

ORIGINAL

IN THE SUPREME COURT OF OHIO

IN RE:

JUSTIN A. MESSMER
Adjudicated Delinquent Child

Case number 2010-0780

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

MERIT BRIEF OF APPELLEE, STATE OF OHIO

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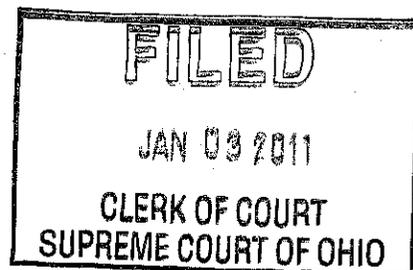


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STATEMENT OF FACTS

On August 9, 2007, a complaint was filed in the Wyandot County Juvenile Court alleging the Appellant committed the offense of gross sexual imposition, a violation of R.C. 2907.05 (A)(4). (Supplement to Appellant's Merit Brief Pg. 1 (S-1)). The complaint alleged that Appellant was sixteen years old at the time he committed the offense. (S-1). The victim of the offense was the Appellant's eight year old sister.

Appellant entered an admission to the offense of gross sexual imposition, as charged in the complaint, a felony of the third degree if committed by an adult. Disposition was held on January 7, 2008. (S-2-S-6). The trial court, at the dispositional hearing, found specifically that based upon the evidence and testimony at the hearing Appellant was at a high risk to reoffend. (S-5). The trial court, after the dispositional hearing, adopted a judgment entry notifying the Appellant of his duty to register as a juvenile sex offender registrant. (S-7-S-14).

Appellant, following the dispositional hearing, appealed to the Third District Court of Appeals, wherein the trial court was reversed on grounds that it failed to comply with Juvenile Rule 29. (S-15-S-25). The Third District Court of Appeals, finding the trial court failed to comply with Juvenile Rule 29, did not consider Appellant's assignments of error involving his sex offender registration. (S-25).

Following the Third District's opinion, Appellant, on October 15, 2008, appeared at the trial court and again entered an admission to gross sexual imposition, a violation of R.C. 2907.05 (A)(4). (S-29). The trial court, with the agreement of the parties, proceeded to disposition. (S-29). Appellant was committed to the Department of Youth Services. (S-29).

The trial court, at the time of disposition, ordered the matter to come back before the court for purposes of a sex offender classification hearing upon Appellant's release from a secure facility. (S-31). Upon being released from the Department of Youth Services, the matter came before the court for purposes of a sex offender classification hearing on August 21, 2009. The trial court issued an order requiring the appellant to register as a Tier II Juvenile Sex Offender Registrant. (S-50-S-57).

Appellant, a second time, appealed the trial court's ruling requiring him to register as a juvenile sex offender. *In re Justin A. Messmer*, 3rd Dist. Wyandot App. No. 16-09-17, 2010-Ohio-1088. This Court accepted for review Appellant's first two assignments of error, however stayed briefing. This Court accepted Appellant's third assignment of error and set the matter for briefing an oral argument.

INTRODUCTION

Juvenile sex offender registration is not unique to Ohio, but has evolved, and been amended several times since it was first introduced over four decades ago. The latest amendment to the adult, as well as juvenile sex offender registration legislation, (Senate Bill 10), came in response to the Adam Walsh Child Protection and Safety Act of 2006. The purpose behind the Federal enactment was to establish consistency among the states that have varying forms of sex offender registration statutes.

In Ohio, since adopting Senate Bill 10, various courts, from the trial court level through courts of appeals, have applied differing interpretations of the statute and it has been challenged on numerous grounds, essentially since the Bill's inception. Currently, this Court has a case pending addressing the issue of whether Senate Bill 10 affords trial courts discretion when classifying juvenile sex offenders. *In re Smith* 3rd Dist. No. 1-07-58, 2008-Ohio-3234. Also pending in this Court is the case *In Re. Adrian R.* 9th Dist. No. 08-CA-17, 2008-Ohio-6581, in which the Appellant challenges Senate Bill 10 by alleging a violation of due process.

At the heart of the issue in this matter is whether Senate Bill 10 violates Appellant's equal protection, because the law requires the Appellant to register as a juvenile sex offender registrant because he was sixteen years old at the time he committed a sex offense. Specifically, the legislature crafted a distinction between those juvenile sex offenders who are sixteen or seventeen years of age and those offenders who are fourteen or fifteen years old. This distinction, Appellant claims is a violation of his Equal Protection.

R.C. 2152.83 (B) vests the trial court with discretion as to whether or not fourteen and fifteen year old, first time offenders, must register as juvenile sex offenders. The trial court is required, after disposition has been completed, to conduct a hearing to determine whether the juvenile should be required to register. R.C. 2152.83(B)(2). In making its decision, the trial court is required to consider all relevant factors. R.C. 2152.83 (D).

The discretion provided to the trial court for fourteen and fifteen year old first time sex offenders, is taken away from the trial court when dealing with sixteen and seventeen year old offenders. R.C. 2152.83 (A) requires juvenile sex offenders who are sixteen or seventeen, at the time of committing the sex offense, to register as juvenile sex offenders.

For the following reasons, this Court should affirm the decision of the Third District Court of Appeals, *In re Justin A. Messmer*, 3rd Dist. Wyandot App. No. 16-09-17, 2010-Ohio-1088.

ARGUMENT

The 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 as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Ohio Constitution.

Appellant challenges that part of R.C. 2152.83 which subjects children, who were first time offenders, and sixteen or seventeen years old at the time of committing a sex offense, to mandatory sex offender classification and registration. Appellant claims he is denied Equal Protection because first time fourteen or fifteen year old juvenile sex offenders are subject to a discretionary classification and registration. See R.C. 2152.83 (B) (2). Furthermore, juveniles

who were less than fourteen years of age at the time of committing a sexually oriented offense are not subject to sex offender classification and registration. See R.C. 2152.82, 2152.83.

A. Rational Basis is the Correct Standard of Review.

When addressing whether a legislative enactment violates Appellant's Equal Protection as guaranteed by the Fourteenth Amendment, the Court should begin its analysis with the presumption that the statute is constitutional. This Court has previously noted that as a general rule, all legislative enactments enjoy a presumption of constitutionality. *State v. Lowe*, 112 Ohio St.3d, 507, *Conley v. Shearer*, 64 Ohio St.3d, 284. Furthermore, "Courts must apply all presumptions and germane rules of construction to uphold a challenged statute if at all possible." *Conley*, citing *Sedar v. Knowlton Constr. Co.* (1990), 49 Ohio St.3d 193; citing *State v. Dorso* (1983), 4 Ohio St.3d 60. Finally, a statute may only be declared invalid if its unconstitutionality is shown beyond a reasonable doubt. *Conley*, citing *Bd. Of Edn. v. Walter* (1979), 58 Ohio St.2d 386.

Determinations of the constitutionality of a statute under the Equal Protection Clause that involve a suspect class or a fundamental right are subject to strict scrutiny. *Sorrell v. Thevenir*, 69 Ohio St.3d 415. When a suspect class or fundamental right is involved, in order to be deemed constitutional, the statute must be shown to promote a compelling governmental interest. *Sorrell* citing *Shapiro v. Thompson* (1969), 394 U.S. 618, 634, 89 S.Ct. 1322, 1331, 22L.Ed2d 600, 615.

Statutes in question that do not involve a suspect class or a fundamental right are analyzed under a less strict, rational basis test. Under the rational basis test, great deference is paid to the State, and the State need only show that the differential treatment is related to some

legitimate state interest. *Conley* citing *State ex rel. Heller v. Miller* (1980) 61 Ohio St.2d 6, 11 15 O.O.3d 3,6, 399 N.E.2d 66, 69.

The suspect classes, which require heightened scrutiny, have been traditionally defined as those involving race, national origin, religion, or sex. *Adamsky v. Buckeye Local School Dist.* 73 Ohio St.3d 360, 362, 1995-Ohio-298, citing *Roseman v. Firemen & Policemen's Death Benefit Fund* (1993), 66 Ohio St.3d 443, 446, 613 N.E.2d 574, 577. However, a statutory classification will be found to violate equal protection if it treats similarly situated people in a different manner based upon an illogical and arbitrary basis. *Id* citing *Morris v. Savoy* (1991), 61 Ohio St.3d 684, 711, 576 N.E.2d 765, 785, citing *State v. Buckley* (1968), 16 Ohio St.2d 128, 45 O.O.2d 469, 243 N.E.2d 66.

Because Senate Bill 10 does not involve a suspect class or a fundamental right, the correct standard of analysis is whether the requirement that sixteen and seventeen year old sex offenders be registered sex offenders bears a rational relationship to a legitimate governmental interest. It appears from Appellant's brief, that there is agreement that a rational basis test is the correct standard. See Merit Brief of Appellant Justin A.[M.] pg. 7.

B. The purpose behind Senate Bill 10.

R.C. 2950.02 sets forth the legislature's intent and reasoning for enacting Senate Bill 10.

§ 2950.02. Exchange or release of relevant information about sexual predators and habitual sex offenders

(A) The general assembly hereby determines and declares that it recognizes and finds all of the following:

(1) If the public is provided adequate notice and information about offenders and delinquent children who commit sexually oriented offenses or who commit child-victim oriented offenses, members of the public and communities can develop constructive plans to prepare themselves and their

children for the offender's or delinquent child's release from imprisonment, a prison term, or other confinement or detention. This allows members of the public and communities to meet with members of law enforcement agencies to prepare and obtain information about the rights and responsibilities of the public and the communities and to provide education and counseling to their children.

(2) Sex offenders and child-victim offenders pose a risk of engaging in further sexually abusive behavior even after being released from imprisonment, a prison term, or other confinement or detention, and protection of members of the public from sex offenders and child-victim offenders is a paramount governmental interest.

(3) The penal, juvenile, and mental health components of the justice system of this state are largely hidden from public view, and a lack of information from any component may result in the failure of the system to satisfy this paramount governmental interest of public safety described in division (A)(2) of this section.

(4) Overly restrictive confidentiality and liability laws governing the release of information about sex offenders and child-victim offenders have reduced the willingness to release information that could be appropriately released under the public disclosure laws and have increased risks of public safety.

(5) A person who is found to be a sex offender or a child-victim offender has a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government.

(6) The release of information about sex offenders and child-victim offenders to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal, juvenile, and mental health systems as long as the information released is rationally related to the furtherance of those goals.

(B) The general assembly hereby declares that, in providing in this chapter for registration regarding offenders and certain delinquent children who have committed sexually oriented offenses or who have committed child-victim oriented offenses and for community notification regarding tier III sex offenders/child-victim offenders who are criminal offenders, public registry-qualified juvenile offender registrants, and certain other juvenile offender registrants who are about to be or have been released from imprisonment, a prison term, or other confinement or detention and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood, it is the general assembly's intent to protect the safety and general welfare of the people of this state. The general assembly further declares that it is the policy of this state to require the exchange in accordance

with this chapter of relevant information about sex offenders and child-victim offenders among public agencies and officials and to authorize the release in accordance with this chapter of necessary and relevant information about sex offenders and child-victim offenders to members of the general public as a means of assuring public protection and that the exchange or release of that information is not punitive.

The General Assembly in R.C. 2950.02 clearly states its reasoning and interest in adopting Senate Bill 10, finding specifically that certain children pose a risk to the community, even after being released from incarceration. The Third District Court of Appeals in *In re Justin A. Messmer*, 3rd Dist. Wyandot App. No. 16-09-17, 2010-Ohio-1088 ruled that the General Assembly likely concluded that the younger the juvenile sex offender, the lesser likelihood of recidivism. By making such a conclusion, the Appellate Court found that R.C. 2152.83, and consequently Senate Bill 10, bears a rational relationship to a legitimate governmental interest.

The General Assembly is charged with making the difficult policy decisions on such issues and codifying them into law. "This court is not the forum in which to second-guess such legislative choices; we must simply determine whether they comply with the Constitution." *Arbino v. Johnson and Johnson*, 2007-Ohio-6948 116 Ohio St.3d 468, 880 N.E.2d 420, Citing *State ex rel. Ohio Congress of Parents & Teachers v. State Bd. of Edn.*, 111 Ohio St.3d 568, 2006-Ohio-5512, 857 N.E.2d 1148, ¶ 20.

Obviously, the higher the likelihood of recidivism, the greater the risk to the community where the offender will live, work and travel. Protecting the public is not a unique or arbitrary governmental interest. In addition to R.C. 2950.02, the overriding purposes and principals of Ohio law as it applies to juveniles includes the protection of the public. R.C. 2152.01 (A) specifically lists the protection of the public interest and safety as one of the overriding purposes for juvenile dispositions.

The conclusion that the General Assembly was concerned with recidivism of juvenile sex offenders is evident in R.C. 2152.82. R.C. 2152.82 (A) requires a juvenile court to classify and register a juvenile sex offender if the offender was fourteen, fifteen, sixteen or seventeen at the time of committing the sex offense, and was previously adjudicated delinquent for committing a sexually oriented offense, regardless of when the prior offense was committed. This provision demonstrates that children who have already been convicted of a prior sex offense, regardless of whether they are fourteen, fifteen, sixteen or seventeen, are a concern to the public and require them to register.

Research has concluded that up to ten percent of those juveniles released after having committed a sex offense are likely to commit another sex offense within one year. *The Ohio Association of County Behavioral Health Authorities, Behavioral Health: Developing a Better Understanding, Juvenile Sex Offenders, Volume 3, Page 2.* A ten percent recidivism rate is significant in terms of the harmful effects that sex offenses have on victims. Appellant, citing to page one of the same publication, argues that juveniles who receive treatment, supervision and support have a low recidivism rate, being four percent to ten percent. *Id.* Pg. 1. While this may be true, not all juvenile sex offenders are receptive to treatment.

The low recidivism rate for juvenile offenders is not a surprise. Recidivism rates for all sex offenders are lower than for the general criminal population. *Center for Sex Offender Management, Myths and Facts About sex Offenders, August 2000. Page 3.*

Juvenile offenders are responsible for a significant amount of sex offenses. It is believed that juveniles are responsible for up to one-fifth of all rapes and one-half of all cases of child molestations each year. *Center for Sex Offender Management, Myths and Facts About sex Offenders, August 2000. Page 5.* Victims of sex offenses are often reluctant to come

forward, therefore the actual number of juveniles committing sexual assault may be higher. *Center for Sex Offender Management, Fact sheet: What You Need to Know about Sex Offenders* Page 7. Research has also concluded that although adolescents do not typically commit offenses against adults, the risk of offending against adults increases slightly after the adolescent reaches sixteen years of age. *National Center on Sexual Behavior of Youth*, July 2003, Number 1, NCSBY What Research Shows About Adolescent Sex Offenders.

It is only logical to recognize that society puts greater responsibilities on children who are on the verge of adulthood. Furthermore, as they age, children are held accountable for their actions. Sixteen and seventeen year olds are also typically more mature physically, thereby presenting an increased risk by those offenders who commit aggressive offenses. Finally, when children reach sixteen, they become more mobile as they become eligible to obtain a driver's license.

C. Senate Bill 10 gives the trial court discretion to reclassify or declassify juvenile sex offender registrants.

While under R.C. 2152.83 trial courts do not initially have discretion with respect to sex offender registration of sixteen and seventeen year old offenders, trial courts do have discretion to reduce, or even eliminate previously imposed registration requirements. The provisions allowing a trial court to reduce or eliminate the registration requirements do not exist for adults.

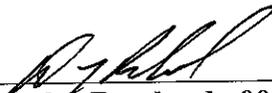
Appellant cites the U.S. Supreme Court case *Bellotti v. Baird*, (1979), 443 U.S. 622, 635, pointing out that juveniles are protected by the same constitutional guarantees as adults. Allowing trial courts to re-evaluate a previously classified juvenile sex offender registrant's requirement to register goes well beyond those protections afforded to adults. There is no

corollary statute allowing trial courts to revisit the issue of adults who are required to register as sex offenders.

R.C. 2152.84 requires a trial court, upon the juvenile's completion of disposition to conduct a hearing to review the effectiveness of the disposition. The trial court then has the option to continue the classification, or reclassify the offender to a lower tier. Furthermore, unlike adults, R.C. 2152.85 allows juvenile sex offenders to periodically petition the court for a reclassification or declassification. While Senate Bill 10 initially divests the court of discretion regarding an initial classification of sixteen and seventeen year old sex offenders, Senate Bill 10 offers the trial court discretion to reduce or eliminate the classification for those juveniles who no longer present a risk to the community.

CONCLUSION

It must be presumed that Senate Bill 10 is constitutional. *State v. Thompson*, 92 Ohio St.3d 584. Furthermore the Appellant has the burden, when challenging the constitutionality of a statute, to prove beyond a reasonable doubt the statute is incompatible with a federal or state constitution. *State v. Williams*, 88 Ohio St.3d 513. Appellant has failed to meet his burden to successfully challenge the constitutionality of R.C. 2152.83. Requiring those eldest juvenile sex offenders to initially register as juvenile sex offenders is rationally related to the legitimate governmental interest of protecting the public. Wherefore, Senate Bill 10 does not violate Appellant's Equal Protection and the decision of the Third District Court of Appeals should be affirmed.



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CERTIFICATE OF SERVICE

I, Douglas Rowland, Assistant Prosecuting Attorney, Wyandot County, Ohio, do hereby certify that a true copy of the foregoing Brief of Appellee was duly served on Counsel for Appellant, Justin M., via first class U.S. mail, addressed to Amanda J. Powell, Assistant Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215 on the 30th day of December, 2010.



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IN THE SUPREME COURT OF OHIO

IN RE: JUSTIN A. MESSMER,
Adjudicated Delinquent Child

Case No. 10-0780

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

C.A. Case No. 16-09-17

NOTICE OF APPEAL OF JUSTIN A. MESSMER

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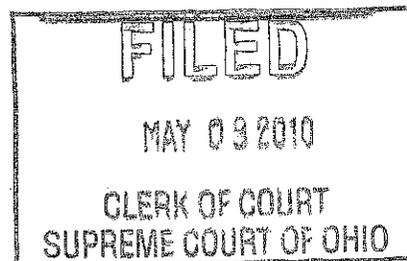
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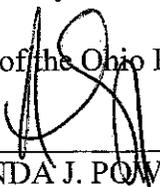


NOTICE OF APPEAL OF MINOR CHILD-APPELLANT JUSTIN A. MESSMER

Justin A. Messmer hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Wyandot County Court of Appeals, Third Appellate District, entered in Court of Appeals Case No. 16-09-17 on March 22, 2010. This case involves felony-level delinquency offenses, involves constitutional questions, and is of public or great general interest.

Respectfully submitted,

Office of the Ohio Public Defender



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CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Appeal has been delivered by ordinary U.S. Mail, postage-prepaid, to the office of Douglas D. Rowland, Wyandot County Assistant Prosecuting Attorney, 137 S. Sandusky Avenue, Upper Sandusky, Ohio 43351, on this 3rd day of May, 2010.



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Assistant State Public Defender

COUNSEL FOR JUSTIN A. MESSMER

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
WYANDOT COUNTY

IN THE MATTER OF:

JUSTIN A. MESSMER,
ADJUDICATED DELINQUENT CHILD.

CASE NO. 16-09-17

JUDGMENT
ENTRY

For the reasons stated in the opinion of this Court, the assignments of error are overruled and it is the judgment and order of this Court that the judgment of the trial court is affirmed with costs assessed to Appellant for which judgment is hereby rendered. The cause is hereby remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. See App.R. 30.

COURT OF APPEALS
WYANDOT CO., OHIO
FILED

MAR 22 2010

Ann K. Dumas
CLERK OF COURTS
WYANDOT CO., OHIO



John P. Villanow

J. Burton

JUDGES

DATED: March 22, 2010

/jlr

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
WYANDOT COUNTY**

IN THE MATTER OF:

CASE NO. 16-09-17

JUSTIN A. MESSMER,

ADJUDICATED DELINQUENT CHILD.

O P I N I O N

**Appeal from Wyandot County Common Pleas Court
Juvenile Division
Trial Court No. A 2071139**

Judgment Affirmed

Date of Decision: March 22, 2010

APPEARANCES:

Amanda J. Powell for Appellant

Douglas D. Rowland for Appellee

ROGERS, J.

{¶1} Defendant-Appellant, Justin Messmer, appeals from the judgment of the Court of Common Pleas of Wyandot County, Juvenile Division, designating him a Tier II sex offender. On appeal, Messmer argues that the trial court abused its discretion in classifying him as a Tier II sex offender based on a finding that the classification was mandated by his offense; that the application of Senate Bill 10 (“S.B. 10”) to his case resulted in a violation of his due process rights and right to equal protection under the United States and Ohio Constitutions; and, that S.B. 10’s application violated the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution. Based on the following, we affirm the judgment of the trial court.

{¶2} In September 2007, the Upper Sandusky Police Department filed a complaint alleging Messmer was a delinquent child on one count of gross sexual imposition in violation of R.C. 2907.05(A)(4) and 2152.02(F), a felony of the third degree if committed by an adult. The complaint arose from allegations that Messmer had sexual contact with his eight year-old sister. Subsequently, the juvenile court entered a denial of the allegation on Messmer’s behalf.

{¶3} In October 2007, Messmer withdrew his denial to the complaint and entered an admission to the charge of gross sexual imposition, with the juvenile court accepting the admission and adjudicating him a delinquent child.

{¶4} In January 2008, the juvenile court proceeded to disposition, classifying Messmer as a Tier II sex offender, committing him to the Department of Youth Services (“DYS”) for a minimum period of six months, and up to a maximum period not to exceed his twenty-first birthday, and ordering him to complete fifty hours of community service and to have no contact with a juvenile without adult supervision.

{¶5} In September 2008, this Court reversed the judgment of the juvenile court in *In re Messmer*, 3d Dist. No. 16-08-03, 2008-Ohio-4955, finding that Messmer’s admission to the charge of gross sexual imposition was not knowing, voluntary, and intelligent because the juvenile court failed to comply with Juv.R. 29(D) in accepting Messmer’s admission.

{¶6} In October 2008, Messmer re-entered his admission to the charge of gross sexual imposition, and the juvenile court accepted the admission and adjudicated him a delinquent child. Thereafter, Messmer was again committed to DYS for a minimum period of six months, and up to a maximum period not to exceed his twenty-first birthday, and ordered to complete fifty hours of community service and to have no contact with a juvenile without adult supervision.

{¶7} In August 2009, the juvenile court conducted a juvenile sexual offender designation hearing, in which it categorized Messmer as a Tier II sexual offender.

{¶8} It is from the juvenile court's sexual offender designation that Messmer appeals, presenting the following assignments of error for our review.

Assignment of Error No. I

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FOUND THAT JUSTIN M'S CLASSIFICATION AS A TIER II JUVENILE SEX OFFENDER REGISTRANT WAS OFFENSE-BASED, IN VIOLATION OF R.C. 2950.01(E)-(G). (A-7); (T.PP. 2-6).

Assignment of Error No. II

THE TRIAL COURT ERRED WHEN IT FOUND SENATE BILL 10 CONSTITUTIONAL AS APPLIED TO JUSTIN M., AS THE APPLICATION OF SENATE BILL 10 TO JUSTIN VIOLATES HIS RIGHT TO DUE PROCESS AS GUARANTEED BY THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION. (A-7); (T.PP. 5-6).

Assignment of Error No. III

THE RETROACTIVE APPLICATION OF SENATE BILL 10 TO JUSTIN M. VIOLATES THE EX POST FACTO CLAUSE OF THE UNITED STATES CONSTITUTION AND THE RETROACTIVITY CLAUSE OF SECTION 28, ARTICLE II OF THE OHIO CONSTITUTION. (A-7); (T.PP. 2-6).

Assignment of Error No. IV

THE JUVENILE COURT ERRED WHEN IT APPLIED SENATE BILL 10 TO JUSTIN M., AS THE LAW VIOLATES HIS RIGHT TO EQUAL PROTECTION UNDER THE LAW IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION; ARTICLE I, SECTION 2 OF THE OHIO CONSTITUTION. (A-7); (T.PP. 2-6).

{¶9} Due to the nature of Messmer's arguments, we elect to address assignments of error two and three together.

Assignment of Error No. I

{¶10} In his first assignment of error, Messmer argues that the juvenile court abused its discretion when it classified him as a Tier II sex offender. Specifically, he contends that the juvenile court mistakenly believed that the classification was offense-based and mandatory, when, in fact, it had the discretion to determine his classification. We disagree.

{¶11} S.B. 10 was enacted in June 2007, with an effective date of January 1, 2008, and amended the sexual offender classification system found in former R.C. 2950. *In re Gant*, 3d Dist. No. 1-08-11, 2008-Ohio-5198, ¶11, appeal accepted for review, 3/25/2009 Case Announcements, 2009-Ohio-1296. Under the prior classification system, the trial court determined whether the offender fell into one of three categories: (1) sexually oriented offender, (2) habitual sex offender, or (3) sexual predator. Former R.C. 2950.09; *State v. Cook*, 83 Ohio St.3d 404, 407, 1998-Ohio-291. In determining whether to classify an offender as a sexual predator, former R.C. 2950.09(B)(3) provided the trial court with numerous factors to consider in its determination. *In re Smith*, 3d Dist. No. 1-07-58, 2008-Ohio-3234, ¶28, appeal accepted for review, 12/8/2008 Case

Announcements, 2008-Ohio-6166. Additionally, R.C. 2950.04 imposed registration requirements for sexual offenders.

{¶12} In contrast, S.B. 10 requires the trial court to designate the offender as either a Tier I, II, or III sex offender. R.C. 2950.01; *Gant*, 2008-Ohio-5198, at ¶15. The new classification system places a much greater limit on the discretion of the trial court to categorize the offender, as S.B. 10 requires the trial court to simply place the offender into one of the three tiers based on the offense. *Id.* A portion of the requirements for a Tier II classification are as follows:

F) “Tier II sex offender/child-victim offender” means any of the following:

(1) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses:

* * *

(c) A violation of division (A)(4) of section 2907.05 or of division (A)(1) or (2) of section 2907.323 of the Revised Code;

R.C. 2950.01(F)(1)(c). Accordingly, the 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. See *Smith*, 2008-Ohio-3234, at ¶31; *Gant*, 2008-Ohio-5198, at ¶15; *Downing v. State*, 3d Dist. No. 8-08-29, 2009-Ohio-1834, ¶10.

{¶13} Here, Messmer was adjudicated a delinquent child due to his admission to gross sexual imposition in violation of R.C. 2907.05(A)(4). Accordingly, pursuant to R.C. 2950.01(F)(1)(c), the juvenile court was required to classify Messmer as a Tier II sex offender. Consequently, we find there to be no error in the juvenile court's classification of Messmer as a Tier II sex offender.

{¶14} Accordingly, we overrule Messmer's first assignment of error.

Assignments of Error Nos. II and III

{¶15} In his second and third assignments of error, Messmer argues that the juvenile court's application of S.B. 10 to designate him as a Tier II sex offender violated his due process rights under the United States and Ohio Constitutions, and violated the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution. Specifically, Messmer contends that S.B. 10's elimination of the juvenile court's discretion in designating sex offenders results in criminal sanctions for juvenile offenders and eliminates due process protections afforded by case-by-case designations. Additionally, Messmer also asserts that, due to S.B. 10's application to offenses that occurred prior to its enactment, and due the General Assembly's penal objective in promulgating the statute, S.B. 10 violates the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution.

{¶16} “An enactment of the General Assembly is presumed to be constitutional, and before a court may declare it unconstitutional it must appear beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible.” *State ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St. 142, paragraph one of the syllabus. “That presumption of validity of such legislative enactment cannot be overcome unless it appear[s] that there is a clear conflict between the legislation in question and some particular provision or provisions of the Constitution.” *Xenia v. Schmidt* (1920), 101 Ohio St. 437, paragraph two of the syllabus.

{¶17} A statute’s constitutionality can be challenged on its face or on the particular set of facts to which the statute has been applied. *Harold v. Collier*, 107 Ohio St.3d 44, 2005-Ohio-5334, ¶37, citing *Belden v. Union Cent. Life Ins. Co.* (1944), 143 Ohio St. 329, paragraph four of the syllabus. When a statute is challenged on its face, the challenger must demonstrate that no set of circumstances exist under which the statute would be valid. *Id.*, citing *United States v. Salerno* (1987), 481 U.S. 739, 745. The fact that the statute could operate unconstitutionally under some given set of facts or circumstances is insufficient to render it wholly invalid. *Id.* “Conversely, when a statute is challenged as applied, the challenger must establish by clear and convincing evidence an existing set of facts that renders the statute invalid when applied to those facts.” *Smith v. Jones*,

175 Ohio App.3d 705, 2007-Ohio-6708, ¶14, citing *Harold*, 107 Ohio St.3d 44, at ¶38.

{¶18} Here, Messmer challenges the constitutionality of S.B. 10 as applied to his case. This Court has previously addressed the issues of whether the application of S.B. 10 violates a defendant's due process rights under the Ohio and United States Constitutions, and whether it violates the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution, and has continually found there to be no such constitutional violations. See *Smith*, 2008-Ohio-3234; *Gant*, 2008-Ohio-5198; *Downing*, 2009-Ohio-1834; *Holcomb v. State*, 3d Dist. Nos. 8-08-23, 8-08-24, 8-08-25, 8-08-26; 2009-Ohio-782; *In re Copeland*, 3d Dist. No. 1-08-40, 2009-Ohio-190. Consequently, because this Court has found that S.B. 10 does not run afoul of these constitutional provisions, we are now bound by the principle of stare decisis to our prior decisions. See *Copeland*, 2009-Ohio-190, at ¶11.

{¶19} Accordingly, we overrule Messmer's second and third assignments of error.

Assignment of Error No. IV

{¶20} In his fourth assignment of error, Messmer argues that the application of S.B. 10 to his case results in a violation of his right to equal protection under the United States and Ohio Constitutions. Specifically, he

contends that S.B. 10's penalty scheme based upon the offender's age bears no rational relation to a legitimate government interest and, therefore, runs afoul of the United States and Ohio Constitutions. We disagree.

{¶21} As set forth in our disposition of Messmer's second and third assignments of error, all legislative enactments are presumed constitutional, and a challenge to the constitutionality of a statute can only prevail when the challenger demonstrates unconstitutionality beyond a reasonable doubt. *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, ¶17, citing *Klein v. Leis*, 99 Ohio St.3d 537, 2003-Ohio-4779, ¶4. Additionally, we note that Messmer challenges the constitutionality of S.B. 10 on its face and as applied to him.

{¶22} In order to determine the constitutionality of a statute under the equal protection clause, we must first decide whether a fundamental right or suspect class is involved. *Conley v. Shearer*, 64 Ohio St.3d 284, 289, 1992-Ohio-133. "A statutory classification which involves neither a suspect class nor a fundamental right does not violate the Equal Protection Clause of the Ohio or United States Constitutions [sic] if it bears a rational relationship to a legitimate governmental interest." *McCrone v. Bank One Corp.*, 107 Ohio St.3d 272, 2005-Ohio-6505, ¶8, quoting *Menefee v. Queen City Metro* (1990), 49 Ohio St.3d 27, 29. Under rational basis review, the judgment of the General Assembly is granted substantial deference. *Eppley v. Tri-Valley Local School Dist. Bd. of Edn.*, 122

Ohio St.3d 56, 2009-Ohio-1970, ¶15, citing *State v. Williams*, 88 Ohio St.3d 513, 531, 2000-Ohio-428. Furthermore, rational basis review only requires a reasonable justification for the classification, even if the classifications are imprecise. *Groch v. Gen. Motors Corp*, 117 Ohio St.3d 192, 2008-Ohio-546, ¶82.

{¶23} Here, Messmer asserts a violation of equal protection on the basis that S.B. 10 impermissibly classifies sexual offenders according to age. However, the suspect classes have been traditionally defined as race, sex, religion, and national origin, *Adamsky v. Buckeye Local School Dist.*, 73 Ohio St.3d 360, 362, 1995-Ohio-298, with age being excluded. *Cleveland v. Trzebuckowski*, 85 Ohio St.3d 524, 1999-Ohio-285, fn2. Accordingly, we will analyze whether S.B. 10's classification scheme bears a rational relationship to a legitimate government interest.

{¶24} Under R.C. 2152.83(A)(1), a juvenile court is required to classify a juvenile as a sex offender where three conditions are met. One of those conditions is that the juvenile was sixteen or seventeen years of age at the time of committing the offense. However, pursuant to R.C. 2152.83(B)(1), the juvenile court has the discretion to conduct a hearing to determine if the juvenile should be classified as a sex offender when three conditions are met, one of which is that the juvenile was fourteen or fifteen years of age at the time of committing the offense. Accordingly, whether the juvenile court has discretion to or is required to classify

a juvenile as a sex offender is partly based upon the age of the juvenile at the time of committing the offense.

{¶25} The General Assembly's reasoning behind the promulgation of sex offender classifications and punishments is set forth in R.C. 2950.02, which provides, in pertinent part:

If the public is provided adequate notice and information about offenders and delinquent children who commit sexually oriented offenses or who commit child-victim oriented offenses, members of the public and communities can develop constructive plans to prepare themselves and their children for the offender's or delinquent child's release from imprisonment, a prison term, or other confinement or detention. * * *

* * *

Sex offenders and child-victim offenders pose a risk of engaging in further sexually abusive behavior even after being released from imprisonment, a prison term, or other confinement or detention, and protection of members of the public from sex offenders and child-victim offenders is a paramount governmental interest.

R.C. 2950.02(A)(1),(2).

{¶26} Accordingly, if the purpose of sex offender classification is to notify and protect the public due to the likelihood of recidivism among sex offenders, it is likely the General Assembly concluded that the lower the age of the offender, the reduced likelihood of recidivism, thereby granting the juvenile court discretion in determining whether a sex offender classification is needed when the offender is

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younger. Consequently, we find that this age classification bears a rational relationship to a legitimate government interest.

{¶27} Accordingly, we overrule Messmer's fourth assignment of error.

{¶28} Having found no error prejudicial to the appellant herein, in the particulars assigned and argued, we affirm the judgment of the trial court.

Judgment Affirmed

WILLAMOWSKI, P.J. and PRESTON, J., concur.

/jlr

CONSTITUTION OF UNITED STATES

AMENDMENTS

Current through 2010

Amendment XIV. Rights Guaranteed: Privileges and Immunities of Citizenship, Due Process, and Equal Protection

SECTION. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Ohio Constitution

Article I. Bill of Rights

Current through the November, 2009 Election

§ 2. Right to alter, reform, or abolish government, and repeal special privileges

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.

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Ohio Statutes

Title 21. COURTS - PROBATE - JUVENILE

Chapter 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

Current through November, 2010

§ 2152.01. Purpose of juvenile dispositions

(A) The overriding purposes for dispositions under this chapter are to provide for the care, protection, and mental and physical development of children subject to this chapter, protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender. These purposes shall be achieved by a system of graduated sanctions and services.

(B) Dispositions under this chapter shall be reasonably calculated to achieve the overriding purposes set forth in this section, commensurate with and not demeaning to the seriousness of the delinquent child's or the juvenile traffic offender's conduct and its impact on the victim, and consistent with dispositions for similar acts committed by similar delinquent children and juvenile traffic offenders. The court shall not base the disposition on the race, ethnic background, gender, or religion of the delinquent child or juvenile traffic offender.

(C) To the extent they do not conflict with this chapter, the provisions of Chapter 2151. of the Revised Code apply to the proceedings under this chapter.

History. Effective Date: 01-01-2002

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Ohio Statutes**Title 21. COURTS - PROBATE - JUVENILE****Chapter 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS**

Current through November, 2010

§ 2152.82. Juvenile sex offender registration as part of dispositional order

(A) The court that adjudicates a child a delinquent child shall issue as part of the dispositional order 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, 2950.05, and 2950.06 of the Revised Code if all of the following apply:

(1) 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.

(2) The child was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the offense.

(3) The court has determined that the child previously was adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense, regardless of when the prior offense was committed and regardless of the child's age at the time of committing the offense.

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

(B) An order required under division (A) of this section shall be issued at the time the judge makes the order of disposition for the delinquent child. Prior to issuing the order required by division (A) of this section, the judge shall conduct a hearing under section 2152.831 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. If 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. When a judge issues an order under division (A) of this section, all of the following apply:

(1) The judge 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 and any determinations included in the order are subject to modification or termination pursuant to sections 2152.84 and 2152.85 of the Revised Code.

(2) The judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian the notice required under divisions (A) and (B) of section 2950.03 of the Revised Code and shall provide as part of that notice a copy of the order.

(3) The judge shall include the order in the delinquent child's dispositional order and shall specify in the dispositional order that the order issued under division (A) of this section was made pursuant to this section.

(4) If the court determines that the delinquent child to whom the order applies is a tier III sex offender/child-victim offender, if the child is not a public registry-qualified juvenile offender registrant, and 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.

(5) The court shall include in the order its determination made at the hearing held under section 2151.831 of the Revised Code as to whether the delinquent 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) Except as provided in division (D) of this section, an order issued under division (A) 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 or 2152.85 of the Revised Code, and section 2152.851 of the Revised Code applies regarding the order and the determinations. If an order is issued under division (A) 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.

(D) If a court issues an order under division (A) 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.

History. Effective Date: 07-31-2003; 2007 SB10 01-01-2008

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Ohio Statutes**Title 21. COURTS - PROBATE - JUVENILE****Chapter 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS**

Current through November, 2010

§ 2152.83. Juvenile sex offender registration at time of release from secure facility

(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, 2950.05, 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 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, 2950.05, 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, 2950.05, 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 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 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 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. Effective Date: 07-31-2004; 2007 SB10 01-01-2008

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Ohio Statutes**Title 21. COURTS - PROBATE - JUVENILE****Chapter 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS**

Current through November, 2010

§ 2152.85. Petition for 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, 2950.05, 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, 2950.05, 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, 2950.05, 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 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 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. Effective Date: 07-31-2003; 2007 SB10 01-01-2008

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Ohio Statutes

Title 29. CRIMES - PROCEDURE

Chapter 2950. SEXUAL PREDATORS, HABITUAL SEX OFFENDERS, SEXUALLY ORIENTED OFFENDERS

Current through November, 2010

§ 2950.02. Exchange or release of relevant information about sexual predators and habitual sex offenders

(A) The general assembly hereby determines and declares that it recognizes and finds all of the following:

(1) If the public is provided adequate notice and information about offenders and delinquent children who commit sexually oriented offenses or who commit child-victim oriented offenses, members of the public and communities can develop constructive plans to prepare themselves and their children for the offender's or delinquent child's release from imprisonment, a prison term, or other confinement or detention. This allows members of the public and communities to meet with members of law enforcement agencies to prepare and obtain information about the rights and responsibilities of the public and the communities and to provide education and counseling to their children.

(2) Sex offenders and child-victim offenders pose a risk of engaging in further sexually abusive behavior even after being released from imprisonment, a prison term, or other confinement or detention, and protection of members of the public from sex offenders and child-victim offenders is a paramount governmental interest.

(3) The penal, juvenile, and mental health components of the justice system of this state are largely hidden from public view, and a lack of information from any component may result in the failure of the system to satisfy this paramount governmental interest of public safety described in division (A)(2) of this section.

(4) Overly restrictive confidentiality and liability laws governing the release of information about sex offenders and child-victim offenders have reduced the willingness to release information that could be appropriately released under the public disclosure laws and have increased risks of public safety.

(5) A person who is found to be a sex offender or a child-victim offender has a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government.

(6) The release of information about sex offenders and child-victim offenders to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal, juvenile, and mental health systems as long as the information released is rationally related to the furtherance of those goals.

(B) The general assembly hereby declares that, in providing in this chapter for registration regarding offenders and certain delinquent children who have committed sexually oriented offenses or who have committed child-victim oriented offenses and for community notification regarding tier III sex offenders/child-victim offenders who are criminal offenders, public registry-qualified juvenile

offender registrants, and certain other juvenile offender registrants who are about to be or have been released from imprisonment, a prison term, or other confinement or detention and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood, it is the general assembly's intent to protect the safety and general welfare of the people of this state. The general assembly further declares that it is the policy of this state to require the exchange in accordance with this chapter of relevant information about sex offenders and child-victim offenders among public agencies and officials and to authorize the release in accordance with this chapter of necessary and relevant information about sex offenders and child-victim offenders to members of the general public as a means of assuring public protection and that the exchange or release of that information is not punitive.

History. Effective Date: 07-31-2003; 2007 SB10 01-01-2008

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