and recommendations of my treatment provider.

F. I will have no unsupervised contact with children under the age of 18. I must obtain permission from my Community Control Officer before having supervised contact with children under the age of 18. The Community Control Officer must approve the "Supervisor", in writing. I will not frequent places where children congregate. Exceptions: BIOLOGICAL RELATIVES AND MOTHER OF HIS CHILD

G. I will not form a relationship with a man or woman who has physical custody of children without the knowledge and permission of my Community Control Officer.

H. I will not possess children's clothing, toys, or games without the knowledge and permission of my Community Control Officer.

I. I will not possess any sexually explicit material (pornography).

J. I will not possess a P.O. Box without the knowledge and permission of my Community Control Officer.

K. I will not possess or use cameras, video cameras, or other photographic equipment without the knowledge and permission of my Community Control Officer.

L. I will not possess or use a computer modem, or otherwise access the Internet, without the knowledge and permission of my Community Control Officer. I will not enter or remain in an establishment that offers access to the internet to their patrons.

M. I will not possess any binding restraints.

N. I will not possess any law enforcement identification, insignia, badges, uniforms, or other items associated with law enforcement.

O. I will not drive a motor vehicle with juveniles under the age of 18, without the knowledge and permission of my Community Control Officer. Exceptions: _____

P. I will inform all persons with whom I have a significant relationship of my offending history, if instructed to do so by my Community Control Officer.

Q. I will inform my employer of my offending history if instructed to do so by my Community Control Officer.

R. I will not have sexual contact with anyone without the knowledge and permission of my Community Control Officer.

S. I will not use alcohol or any other drug or mind-altering substances.

T. I will abide by a daily curfew from _____ to _____ at my approved residence. Curfew may be modified by Community Control Officer to allow for employment and/or treatment appointments only.

U. As a Registered Sex Offender residing in Warren County Ohio, you are ordered to report to the Warren County Common Pleas Court Adult Probation Department from 4:30 PM to 8:00 PM on all dates Warren County communities observe Trick-or-Treat. You are not permitted to distribute candy from you residence or have any type of Halloween or Harvest Party at your residence. Your residential doors are to be locked and all exterior lights are to be turned off.

V. Additional Special Conditions: _____

George Williams
 OFFENDER SIGNATURE DATE

Alfred Fields 1-31-08
 WITNESS DATE

COMMON PLEAS COURT
WARREN COUNTY, OHIO
FILED

Explanation of Duties to Register as a Sex Offender or Child Victim Offender Duties
(ORC 2950.04 or 2950.041)

08 FEB -1 AM 11:47

DRC # _____ e-SORN # _____

SSN # _____ County of JAMES L. SPAETH
Conviction: WARREN CLERK OF COURTS

Court Case Number 07CR24610

Conviction O.R.C.# (s) UNLAWFUL SEXUAL CONDUCT WITH A MINOR. ORC 2907.04(A)

Name WILLIAMS GEORGE DONALD
(Last) (First) (Middle)

Expected Residence Address _____ Mason
(Street) (City) (3142)
OH 45040 (71)
(State) (Zip) (Phone)

1. You have been convicted of or pleaded guilty to a sexually oriented offense and or child victim offense as defined in ORC 2950.01

and you are one of the following (CHECK BOX , CIRCLE EITHER SEX OFFENDER OR CHILD VICTIM OFFENDER):

TIER I Sex Offender/Child Victim Offender Registrant

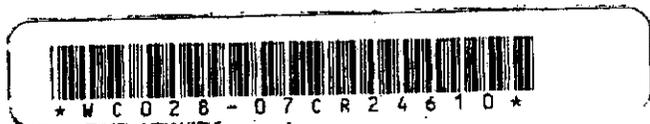
TIER II Sex Offender/Child Victim Offender Registrant

Subject to Community Notification (applies to registrants previously subject to requirement)

TIER III Sex Offender/ Child Victim Offender Registrant

Not Subject to Community Notification pursuant to O.R.C. 2950.11 (F)(2)

2. 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



*Very Maye
Ch: WES
2-1-08*

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. Employment includes volunteer services.

3. You are required to provide to the sheriff temporary lodging information, including address and length of stay, if your absence will be for 7 days or more.
4. 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 officer no earlier than 10 days prior to your verification date.
5. 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 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. If the residence address change is not to a fixed address, you shall include a detailed description of the place or places you intend to stay and no later than the end of the first business immediately following the day you obtain a fixed address, you must register with the sheriff that fixed address.
6. 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.
7. **DEPENDING UPON YOUR DESIGNATION, YOU ARE REQUIRED TO COMPLY WITH ALL OF THE ABOVE-DESCRIBED REQUIREMENTS FOR THE FOLLOWING PERIOD OF TIME AND FREQUENCY (CHECK ONE):**

TIER I- for a period of 15 years with in-person verification **annually**.

TIER II- for a period of 25 years with in-person verification every 180 days.

TIER III -for your **lifetime** with in-person verification every 90 days.

8. Since your expected residence address as stated above is located in WARREN County you shall register in person no later than February 4, 2008 (3 days after release)
(Date)
with that County Sheriff's Office located at:

550 JUSTICE DRIVE , LEBANON, OHIO 45036
(Street Address)

(City/State)

(Zip)

9. **Failure to register, failure to verify residence at the specified times or failure to provide notice of a change in residence address or other required information as described above will result in criminal prosecution.**

10. I acknowledge that the above requirements have been explained to me and that I must abide by all of the provisions of the Ohio Revised Code Chapter 2950.

George Williams
Offender's Signature

1-31-08
Date

11. I certify that I specifically informed the offender of their duties as set forth above and they indicated to me an understanding of those duties.

Neil B. Brown
Judges Signature

1-31-08
Date