

ORIGINAL

In the
Supreme Court of Ohio

IN THE MATTER OF: JUSTIN A.
MESSMER,

Adjudicated Delinquent Child.

Case No. 2010-0780

On Appeal from the Wyandot
County Court of Appeals,
Third Appellate District

Court of Appeals Case
No. 16-09-17

**MERIT BRIEF OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL
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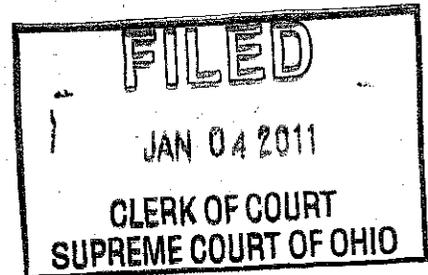


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INTRODUCTION

When he was sixteen, Justin Messmer had sexual contact with his eight-year-old sister. Messmer admitted to a charge of gross sexual imposition, and the juvenile court committed him to the custody of the Department of Youth Services. It also classified him as a tier II sex offender under Senate Bill 10 (S.B.10)—Ohio's sex offender registration law.

In this appeal, Messmer asserts that the retroactive application of S.B.10 to juveniles who committed an offense before the statute's effective date violates equal protection. The problem, he says, is S.B.10's reliance on age-based classifications. As a sixteen-year-old, Messmer is automatically subject to registration duties. By comparison, a twelve-year-old sex offender is not subject to any registration duties, and a fourteen-year-old sex offender is subject to registration duties at the discretion of the juvenile court. See R.C. 2152.83. Messmer asserts that all juvenile sex offenders, regardless of age, must be treated alike to satisfy equal protection.

His claim fails for two reasons. First, the age-based distinctions at issue did not originate with S.B.10. The General Assembly adopted these age cutoffs—fourteen-years-old for discretionary registration, and sixteen-years-old for mandatory registration—in 2002, well before Messmer committed his sexual assault. Because those age-based classifications were already in existence at the time of Messmer's offense, there is no retroactivity problem.

Second, Messmer concedes that the age-based classifications here are subject only to rational basis scrutiny. The classifications easily survive that deferential review. The entire premise of the juvenile justice system is the principle that, as a child matures with age, he becomes increasingly responsible for his actions. To that end, the General Assembly has long used a juvenile offender's age to determine criminal culpability, the venue of the proceeding, eligibility for confinement, and the length of sentence. Messmer has not cited, nor is the

Attorney General aware of, any case where this Court has employed rational basis review to invalidate any particular age cutoff in the juvenile justice setting.

The General Assembly followed the same approach for juvenile sex offender registration in R.C. 2152.83. It reasonably determined that a twelve-year-old sex offender, a fourteen-year-old sex offender, and a seventeen-year-old sex offender are *not* similarly situated. The older the sex offender, the greater awareness he has of his acts, and the greater the threat he may pose to public safety. Because the General Assembly's age cutoffs reflect the well-worn principle that accountability grows with age, they are rational, and they do not offend equal protection.

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 JUVENILE OFFENDER REGISTRATION LAWS IN OHIO

A. The Previous Juvenile Sex Offender Registration Law

Ohio first extended its sex offender registration laws to juveniles in 2002. That framework used a two-step process. First, the juvenile court had to determine whether the delinquent child was a "juvenile offender registrant" (JOR). To qualify as a JOR, the child must have committed an eligible "sexually oriented" or "child victim" offense. Former R.C. 2152.82(A)(1), 2152.83(A)(1)(a), 2152.83(B)(1)(a).

If the child was thirteen years old or younger at the time of the offense, the JOR designation could not be imposed. If the juvenile was fourteen or fifteen at the time of the offense, the JOR designation was discretionary with the juvenile court. Former R.C. 2152.83(B)(1). The court would conduct a hearing "to determine whether the child should be classified a juvenile offender registrant," see Former R.C. 2152.83(B)(2), and consider a number

of statutory factors: “[t]he nature of the sexually oriented offense,” “[w]hether the child has shown any genuine remorse or compunction,” “[t]he public interest and safety,” “[t]he results of any treatment,” and the like. Former R.C. 2152.83(E). If the child was sixteen or seventeen at the time of the offense, or if he was a repeat offender, the JOR designation was mandatory. Former R.C. 2152.82(A); 2152.83(A)(1).

If a delinquent child received a JOR designation, the law affixed a minimum registration requirement—he had to register in person with his county sheriff every year for a period of ten years. Former R.C. 2950.07(B)(3).

In a second step, the juvenile court then determined whether to further classify the child as a “sexual predator” or “habitual sexual offender.” Former R.C. 2152.82(B), 2152.83(A)(2), 2152.83(B)(2). This inquiry required the court to consider a number of statutory factors. Former R.C. 2152.83(E)(1)-(6). If the child received one of these classifications, his registration obligations would increase in frequency and in scope beyond the baseline JOR obligations. Habitual sexual offenders had to register once a year for twenty years, and sexual predators had to register quarterly for life. Former R.C. 2950.06(B), 2950.07(B).

Finally, the juvenile court had discretion to revisit its sex offender classification. The statute required the court to conduct a hearing “upon completion of the disposition” of the child from the juvenile court system “to determine whether the prior classification of the child . . . should be continued, modified, or terminated.” Former R.C. 2152.84(A)(1). Moreover, the statute allowed the child to petition the court for reclassification or declassification at certain intervals. Former R.C. 2152.85.

B. The New Juvenile Classification System under S.B. 10

On July 27, 2006, the U.S. Congress passed the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 203, 120 Stat. 587, 613. This federal law established a

comprehensive national system for the registration of sex offenders in order “to protect the public from sex offenders and offenders against children, and in response to the vicious attacks by violent predators.” 42 U.S.C. § 16901. On June 30, 2007, the General Assembly passed S.B.10 in order to align Ohio’s existing sex offender registration laws with the “recently enacted requirements of federal law contained in the Adam Walsh Child Protection and Safety Act.” S.B. 10, 127th Gen. Assem. (2007). S.B.10’s classification system became effective on January 1, 2008.

S.B.10 replaced the old classification regime—as to both adults and juveniles—with a new, three-tier system. The registration and notification obligations vary by tier. R.C. 2950.07(B). The new law fixes an adult offender’s tier automatically, by looking to his offense of conviction—and nothing else. R.C. 2950.01. The constitutionality of this adult classification scheme will be reviewed by this Court in *State v. Williams*, No. 2009-0088, and *State v. Dehler*, No. 2009-1974.

Juvenile offenders, however, are treated much differently from adults under S.B.10. Like the old sex offender registration law, S.B.10 uses a two-step classification process.

First, the juvenile court must decide whether the delinquent child is a “juvenile offender registrant” (JOR).¹ If the child was thirteen years old or younger at the time of the offense, the juvenile court may not impose the JOR designation. If the child was fourteen or fifteen at the time of his offense, the court has discretion on whether to impose the JOR designation. R.C. 2152.83(B). In making this initial determination, the court must hold a hearing and weigh,

¹ There is a separate category of juvenile offenders known as “public registry-qualified juvenile offender registrants,” or “PRQJOR.” See R.C. 2152.86. These are juveniles who have received a “Serious Youth Offender” sentence, which is a blended juvenile-adult sentence. S.B.10 adopted a different set of registration obligations and procedures for these offenders. The Court will review the constitutionality of this designation in *In re C.P.*, No. 2010-0731. Because Messmer is not a PRQJOR, this code section is not at issue.

among other factors, “the nature of the sexually oriented offense,” “[w]hether the child has shown any genuine remorse or compunction,” “[t]he public interest and safety,” and “[t]he results of any treatment provided to the child.” R.C. 2152.83(D). If the child was sixteen or seventeen at the time of his offense, or if the child is a repeat offender, the juvenile court must impose the JOR designation. R.C. 2152.82(A), 2152.83(A).

If a delinquent child receives the JOR designation, S.B.10 directs the juvenile court to then classify the child into one of three tiers. The tier determines the frequency and duration of the reporting requirement. A tier I juvenile offender must register annually with his county sheriff for a period of ten years, a tier II offender must register every 180 days for twenty years, and a tier III offender must register every 90 days for life. R.C. 2950.06(B), 2950.07(B). As part of this process, “the judge shall conduct a hearing under [R.C. 2152.831] to determine 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.” R.C. 2152.82(B), 2152.83(A)(2), 2152.83(C)(1); see also R.C. 2152.831(A) (same).

Like the old law, S.B.10 further instructs the juvenile court to conduct a reclassification hearing “upon completion of the disposition of that child” from the juvenile system. R.C. 2152.84(A)(1). During this hearing, the court must “determine whether the prior classification of the child as a juvenile offender registrant should be continued or terminated,” and “determine whether its prior determination . . . 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.” *Id.* The law explicitly states that the juvenile court may terminate all registration requirements for the individual, R.C. 2152.84(A)(2)(b), or

reclassify him to a lower tier. R.C. 2152.84(B)(2). The court may not, however, impose a greater tier. R.C. 2152.84(B)(2).

Finally, like the old law, S.B.10 allows the individual to petition the juvenile court for reclassification or declassification at regular intervals following his disposition. R.C. 2152.85.

STATEMENT OF CASE AND FACTS

In September 2007, the Upper Sandusky Police Department filed a complaint alleging that Justin Messmer, then sixteen years old, had sexual contact with his eight-year-old sister. See *In re Messmer* (3d Dist.), No. 16-09-17, 2010-Ohio-1088, ¶ 2. In October 2008, Messmer admitted to a charge of gross sexual imposition. *Id.* at ¶ 6. The juvenile court committed him to the Department of Youth Services for a minimum period of six months and a maximum period not to exceed his twenty-first birthday. *Id.*

In August 2009, the juvenile court classified Messmer as a tier II sex offender, concluding that the tier II designation was mandatory under S.B.10 in light of his offense. *Id.* at ¶ 7.

On appeal, the Third District affirmed. It rejected Messmer's claim that juvenile courts had discretion in classifying juvenile offenders under S.B.10: "[T]he trial court has no discretion in designating the offender as a Tier I, II, or III sex offender; it must merely classify the offender according to the offense committed." *Id.* at ¶ 12.

The court also rejected Messmer's claim that the retroactive application of S.B.10 violated his rights under the Ex Post Facto Clause of the United States Constitution, the Retroactivity Clause of the Ohio Constitution, due process, and equal protection. *Id.* at ¶¶ 15-26.

Messmer appealed to this Court. The Court accepted his first two propositions of law (challenging the retroactive application of S.B.10 under the Ex Post Facto Clause and due process), and held them for decisions in *In re Smith*, No. 2008-1624, and *In re Adrian R.*, No.

2009-0189. The Court also accepted Messmer's third proposition of law and ordered briefing on whether the retroactive application of S.B.10 violates equal protection.

ARGUMENT

To be clear, the Attorney General believes the juvenile court erred in finding that it was required to designate Messmer as a tier II juvenile sex offender. As the Attorney General's amicus brief in *Smith* explained, S.B.10's statutory regime clearly affords discretion to juvenile courts in the tier classification process. See Amicus Br. of Ohio Attorney General (Apr. 22, 2009), *In re Smith*, No. 2008-1624. The Third District's judgment below should be reversed on that narrow statutory ground, and the case should be remanded for a new classification hearing.

For the reasons discussed below, however, the Attorney General disputes Messmer's constitutional attack on S.B.10.

Attorney General's Proposition of Law No. I:

Messmer's equal protection challenge should be dismissed as improvidently allowed because the age-based distinctions in R.C. 2152.83 were enacted in 2002 and, thus, were not retroactively applied to Messmer

In his sole proposition of law, Messmer asserts that "[t]he retroactive application of Senate Bill 10 to juveniles whose offense was committed prior to the enactment of Senate Bill 10 violates the juvenile's right to Equal Protection." Br. at 6. He then complains that S.B.10 uses irrational age-based distinctions to determine whether a juvenile offender is eligible for sex offender registration—offenders under the age of thirteen have no registration duties, offenders who are fourteen or fifteen may have duties (depending on the juvenile court's findings), and offenders who are over sixteen automatically have duties. Br. at 7.

Messmer pressed this same retroactivity proposition to the Third District, see *Messmer*, 2010-Ohio-1088, at ¶ 8, and in his jurisdictional memorandum, see Jur. Mem. at 8 (May 3, 2010).

Messmer's proposition ignores the fact that this age-based classification is *not* an innovation of S.B.10. Rather, Ohio has used this classification method since 2002. Therefore, it was not retroactively applied to Messmer.

As discussed above, the General Assembly passed Ohio's first juvenile offender registration statute in 2002. Under that regime, the juvenile court made a threshold determination as to whether the offender was eligible for registration. That determination turned on age: If "[t]he child was sixteen or seventeen years of age at the time of committing [his] offense," the juvenile court would automatically "issue . . . an order that classifie[d] the child [as] a juvenile sex offender registrant and specifie[d] that the child ha[d] a duty to register." Former R.C. 2152.83(A)(1) (2003). If "[t]he child was fourteen or fifteen years of age at the time of committing the offense," the juvenile court had discretion. Former R.C. 2152.83(B)(1) (2003). After considering relevant statutory factors, it could "classif[y] the child [as] a juvenile sex offender registrant and specif[y] that the child has a duty to register," or it could "[d]ecline to issue" such an order. Former R.C. 2152.83(B)(2)(a)-(b) (2003). Finally, if the child was thirteen years old or younger at the time of the offense, the law prohibited any imposition of registration duties.

If the juvenile court found the child eligible for registration, it then determined whether the child should receive enhanced registration duties as a "habitual sex offender" or a "sexual predator." Former R.C. 2152.83(A)(2), (B)(2)(b) (2003).

S.B.10 did not alter, amend, or otherwise change the threshold age-based inquiry. Rather, it revised only the second step, replacing the old classification categories with the tier framework.

This history is important. Messmer has asked this Court to review the question whether “[t]he retroactive application of Senate Bill 10 . . . violates the juvenile’s right to Equal Protection.” Br. at 6. He then complains only that the use of age-based classifications for juvenile sex-offender registration violates equal protection. Because those age-based classifications *were already in existence* at the time of Messmer’s offense, there is no retroactivity issue. Thus, Messmer’s proposition of the law is fatally defective, and this Court should dismiss it as improvidently allowed.

Attorney General’s Proposition of Law No. II:

The age-based classifications in R.C. 2152.83 survive rational basis review.

Even if the Court chooses to untether Messmer’s equal protection arguments from his proposition of law and address the age-based classifications in R.C. 2152.83 broadly, Messmer would still lose. The General Assembly’s decision to classify juvenile offenders based on age is an eminently rational approach to sex offender classification.

At the outset, the Attorney General and Messmer agree on two points. First, the Attorney General too believes that “[t]reating children differently from adults make sense” when it comes to sex offender classification. Br. at 8. But the General Assembly did just that. Although S.B.10 imposes automatic offense-based classifications on adult sex offenders, it gives juvenile courts discretion in fixing classifications on juvenile sex offenders. R.C. 2152.83, 2152.831. Although S.B.10 prohibits adult sex offenders from petitioning to reduce or terminate their registration obligations, it instructs juvenile courts to review (and if necessary, reduce or terminate) a juvenile sex offender’s registration obligations at periodic intervals. R.C. 2152.84, 2152.85. And although S.B.10 requires the Attorney General to publish the name, photograph, and identifying information for adult sex offenders on a publicly accessible internet database, it does not permit the display of such information for juvenile sex offenders. R.C. 2950.13(A)(11).

These are just some of the ways in which the General Assembly opted to relax the State's sex offender law for juvenile offenders.

The Attorney General and Messmer also agree that the proper standard of review in this case "is the rational basis test." Br. at 7. The age-based classifications in R.C. 2152.83 will "not violate equal-protection principles if [they are] rationally related to a legitimate government interest." *Pickaway County Skilled Gaming, LLC v. Cordray*, 127 Ohio St. 3d 104, 2010-Ohio-4908, at ¶ 18 (citation omitted). This well-worn inquiry proceeds in two steps: First, the Court "must . . . identify a valid state interest." *Id.* at ¶ 19 (citation omitted). Second, the Court "must determine whether the method or means by which the state has chosen to advance that interest is rational." *Id.* (citation omitted).

The agreement ends here. When enacting R.C. 2152.83, the General Assembly determined that a twelve-year-old who commits a sex offense should be treated differently than a fourteen-year-old, who, in turn, should be treated differently than a seventeen-year-old. Messmer, by contrast, asserts that all juvenile sex offenders must be treated alike in order to satisfy equal protection.

That position has no support. The General Assembly's age-based distinctions are rational, particularly in the juvenile justice setting. Therefore, Messmer's equal protection claim fails.

A. Sex offender registration laws advance legitimate state interests.

Messmer does not contest this prong of the rational basis test, nor could he. The General Assembly has long declared the civil, remedial purpose of sex offender laws. 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). The General Assembly has 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).

The courts have endorsed this objective as a valid state interest. In *Smith v. Doe* (2003), 538 U.S. 84, the U.S. Supreme Court recognized that sex offender laws further “a legitimate nonpunitive purpose of ‘public safety, which is advanced by alerting the public to the risk of sex offenders in their community.’” *Id.* at 102-03 (citation omitted). This Court has done so as well. See *State v. Ferguson*, 120 Ohio St. 3d 7, 2008-Ohio-4824, ¶ 38.

The fact that a sex offender may be a juvenile, as opposed to an adult, does not defeat the importance of this objective. In establishing an appropriate disposition for any juvenile offender, the State must balance its twin goals of “rehabilitat[ing] the offender” and “protect[ing] the public interest and safety.” R.C. 2152.01(A). Including certain higher-risk juvenile offenders in the State’s sex offender registration program unquestionably advances those legitimate (indeed, compelling) interests.

B. The age-based distinctions in R.C. 2152.83 rationally advance those interests.

To evaluate a juvenile offender’s eligibility for Ohio’s sex offender registration scheme, the General Assembly instructed courts to look, in part, to age. An offender thirteen or younger at the time of the offense is not subject to any registration. An offender who is fourteen or fifteen will be subject to registration at the juvenile court’s discretion. R.C. 2152.83(B). And an offender who is sixteen or seventeen must receive some registration requirement (although the juvenile court retains discretion to set its frequency and duration). R.C. 2152.83(A).

The juvenile justice system is rife with similar bright-line age distinctions. Indeed, the core of the juvenile system is the principle that, as a juvenile matures in age, he becomes increasingly responsible for his actions—and with that, increasingly accountable for his delinquent acts. Following that principle, Ohio law draws age-based lines among juveniles all the time. It is why,

for example, a ten-year-old may be eligible for a "serious youth offender" designation when a nine-year-old is not, R.C. 2152.11; a ten-year-old may be placed in DYS custody when a nine-year-old cannot, R.C. 5139.05(A); a fourteen-year-old may be subject to discretionary bindover to the court of common pleas while a thirteen-year-old is not, R.C. 2152.10; R.C. 2152.12; and a sixteen-year-old may be subject to mandatory bindover to the court of common pleas when a fifteen-year-old is not, R.C. 2152.10; R.C. 2152.12. These are age-based distinctions, to be sure, but they are based on the rational principle that accountability grows with age.²

In keeping with the principle that accountability accompanies age, R.C. 2152.83 reflects a rational legislative judgment that, in general, older juvenile sex offenders pose a greater long-term threat to public safety than younger sex offenders. Older juveniles have a greater degree of awareness of and culpability for their acts. Therefore, when they commit sexual offenses, it is reasonable to infer that they pose longer-term public safety risks than younger, less mature juveniles. And older juveniles will "age out" of the juvenile system sooner than their younger peers, giving them less time to reap the benefits of the juvenile system's rehabilitative services.

² The Ohio Revised Code is filled with age-based distinctions that reflect judgments about graduated juvenile maturity levels. A juvenile must be seven to contribute to a campaign, R.C. 3517.102(c); ten to be presumed a competent witness, R.C. 2317.01; ten to ride in a boat without a lifejacket, R.C. 1547.24; ten to serve as an observer for a boat towing waterskiers, R.C. 1547.15; twelve to operate personal watercraft with parental supervision, R.C. 1547.06; twelve to give consent to adoption, R.C. 3107.06; fourteen to receive personal service, R.C. 2111.04; fourteen to select her own guardian, R.C. 2111.12; fourteen to operate an electric personal assistive mobility device, R.C. 4511.512; fourteen to operate a motorized bicycle, R.C. 4511.521(A)(1); fourteen to receive outpatient mental health services without parental consent, R.C. 5122.04(A); fifteen to enter a life insurance contract, R.C. 3911.08; fifteen years and six months to receive a learner's permit to drive, R.C. 4507.05; fifteen years and six months to become an organ donor, R.C. 2108.04(A); sixteen to hunt without parental supervision, R.C. 1533.13; sixteen to operate an amusement ride, R.C. 1711.55(D); sixteen to purchase certain regulated poisons, R.C. 3719.32; sixteen to operate a historical boiler, R.C. 4104.35; sixteen to be employed without a work permit, R.C. 4109.02; sixteen to become an apprentice, R.C. 4139.01; sixteen to ride unrestrained in the back of a truck, R.C. 4511.51; seventeen to serve as a precinct officer during elections, R.C. 3501.22; seventeen to donate blood, R.C. 2108.31; and seventeen to attend a barber school, R.C. 4709.10.

The age-based lines in R.C. 2152.83 reflect not arbitrary, age based discrimination, but reasonable reliance on the common-sense notion of graduated accountability that underlies much of the juvenile system.

In attacking those age-based distinctions, Messmer offers a number of irrelevant observations. He contends that the differential treatment of juvenile sex offenders based on age “is not supported by empirical evidence.” Br. at 8. On rational basis review, however, the General Assembly need not study “empirical data” or concern itself “with mathematical nicety.” *Pickaway County*, 2010-Ohio-4908, at ¶ 32 (citation omitted). Messmer also complains that “the General Assembly g[ave] no rationale for treating older children who have committed a sex offense differently from younger children who have committed the same sex offense.” Br. at 12. That is irrelevant. It is not the General Assembly’s burden to articulate a justification for its age-based classifications. On rational basis review, it is *Messmer* who “bears the burden to negate every conceivable basis that might support the legislation.” *Pickaway County*, 2010-Ohio-4908, at ¶ 20 (citation omitted).

On that score, Messmer has failed to undermine the rationality of the age distinctions in R.C. 2152.83. He briefly invokes *Roper v. Simmons* (2005), 543 U.S. 551, 567, where the Supreme Court barred the death penalty for juveniles under age eighteen, for the proposition that children who commit serious crimes are “categorically less culpable than the average criminal.” Br. at 8. The Attorney General agrees that, as a general matter, juveniles (those under eighteen) are less culpable than adults (those over eighteen). But that certainly does not mean that all juveniles under the age of eighteen have the *same* level of culpability for their crimes.

Second, Messmer cites a raft of studies concluding that “juvenile sex offenders are . . . significantly different from adult sex offenders.” Br. at 9. Again, those studies compare juvenile

offenders as a group to adult offenders as a group. The issue here is whether the General Assembly is allowed to make age-based distinctions *between* groups of juveniles. Messmer offers no authority supporting his incredible claim that a twelve-year-old sex offender, a fourteen-year-old sex offender, and a seventeen-year-old sex offender are all “similarly situated” in terms of maturity, responsibility, recidivism, and amenability to treatment. Br. at 12. Thus, there is no constitutional requirement that R.C. 2152.83 treat those three juveniles—all at different stages in their adolescent development—in an identical fashion. See *Ohio Apt. Ass’n v. Levin*, 127 Ohio St. 3d 76, 2010-Ohio-4414, ¶ 38 (“[T]he Equal Protection Clause does not require things which are different in fact to be treated in law as though they were the same.”) (internal quotations, alteration, and citation omitted).

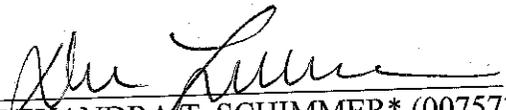
The State employs age cutoffs to distinguish between juvenile offenders in all sorts of meaningful ways. Age may determine the juvenile’s culpability for a criminal offense, the venue of his proceeding, the location of his confinement, and the length of his disposition. The cutoffs in R.C. 2152.83—fourteen years for discretionary sex offender registration, and sixteen years for mandatory sex offender registration—hew to that approach. Messmer cites no case where this Court, on rational basis review, has invalidated a statutory-based age classification in the juvenile justice setting. This case should not be the first.

CONCLUSION

For these reasons, the Court should reject Messmer's equal protection challenge.

Respectfully submitted,

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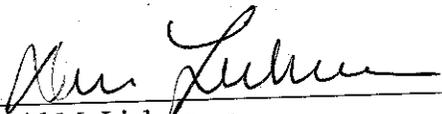
I certify that a copy of the foregoing Merit Brief of *Amicus Curiae* Ohio Attorney General Richard Cordray in Support of Appellee State of Ohio was served by U.S. mail this 4th day of January, 2011, upon the following counsel:

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*** ARCHIVE MATERIAL ***

*** THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH NOVEMBER 1, 2002 ***

TITLE XXI [21] COURTS -- PROBATE -- JUVENILE
CHAPTER 2152: DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS
[JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAW]

ORC Ann. 2152.83 (Anderson 2003)

§ 2152.83 Subsequent orders classifying child as juvenile sex offender registrant.

(A)(1) The court that adjudicates a child a delinquent child shall issue as part of the dispositional order or, if the court commits the child for the delinquent act to the custody of a secure facility, shall issue at the time of the child's release from the secure facility, an order that classifies the child a juvenile sex offender registrant and specifies that the child has a duty to register under section 2950.04 of the Revised Code if all of the following apply:

(a) The act for which the child is or was adjudicated a delinquent child is a sexually oriented offense that the child committed on or after January 1, 2002.

(b) The child was sixteen or seventeen years of age at the time of committing the offense.

(c) The court was not required to classify the child a juvenile sex offender registrant under section 2152.82 of the Revised Code.

(2) Prior to issuing the order required by division (A)(2) of this section, the judge shall conduct the hearing and make the determinations required by division (B) of section 2950.09 of the Revised Code to determine if the child is to be classified as a sexual predator, shall make the determinations required by division (E) of that section to determine if the child is to be classified as a habitual sex offender, and shall otherwise comply with those divisions. When a judge issues an order under division (A)(1) of this section, the judge shall include in the order all of the determinations and information identified in division (B)(1) of section 2152.82 of the Revised Code that are relevant.

(B)(1) The court that adjudicates a child a delinquent child, on the judge's own motion, may conduct at the time of disposition of the child or, if the court commits the child for the delinquent act to the custody of a secure facility, may conduct at the time of the child's release from the secure facility, a hearing for the purposes described in division (B)(2) of this section if all of the following apply:

(a) The act for which the child is adjudicated a delinquent child is a sexually oriented offense that the child committed on or after January 1, 2002.

(b) The child was fourteen or fifteen years of age at the time of committing the offense.

EXHIBIT 1

ORC Ann.2152.83(Anderson 2003)

(c) The court was not required to classify the child a juvenile sex offender registrant under section 2152.82 of the Revised Code.

(2) A judge shall conduct a hearing under division (B)(1) of this section to review the effectiveness of the disposition made of the child and of any treatment provided for the child placed in a secure setting and to determine whether the child should be classified a juvenile sex offender registrant. The judge may conduct the hearing on the judge's own initiative or based upon a recommendation of an officer or employee of the department of youth services, a probation officer, an employee of the court, or a prosecutor or law enforcement officer. If the judge conducts the hearing, upon completion of the hearing, the judge, in the judge's discretion and after consideration of the factors listed in division (E) of this section, shall do either of the following:

(a) Decline to issue an order that classifies the child a juvenile sex offender registrant and specifies that the child has a duty to register under section 2950.04 of the Revised Code;

(b) Issue an order that classifies the child a juvenile sex offender registrant and specifies that the child has a duty to register under section 2950.04 of the Revised Code and, if the judge determines as described in division (C) of this section that the child is a sexual predator or a habitual sex offender, include in the order a statement that the judge has determined that the child is a sexual predator or a habitual sex offender, whichever is applicable.

(C) A judge may issue an order under division (B) of this section that contains a determination that a delinquent child is a sexual predator only if the judge, in accordance with the procedures specified in division (B) of section 2950.09 of the Revised Code, determines at the hearing by clear and convincing evidence that the child is a sexual predator. A judge may issue an order under division (B) of this section that contains a determination that a delinquent child is a habitual sex offender only if the judge at the hearing determines as described in division (E) of section 2950.09 of the Revised Code that the child is a habitual sex offender. If the judge issues an order under division (B) of this section that contains a determination that a delinquent child is a habitual sex offender, the judge may impose a requirement subjecting the child to community notification provisions as described in division (E) of section 2950.09 of the Revised Code.

(D) If a judge issues an order under division (A) or (B) 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 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, shall provide the notice as described in division (B)(1)(c) of that section, and shall comply with divisions (B)(1), (B)(2), and (C) of that section regarding that notice.

The judge also shall include in the order a statement that, upon completion of the disposition of the delinquent child that was made for the sexually oriented offense upon which the order is based, a hearing will be conducted and the order is subject to modification or termination pursuant to section 2152.84 of the Revised Code.

(E) In making a decision under division (B) of this section as to whether a delinquent child should be classified a juvenile sex offender registrant and, if so, whether the child also is a sexual predator or a habitual sex offender, a judge shall consider all relevant factors, including, but not limited to, all of the following:

- (1) The nature of the sexually oriented offense committed by the child;
- (2) Whether the child has shown any genuine remorse or compunction for the offense;
- (3) The public interest and safety;
- (4) The factors set forth in division (B)(3) of section 2950.09 of the Revised Code;
- (5) The factors set forth in divisions (B) and (C) of section 2929.12 of the Revised Code as those factors apply

regarding the delinquent child, the offense, and the victim;

(6) The results of any treatment provided to the child and of any follow-up professional assessment of the child.

(F) An order issued under division (A) or (B) of this section 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 2152.84 of the Revised Code. 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) As used in the section, "secure facility" has the same meaning as in section 2950.01 of the Revised Code.

HISTORY: HISTORY

: 149 v S 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002.

NOTES: CROSS-REFERENCES TO RELATED SECTIONS

Children subject to sex offender registration and notification law, RC § 2152.19.1.

Classification as sexual predator, RC § 2950.09.

Commencement of duty to register; duration, RC § 2950.07.

Court control of child following commitment to department, RC § 2152.22.

Duty to register, RC § 2950.04.

Hearing upon completion of disposition on whether to continue classification or determination, RC § 2152.84.

Jurisdiction of juvenile court, RC § 2151.23.

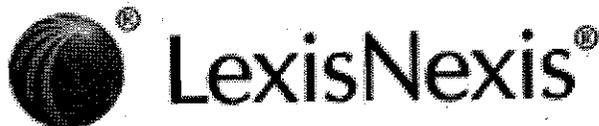
Notice to delinquent child of duty to register and update address, RC § 2950.03.

Notice to victim of offender's or delinquent child's registration or change of information, RC § 2950.10.

Persons to be notified within geographical area, RC § 2950.11.

Petition requesting reclassification or declassification, RC § 2152.85.

Sexual predators, habitual sex offenders, sexually oriented offenders, definitions, RC § 2950.01.



LEXSTAT ORC ANN. 2152.83

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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. 2152.83 (2010)

§ 2152.83. Classification at time of disposition or release from secure facility; determination of tier classification

(A) (1) The court that adjudicates a child a delinquent child shall issue as part of the dispositional order or, if the court commits the child for the delinquent act to the custody of a secure facility, shall issue at the time of the child's release from the secure facility, an order that classifies the 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 if all of the following apply:

(a) The act for which the child is or was adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.

(b) The child was sixteen or seventeen years of age at the time of committing the offense.

(c) The court was not required to classify the child a juvenile offender registrant under section 2152.82 of the Revised Code or as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under section 2152.86 of the Revised Code.

(2) Prior to issuing the order required by division (A)(2) of this section, the judge shall conduct a hearing under section 2152.831 [2152.83.1] of the Revised Code, except as otherwise provided in that section, to determine 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. When a judge issues an order under division (A)(1) of this section, the judge shall include in the order the determinations identified in division (B)(5) of section 2152.82 of the Revised Code.

(B) (1) The court that adjudicates a child a delinquent child, on the judge's own motion, may conduct at the time of



disposition of the child or, if the court commits the child for the delinquent act to the custody of a secure facility, may conduct at the time of the child's release from the secure facility a hearing for the purposes described in division (B)(2) of this section if all of the following apply:

(a) The act for which the child is adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.

(b) The child was fourteen or fifteen years of age at the time of committing the offense.

(c) The court was not required to classify the child a juvenile offender registrant under *section 2152.82 of the Revised Code* or as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under *section 2152.86 of the Revised Code*.

(2) A judge shall conduct a hearing under division (B)(1) of this section to review the effectiveness of the disposition made of the child and of any treatment provided for the child placed in a secure setting and to determine whether the child should be classified a juvenile offender registrant. The judge may conduct the hearing on the judge's own initiative or based upon a recommendation of an officer or employee of the department of youth services, a probation officer, an employee of the court, or a prosecutor or law enforcement officer. If the judge conducts the hearing, upon completion of the hearing, the judge, in the judge's discretion and after consideration of the factors listed in division (E) of this section, shall do either of the following:

(a) Decline to issue an order that classifies the 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*;

(b) Issue an order that classifies the 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* and that states the determination that the judge makes 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.

(C) (1) Prior to issuing an order under division (B)(2)(b) of this section, the judge shall conduct a hearing under *section 2152.831 [2152.83.1] of the Revised Code* to determine 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. The judge may hold the hearing at the same time as the hearing under division (B) of this section.

(2) If a judge issues an order under division (A) or (B) of this section and the court determines that the delinquent child to whom the order applies is a tier III sex offender/child-victim offender and the child is not a public registry-qualified juvenile offender registrant, the judge may impose a requirement subjecting the child to the victim and community notification provisions of *sections 2950.10 and 2950.11 of the Revised Code*. If the judge imposes a requirement subjecting the child to the victim and community notification provisions of *sections 2950.10 and 2950.11 of the Revised Code*, the judge shall include the requirement in the order.

(3) If a judge issues an order under division (A) or (B) 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 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.

The judge also shall include in the order a statement that, upon completion of the disposition of the delinquent child that was made for the sexually oriented offense or child-victim oriented offense upon which the order is based, a hearing will be conducted and the order is subject to modification or termination pursuant to *section 2152.84 of the Revised Code*.

(D) In making a decision under division (B) of this section as to whether a delinquent child should be classified a juvenile offender registrant, a judge shall consider all relevant factors, including, but not limited to, all of the following:

- (1) The nature of the sexually oriented offense or the child-victim oriented offense committed by the child;
- (2) Whether the child has shown any genuine remorse or compunction for the offense;
- (3) The public interest and safety;

(4) The factors set forth in division (K) of *section 2950.11 of the Revised Code*, provided that references in the factors as set forth in that division to "the offender" shall be construed for purposes of this division to be references to "the delinquent child;"

(5) The factors set forth in divisions (B) and (C) of *section 2929.12 of the Revised Code* as those factors apply regarding the delinquent child, the offense, and the victim;

(6) The results of any treatment provided to the child and of any follow-up professional assessment of the child.

(E) An order issued under division (A) or (B) 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 2152.84 of the Revised Code*, and *section 2152.851 [2152.85.1] of the Revised Code* applies regarding the order and the determinations. 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.

(F) If a court issues an order under division (A) or (B) of this section before January 1, 2008, not later than February 1, 2008, the court shall terminate the order and issue a new order that reclassifies the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to *section 2152.86 of the Revised Code* if the court imposed on the child a serious youthful offender dispositional sentence under *section 2152.13 of the Revised Code* and if the act that was the basis of the classification of the delinquent child as a juvenile offender registrant and is the basis of the serious youthful offender dispositional sentence is any of the following:

(1) Committing, attempting to commit, conspiring to commit, or complicity in committing a violation of *section 2907.02 of the Revised Code*, division (B) of *section 2907.05 of the Revised Code*, or *section 2907.03 of the Revised Code* if the victim of the violation was less than twelve years of age;

(2) Committing, attempting to commit, conspiring to commit, or complicity in committing a violation of *section 2903.01, 2903.02, or 2905.01 of the Revised Code* that was committed with a purpose to gratify the sexual needs or desires of the child.

(G) As used in this section, "secure facility" has the same meaning as in *section 2950.01 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.

NOTES:

Section Notes

The effective date is set by § 3 of 152 v S 10.