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STATEMENT OF THE CASE AND FACTS

C.P. relies on the Statement of the Case and Facts presented in his Merit Brief.

ARGUMENT

Introduction

The State claims that in enacting the PRQJOR provisions of Senate Bill 10 (“S.B. 10”), the General Assembly considered Ohio’s enumerated sex offenses and determined that the most restrictive classifications for youth were to be reserved for the “most serious juvenile sex offenders.” (*Answer Brief*, pp. 4, 9). However, this is not true. A review of the legislative progression of Ohio’s sex offender registration and notification provisions demonstrates that the General Assembly made no such consideration in enacting S.B. 10. Rather, Ohio’s legislature enacted S.B. 10 in order to comply with federal guidelines, or risk losing a portion of funding from a federal law enforcement grant. Office of the Attorney General; The National Guidelines for Sex Offender Registration and Notification; Notice. 73 Fed. Reg. 128 (July 2, 2008) (Codified as 42 U.S.C. 16912). As such, the provisions of S.B. 10 were not enacted in response to a surge in juvenile sex offenses or a demonstrated increase in juvenile offenders’ danger to the community. Instead, they were enacted to ensure that Ohio did not lose any federal law enforcement funding.

In addition, as there is no empirical evidence to support the State’s assumption that a fifteen-year-old juvenile sex offender is more dangerous or likely to recidivate than a thirteen-year-old with the same offense and serious youthful offender (“SYO”) designation, there is no rational basis for the age-based distinctions in R.C. 2152.86.

While the State cites to *In re T.M.*, 4th Dist. No. 08CA863, 2009-Ohio-4224 (*Answer Brief*, p. 3) for the proposition that juvenile courts retain discretion in determining tier level

under S.B. 10, this Court has not yet decided that issue. As C.P. referenced in his merit brief, a majority of Ohio's appellate districts have found that juvenile courts retain discretion to determine a youth's tier level. (*Merit Brief*, pp. 14-15). However, currently pending before this Court are two cases in which the split among the districts has been addressed. See *In re Smith*, 120 Ohio St.3d 1416, 2008-Ohio-6166; and *In re A.R.*, 120 Ohio St.3d 1472, 2009-Ohio-2045. Thus, the State cannot definitively say that juvenile courts maintain tier discretion as this Court has yet to answer that question. However, if juvenile courts do have discretion to determine the tier level of non-PRQJOR youth, C.P.'s classification is even more egregious as he is placed at a significant disadvantage from other youth who are adjudicated delinquent of a sexually oriented offense with no rational basis for such distinction.

Notably, in the years since the federal legislation was initially passed, Attorney General Eric Holder has exercised his discretion under 42 U.S.C. 16918(c)(4) to create a juvenile exemption from the public registration requirements of SORNA.¹ Specifically, on May 14, 2010, the Attorney General issued a notice in the federal register which included proposed supplemental guidelines for SORNA.

SORNA includes as covered "sex offender[s]" juveniles at least 14 years old who are adjudicated delinquent for particularly serious sex offenses. See 42 U.S.C. 16911(1), (8). While the SORNA Guidelines endeavored to facilitate jurisdictions' compliance with this aspect of SORNA, see 73 FR at 38030, 38040-41, 38050, resistance by some jurisdictions to public disclosure of information about sex offenders in this class has continued to be one of the largest impediments to SORNA implementation. Hence, the Attorney General is exercising his authority under 42 U.S.C. 16918(c)(4) to create additional discretionary exemptions from public Web site disclosure to allow jurisdictions to exempt from public Web site disclosure information concerning sex offenders required to register on the basis of juvenile delinquency adjudications. This

¹ SORNA is the acronym for the Sex Offender Registration and Notification Provisions of the federal Adam Walsh Act. Office of the Attorney General; Proposed Supplemental Guidelines for Sex Offender Registration and Notification; Notice. 75 Fed. Reg. 93 (May 14, 2010).

change creates a new discretionary, not mandatory, exemption from public Web site disclosure.

Office of the Attorney General; Proposed Supplemental Guidelines for Sex Offender Registration and Notification; Notice. 75 Fed. Reg. 93 (May 14, 2010). These guidelines were open for public comment through July 2010, and may go into effect before the end of this year.

PROPOSITION OF LAW I

The classification of a registration-eligible youth as a public registry-qualified juvenile offender registrant violates the juvenile's right to due process as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution.

The State asserts that C.P.'s claim—that the juvenile court's lack of discretion in determining his classification violates due process—was not raised on direct appeal. (*Answer Brief*, p. 10). However, in his first assignment of error in the court of appeals, C.P. specifically argued that:

Under R.C. 2152.82 and 2152.83, for children who are classified as non-public juvenile offender registrants, the juvenile court has the ability to make a determination as to what registration level the child is subject, and whether that child should be subject to community notification. R.C. 2950.01(E)-(G); *In re J.M.*, 4th Dist. No. 08CA782, 2009-Ohio-4574, ¶¶68-74. This provides juvenile sex offender registrants with protections to ensure that their classifications are determined on a case-by-case basis, wherein the court is able to take into consideration their youth, and what effect treatment has had on their likelihood to reoffend in the future. However, R.C. 2152.86 provides no such protection; rather, the statute requires that, once a court makes a determination that a child is a serious youthful offender in relation to their adjudication for a sexually oriented offense, the court has no choice but to automatically classify the child as a Tier III PRQJOR, with a duty to comply with registration requirements every 90 days until death. R.C. 2152.86(B)(1); R.C. 2950.06(B)(3).

(R-15, p. 9). As such, C.P. is not presenting a new claim to this Court, but is making the same arguments raised below.

The State cites to the United States Supreme Court decision in *Connecticut Department of Safety v. Doe* (2003) 538 U.S. 1, 123 S.Ct. 1160, in support of its argument that due process does not afford a juvenile offender a hearing when determining his classification level. *Connecticut Dept. of Safety v. Doe* is inapposite to the claims raised in the present appeal. First, *Connecticut Dept. of Safety v. Doe* concerned the application of Megan's Law to adult registrants. The Supreme Court did not and has not addressed registration for juveniles. Given the vast differences between adults and children, both developmentally and in the eyes of the law, a blanket application of *Connecticut Dept. of Safety v. Doe* is inappropriate here. See *Graham v. Florida* (2009), 130 S.Ct. 2011, 176 L.Ed.2d 825 (The Court reinforced the idea that juvenile offenders cannot with reliability be classified among the worst offenders).

Further, the Appellant in *Connecticut Dept. of Safety v. Doe* challenged the retroactive publication of his registrant status under Megan's Law. *Connecticut Dept. of Safety v. Doe*, at 5-7. The Appellant claimed that the passage of Megan's Law and its *retroactive* application to him violated his right to due process, as it did not afford him a hearing so that a court could determine whether he was currently a danger to the public prior to publicizing his previous conviction. *Id.* at 7-8. Moreover, the Supreme Court found in *Connecticut Dept. of Safety v. Doe* that the Appellant's challenge failed in part because the internet publication provision of Connecticut's version of Megan's Law applied equally to all registrants. *Id.* at 8. Every adult offender registrant was posted on web as a result of the enactment of the new registration scheme. *Id.* But C.P. is not raising an *ex post facto* or retroactivity challenge in this case. Nor is he challenging a provision of S.B. 10 that applies equally to all juvenile offenders. Instead, C.P. is challenging the fact that R.C. 2152.86 singles out a segment of juvenile offender registrants

for inclusion on eSORN² and for automatic community notification, without giving him full due process before doing so.

The State asserts that the protections afforded C.P. in his SYO proceedings were sufficient to protect his due process rights at the classification stage of the proceedings. (*Answer Brief*, p. 12). However, the procedural protections built into Ohio's SYO statutes are not related to the child's subsequent classification as a sex offender. Instead, the SYO determination concerns whether the child should be subject to treatment and rehabilitation in the juvenile system, with the possibility of transferring him to the adult system in the event of a triggering circumstance. Specifically, before imposing an SYO disposition, the court must find that:

given the nature and circumstances of the violation and the history of the child, the length of time, level of security, and types of programming and resources available in the juvenile system alone are not adequate to provide the juvenile court with a reasonable expectation that the purposes set forth in section 2152.01 of the Revised Code will be met, the juvenile court may impose upon the child a sentence available for the violation, as if the child were an adult, under Chapter 2929. of the Revised Code, except that the juvenile court shall not impose on the child a sentence of death or life imprisonment without parole.

R.C. 2152.13(D)(2)(a)(i). At no time during that process does the juvenile court consider any factor relevant to a sex offender classification. Thus, the fact that C.P. was afforded certain protections at the SYO stage of the proceedings, does not negate the fact that those same protections were absent from his classification as a PRQJOR.

The SYO designation does not make C.P. any more adult than his other juvenile counterparts. It simply means that if he fails to successfully complete treatment and be rehabilitated in the juvenile system, his adult sentence, which is currently stayed, will be invoked. If the State chooses to file a motion asking the juvenile court to invoke C.P.'s adult

² "eSORN" stands for the Electronic Sex Offender Registration and Notification database maintained by the Ohio Attorney General.

sentence, C.P. would be afforded a hearing and counsel to represent him at that hearing. R.C. 2152.14. Conversely, his adult-like classification is invoked immediately. PRQJORS have no opportunity to be heard on the issue of their classification. They are not given the right to present evidence that shows they should not be subject to a lifetime of public registration. And their counsel plays no role on the issue of classification. C.P. and other youth like him, may never have the adult portion of their sentence invoked. Yet, their classification as PRQJORS and subsequent publication on the web is immediate.

R.C. 2152.86 puts C.P. and other youth so classified at a significant disadvantage, as they are classified like no other class of juvenile offender registrants, and subjected to registration requirements that are mirrored only by the classifications imposed on adult offenders. In no other area of the Ohio Revised Code are juveniles given such consequences without procedures to ensure that their rights are fully realized.

PROPOSITION OF LAW II

The classification of a registration-eligible youth as a public registry-qualified juvenile offender registrant violates the juvenile's right to equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Ohio Constitution.

The State asserts that C.P. is advocating for “more serious offenders” to be treated the same as “less serious offenders.” (*Answer Brief*, p. 16). Further, the State notes that C.P.’s equal protection claim should fail, as “the juvenile statutes that address juvenile sex offenders make distinctions [b]ased on age of the offender, the nature of the offence (sic) and whether the offender is a repeat offender.” (*Answer Brief*, pp. 18). But the State’s response assumes that C.P. is a more serious offender, despite the fact that the distinctions in S.B. 10 give no consideration to the details of a particular youth’s offense. Further, the State ignores the narrow

scope of C.P.'s challenge, which is that R.C. 2152.86 in particular is unconstitutionally sound. When the age-based distinctions in R.C. 2152.86 are reviewed, and when R.C. 2152.86 is compared to the remaining juvenile provisions of S.B. 10, it is evident that the automatic and public classification provisions in R.C. 2152.86 cannot withstand constitutional scrutiny.

Contrary to the State's assertions, the application of R.C. 2152.86 is not triggered by whether a youth has multiple adjudications for sexually oriented offenses. See R.C. 2152.82. Thus, the fact that C.P. was previously adjudicated delinquent of a sexually oriented offense is not relevant to this Court's consideration of whether R.C. 2152.86 is constitutional. Further, classification under R.C. 2152.86 is not contingent on the *nature* of the offense. Instead, it commences with the prosecutor's decision to initiate the case as an SYO proceeding. R.C. 2152.13. It is then contingent upon whether the child is adjudicated delinquent of one of the offenses specifically enumerated in R.C. 2152.86. On the contrary, the nature of the offense is a factor for juvenile court's to determine whether a child should be classified at all under R.C. 2152.83, or whether a juvenile offender registrant's classification should be lowered or terminated pursuant to R.C. 2152.84 or 2152.85.

In its answer, the State fails to provide a response for one of the most glaring inequities in the new law: the disparate treatment of children whose only material difference is their age. Though a child who is not age-eligible for registration may be adjudicated delinquent of a PRQJOR-eligible offense, and may also be designated an SYO in relation to that offense, their age ultimately determines whether they will be classified under R.C. 2152.86. For example, if C.P. had been thirteen instead of fifteen, with the same offenses, the same prior record, and the same designation as an SYO, he would never be classified as a PRQJOR. R.C. 2152.82; 2152.83; 2152.86. His picture would not go on eSORN; nor would he be subject to community

notification. In fact, he would not be eligible to be a juvenile offender registrant at all. R.C. 2152.82; 2152.83; 2152.86. Even if at thirteen he had additional adjudications for sexually oriented offenses, he would never have to register, no matter how serious or violent his offenses may have been. R.C. 2152.82. The State has failed to present any empirical evidence to demonstrate that a fifteen-year-old offender is a greater danger to the public's safety than a similarly adjudicated thirteen-year-old offender. As such, there is no justification for the disparate treatment of a thirteen year old in C.P.'s position and C.P. at fifteen years of age under R.C. 2152.86.

The State notes that the General Assembly's intent in enacting sex offender registration and notification laws was to protect the public. (*Answer Brief*, p. 19). However, that end is not met by the public registration of juvenile offenders. In fact, research shows that "there is little empirical proof that sex offender registries and notification make communities safer." Council of State Governments, *Sex Offender Management Policy in the States*, Public Safety Brief, Winter 2010, p. 6. Contrary to the State's claim that it is only speculative to surmise that C.P. will suffer negative consequences as a result of his registration being published on eSORN, the reality is, that a youth's inclusion on an electronic registry has devastating effects that may impede his ability to successfully reintegrate back into the community. Registered sex offenders have reported facing ostracism, losing their jobs, being evicted from properties and being expelled from school. Levenson and Cotter, *The Effects of Megan's Law on Sex Offender Reintegration*, JOURNAL OF CONTEMPORARY CRIMINAL JUSTICE, Vol. 21, No. 3 (2005), pp. 298-300.

Immediately following the enactment of the federal Adam Walsh Act, the Human Rights Watch³ released a report in which it outlined the results of a fifty-state survey of the nation's sex offender registration and notification laws and the effects that those laws have on the community and on the registrants themselves. *No Easy Answers: Sex Offender Laws in the U.S.*, Human Rights Watch, September 2007. The results of the study indicated that:

The public has a strong interest in making sure that those youth who are troubled and are at risk of reoffending receive the help they need to avoid engaging in such conduct again. Treatment and rehabilitation of children is rarely furthered by publicizing that they were adjudicated or convicted of a sex crime. Moreover, as noted above, since most adult offenders were never youthful sex offenders, requiring adults to register for crimes so committed as youth contributes little to the public interest in identifying people likely to engage in sex offenses.

Id. at 77. Moreover, studies have shown that, "to the extent that registration and community notification impede community reintegration and adjustment, they may have the paradoxical effect of *increasing risk of re-offense.*" Michael Caldwell, Michael Ziemke, & Michael Vitacco, *An Examination of the Sex Offender Registration and Notification Act as Applied to Juveniles*, PSYCHOLOGY, PUBLIC POLICY, AND LAW, VOL. 14, NO. 2, P. 106 (2008). (Emphasis added.)

The State's sole attempt at defending the public and automatic registration of youth falls grossly short of demonstrating a rational basis for the government's stated interest. The State argues that C.P.'s references to the National Center on Sexual Behavior of Youth's statistics on juvenile offender recidivism rates are not reliable due to the high number of unreported rape cases throughout the United States. (*Answer Brief*, p. 7). In support of its assertion, the State cites to what it purports to be a list of actual crime statistics from the National Center for Policy

³ Human Rights Watch is one of the world's leading independent organizations dedicated to defending and protecting human rights. Additional information on their organization and work can be found at www.hrw.org.

Analysis. (*Answer Brief*, p. 7). However, the State's list does not accurately present the information contained in the 1999 study by the National Center for Policy Analysis⁴ ("NCPA").

The NCPA study measured the expected probability of being punished for a crime by "asking randomly selected people whether they ha[d] ever been victims," and comparing those numbers to prison populations for specific years. *Crime and Punishment in America: 1999*, NCPA Policy Report No. 229, <http://www.ncpa.org/pdfs/st229.pdf>. The study calculated the expected punishment for a list of serious offenses, including rape, burglary, and murder. *Id.* A chart titled "Table I" in the study showed the probability of arrest for those who might commit a rape in 1997; the probability of prosecution for those who might commit a rape in 1990; and the probability of conviction and imprisonment for those who might commit a rape in 1994. *Id.* at p. 7-9. The study did not report actual rape statistics or show accurate data from particular years. It calculated statistical probabilities rather than exact crime statistics. Further, the NCPA did not indicate that its projected punishment models included any probabilities for juvenile offenders or that any of the surveyed persons reported being victimized by juveniles. Interestingly enough, the study concluded that crime rates were at a 25-year low in 1999, and that offenders who were apprehended and punished spent a longer amount of time in prison than offenders had since the 1970's. *Id.* at Executive Summary.

Further, the State cited to recommendations from the National Center on Sexual Behavior of Youth to justify the public registration of youth so that "parents do not unknowingly

⁴ The State's inaccurate presentation of the NCPA's rape statistics appear, in an identical manner as cited in the State's Answer Brief, in a blog called "Human Sexuality and Relationships," in a post titled "Sexual Assault Statistics," which can be found at <http://hsr21c.com/sex/sexual-assault-statistics/>. They also appear in a similar format on a website operated by RAINN (The Rape Abuse Incest National Network) with a reference to the NCPA study. <http://www.rainn.org/get-information/statistics/reporting-rates>. Each website appeared to have calculated the statistic that "15 of 16 walk free" on their own, as that number does not appear in the NCPA study.

submit their children to unnecessary risks.” (*Answer Brief*, p. 8). However, the State’s use of this information distorts the purpose of the recommendations. As noted in the July 2003 Fact Sheet, these recommendations are for the family of the juvenile offender registrant to follow once the youth is reintegrated back into the home. (National Center on Sexual Behavior of Youth, July 2003 Fact Sheet, No. 1 <http://www.ncsby.org/pages/publications/What%20Research%20Shows%20About%20Adolescent%20Sex%20Offenders%20060404.pdf>). As such, the recommendations are not justifications for the public dissemination of the registrant’s classification status, as the persons to whom the recommendations are made are those who are already aware of the youth’s offense and registration. Rather, they are guidelines by which the youth’s family assists the child with successful community reentry.

PROPOSITION OF LAW III

The classification of a registration-eligible youth as a public registry-qualified juvenile offender registrant violates the prohibition against cruel and unusual punishments as guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Section 9 of the Ohio Constitution.

As the State notes, each appellate district in Ohio has determined that S.B. 10 is civil in nature and not punitive. However, the opinions from the various appellate districts throughout the state are not controlling in this Court. This Court has not yet decided whether the juvenile provisions of S.B. 10 are purely civil or are punitive in nature. That direct question has been presented to this Court for review in *In re Smith* and *In re Adrian R.*, supra.

The fact that this Court has previously upheld previous versions of Ohio’s adult registration scheme does not automatically preclude the claims raised herein, as C.P.’s case challenges a new version of Ohio’s registration statutes and specifically challenges the juvenile

provisions of those statutes. See *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824; *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202. Nor do the decisions of the United States Supreme Court call for the cursory dismissal of C.P.'s claims, as the Supreme Court's decisions on those matters have been limited to adult registration cases. See *Smith v. Doe* (2003), 538 U.S. 84, 123 S.Ct. 1140. So, while both the State and the Attorney General urge that C.P. is merely challenging the same registration requirements that have already been found constitutional, the reality is that this Court has not yet considered whether the application of the juvenile provisions of S.B. 10 are civil or criminal in nature.

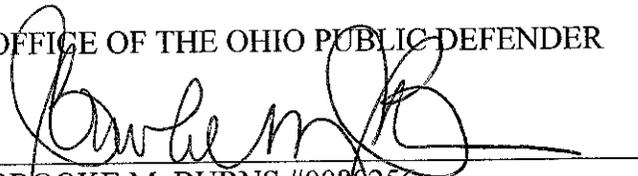
Unlike other juvenile dispositions, the registration duties and requirements for youth extend well beyond the juvenile court's jurisdiction. R.C. 2152.86; 2151.23. Thus, C.P. will carry a consequence of his juvenile adjudication with him for the rest of his life. R.C. 2152.85. And should he fail to comply with these registration requirements once he reaches adulthood, he will be charged with a felony offense. R.C. 2950.99. In no uncertain terms does his classification under R.C. 2152.86 fit within the civil nature of traditional juvenile dispositions.

CONCLUSION

Revised Code Section 2152.86 robs a child of his right to due process, equal protection, and right to be protected against cruel and unusual punishment. As such it violates both the United States and Ohio Constitutions. For the reasons argued above and in C.P.'s merit brief, C.P. respectfully requests that this Court find R.C. 2152.86 unconstitutional.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



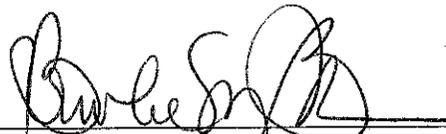
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **REPLY BRIEF OF APPELLANT C.P.** was forwarded by regular U.S. Mail, postage prepaid, this 22nd day of November, 2010, to the office of George Reitmeier, Assistant Athens County Prosecutor, 1 South Court Street, Athens, Ohio 45701.



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LEXSTAT O.R.C. 2152.84

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
 WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
 *** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
 *** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 21. COURTS -- PROBATE -- JUVENILE
 CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS
 JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAW

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ORC Ann. 2152.84 (2010)

§ 2152.84. Hearing upon completion of disposition on whether to continue classification or determination; reclassification

(A) (1) When a juvenile court judge issues an order under section 2152.82 or division (A) or (B) of *section 2152.83 of the Revised Code* that classifies a delinquent child a juvenile offender registrant and specifies that the child has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*, upon completion of the disposition of that child made for the sexually oriented offense or the child-victim oriented offense on which the juvenile offender registrant order was based, the judge or the judge's successor in office shall conduct a hearing to review the effectiveness of the disposition and of any treatment provided for the child, to determine the risks that the child might re-offend, to determine whether the prior classification of the child as a juvenile offender registrant should be continued or terminated as provided under division (A)(2) of this section, and to determine whether its prior determination made at the hearing held pursuant to *section 2152.831 [2152.83.1] of the Revised Code* as to whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender should be continued or modified as provided under division (A)(2) of this section.

(2) Upon completion of a hearing under division (A)(1) of this section, the judge, in the judge's discretion and after consideration of all relevant factors, including but not limited to, the factors listed in division (D) of *section 2152.83 of the Revised Code*, shall do one of the following as applicable:

(a) Enter an order that continues the classification of the delinquent child as a juvenile offender registrant made in the prior order issued under section 2152.82 or division (A) or (B) of *section 2152.83 of the Revised Code* and the prior determination included in the order that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable;

(b) If the prior order was issued under division (B) of *section 2152.83 of the Revised Code*, enter an order that contains a determination that the delinquent child no longer is a juvenile offender registrant and no longer has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*. An order issued under division (A)(2)(b) of this section also terminates all prior determinations that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable. Division (A)(2)(b) of this section does not apply to a prior order issued under section 2152.82 or division (A) of *section 2152.83 of the Revised Code*.

(c) If the prior order was issued under section 2152.82 or division (A) or (B) of *section 2152.83 of the Revised Code*, enter an order that continues the classification of the delinquent child as a juvenile offender registrant made in the

prior order issued under section 2152.82 or division (A) or (B) of *section 2152.83 of the Revised Code*, and that modifies the prior determination made at the hearing held pursuant to *section 2152.831 [2152.83.1] of the Revised Code* that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable. An order issued under division (A)(2)(c) of this section shall not include a determination that increases to a higher tier the tier classification of the delinquent child. An order issued under division (A)(2)(c) of this section shall specify the new determination made by the court at a hearing held pursuant to division (A)(1) of this section as to whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable.

(B) (1) If a judge issues an order under division (A)(2)(a) of this section that continues the prior classification of the delinquent child as a juvenile offender registrant and the prior determination included in the order that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable, the prior classification and the prior determination shall remain in effect.

(2) A judge may issue an order under division (A)(2)(c) of this section that contains a determination that reclassifies a child from a tier III sex offender/child-victim offender classification to a tier II sex offender/child-victim offender classification or to a tier I sex offender/child-victim offender classification.

A judge may issue an order under division (A)(2)(c) of this section that contains a determination that reclassifies a child from a tier II sex offender/child-victim offender classification. A judge may not issue an order under that division that contains a determination that reclassifies a child from a tier II sex offender/child-victim offender classification to a tier III sex offender/child-victim offender classification.

A judge may not issue an order under division (A)(2)(c) of this section that contains a determination that reclassifies a child from a tier I sex offender/child-victim offender classification to a tier II sex offender/child-victim offender classification or to a tier III sex offender/child-victim offender classification.

If a judge issues an order under this division that contains a determination that reclassifies a child, the judge shall provide a copy of the order to the delinquent child and the bureau of criminal identification and investigation, and the bureau, upon receipt of the copy of the order, promptly shall notify the sheriff with whom the child most recently registered under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* of the determination and reclassification.

(3) If a judge issues an order under division (A)(2)(b) of this section that declassifies the delinquent child as a juvenile offender registrant, the judge shall provide a copy of the order to the bureau of criminal identification and investigation, and the bureau, upon receipt of the copy of the order, promptly shall notify the sheriff with whom the child most recently registered under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* of the declassification.

(C) If a judge issues an order under division (A)(2)(a), (b), or (c) of this section, the judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian a copy of the order and, if applicable, a notice containing the information described in divisions (A) and (B) of *section 2950.03 of the Revised Code*. The judge shall provide the notice at the time of the issuance of the order and shall comply with divisions (B) and (C) of that section regarding that notice and the provision of it.

(D) An order issued under division (A)(2)(a) or (c) of this section and any determinations included in the order shall remain in effect for the period of time specified in *section 2950.07 of the Revised Code*, subject to a modification or termination of the order under *section 2152.85 of the Revised Code*, and *section 2152.851 [2152.85.1] of the Revised Code* applies regarding the order and the determinations. If an order is issued under division (A)(2)(a) or (c) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

(E) The provisions of this section do not apply to a delinquent child who is classified as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to *section 2152.86 of the Revised Code*.

HISTORY:

149 v S 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

LEXSTAT ORC ANN. 2152.85

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
 WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
 *** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
 *** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 21. COURTS -- PROBATE -- JUVENILE
 CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS
 JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAW

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ORC Ann. 2152.85 (2010)

§ 2152.85. Petition requesting reclassification or declassification

(A) Regardless of when the delinquent child was classified a juvenile offender registrant, upon the expiration of the applicable period of time specified in division (B)(1), (2), or (3) of this section, a delinquent child who has been classified pursuant to this section or *section 2152.82 or 2152.83 of the Revised Code* a juvenile offender registrant may petition the judge who made the classification, or that judge's successor in office, to do one of the following:

(1) If the order containing the juvenile offender registrant classification also includes a determination by the juvenile court judge that the delinquent child is a tier III sex offender/child-victim offender, to enter, as applicable, an order that contains a determination that reclassifies the child as either a tier II sex offender/child-victim offender or a tier I sex offender/child-victim offender, the reason or reasons for that reclassification, and a determination that the child remains a juvenile offender registrant, or an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*;

(2) If the order containing the juvenile offender registrant classification also includes a determination by the juvenile court judge that the delinquent child is a tier II sex offender/child-victim offender, to enter, as applicable, an order that contains a determination that reclassifies the child as a tier I sex offender/child-victim offender, the reason or reasons for that reclassification, and a determination that the child remains a juvenile offender registrant, or an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*;

(3) If the order containing the juvenile offender registrant classification also includes a determination by the juvenile court judge that the delinquent child is a tier I sex offender/child-victim offender, to enter an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*.

(B) A delinquent child who has been adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense or a child-victim oriented offense and who has been classified a juvenile offender registrant relative to that offense may file a petition under division (A) of this section requesting reclassification or declassification as described in that division after the expiration of one of the following periods of time:

(1) The delinquent child initially may file a petition not earlier than three years after the entry of the juvenile court judge's order after the mandatory hearing conducted under *section 2152.84 of the Revised Code*.

(2) After the delinquent child's initial filing of a petition under division (B)(1) of this section, the child may file a second petition not earlier than three years after the judge has entered an order deciding the petition under division (B)(1) of this section.

(3) After the delinquent child's filing of a petition under division (B)(2) of this section, thereafter, the delinquent child may file a petition under this division upon the expiration of five years after the judge has entered an order deciding the petition under division (B)(2) of this section or the most recent petition the delinquent child has filed under this division.

(C) Upon the filing of a petition under division (A) of this section, the judge may review the prior classification or determination in question and, upon consideration of all relevant factors and information, including, but not limited to the factors listed in division (D) of *section 2152.83 of the Revised Code*, the judge, in the judge's discretion, shall do one of the following:

(1) Enter an order denying the petition;

(2) Issue an order that reclassifies or declassifies the delinquent child in the requested manner.

(D) If a judge issues an order under division (C)(1) of this section that denies a petition, the prior classification of the delinquent child as a juvenile offender registrant, and the prior determination that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable, shall remain in effect.

A judge may issue an order under division (C)(2) of this section that contains a determination that reclassifies a child from a tier III sex offender/child-victim offender classification to a tier II sex offender/child-victim offender classification or to a tier I sex offender/child-victim offender classification.

A judge may issue an order under division (C)(2) of this section that contains a determination that reclassifies a child from a tier II sex offender/child-victim offender classification to a tier I sex offender/child-victim offender classification.

If a judge issues an order under this division that contains a determination that reclassifies a child, the judge shall provide a copy of the order to the delinquent child and the bureau of criminal identification and investigation, and the bureau, upon receipt of the copy of the order, promptly shall notify the sheriff with whom the child most recently registered under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* of the determination and reclassification.

If a judge issues an order under division (C)(2) of this section that declassifies the delinquent child, the order also terminates all prior determinations that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable. If a judge issues an order under division (C)(2) of this section that declassifies the delinquent child, the judge shall provide a copy of the order to the bureau of criminal identification and investigation, and the bureau, upon receipt of a copy of the order, promptly shall notify the sheriff with whom the child most recently registered under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* of the declassification.

(E) If a judge issues an order under division (C)(1) or (2) of this section, the judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian a copy of the order and, if applicable, a notice containing the information described in divisions (A) and (B) of *section 2950.03 of the Revised Code*. The judge shall provide the notice at the time of the issuance of the order and shall comply with divisions (B) and (C) of that section regarding that notice and the provision of it.

(F) An order issued under division (C) of this section shall remain in effect for the period of time specified in *section 2950.07 of the Revised Code*, subject to a further modification or future termination of the order under this section. If an order is issued under division (C) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

(G) The provisions of this section do not apply to a delinquent child who is classified as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to *section 2152.86 of the Revised Code*.

HISTORY:

149 v S 3, Eff 1-1-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

LEXSTAT 42 U.S.C. 16912

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*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 151. CHILD PROTECTION AND SAFETY
SEX OFFENDER REGISTRATION AND NOTIFICATION
SEX OFFENDER REGISTRATION AND NOTIFICATION

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42 USCS § 16912

§ 16912. Registry requirements for jurisdictions

(a) Jurisdiction to maintain a registry. Each jurisdiction shall maintain a jurisdiction-wide sex offender registry conforming to the requirements of this title.

(b) Guidelines and regulations. The Attorney General shall issue guidelines and regulations to interpret and implement this title.

LEXSTAT 42 U.S.C. 16918

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42 USCS § 16918

§ 16918. Public access to sex offender information through the Internet

(a) In general. Except as provided in this section, each jurisdiction shall make available on the Internet, in a manner that is readily accessible to all jurisdictions and to the public, all information about each sex offender in the registry. The jurisdiction shall maintain the Internet site in a manner that will permit the public to obtain relevant information for each sex offender by a single query for any given zip code or geographic radius set by the user. The jurisdiction shall also include in the design of its Internet site all field search capabilities needed for full participation in the Dru Sjojin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General.

(b) Mandatory exemptions. A jurisdiction shall exempt from disclosure--

- (1) the identity of any victim of a sex offense;
- (2) the Social Security number of the sex offender;
- (3) any reference to arrests of the sex offender that did not result in conviction; and
- (4) any other information exempted from disclosure by the Attorney General.

(c) Optional exemptions. A jurisdiction may exempt from disclosure--

- (1) any information about a tier I sex offender convicted of an offense other than a specified offense against a minor;
- (2) the name of an employer of the sex offender;
- (3) the name of an educational institution where the sex offender is a student; and
- (4) any other information exempted from disclosure by the Attorney General.

(d) Links. The site shall include, to the extent practicable, links to sex offender safety and education resources.

(e) Correction of errors. The site shall include instructions on how to seek correction of information that an individual contends is erroneous.

(f) Warning. The site shall include a warning that information on the site should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address. The warning shall note that any such action could result in civil or criminal penalties.