

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Appellee,

-vs-

PAUL E. PALMER,

Appellant.

Case No.: 2010-1660

On Appeal From the
Franklin County Court of Appeals,
Tenth Appellate District

Case Nos. 09AP-956
09AP-957

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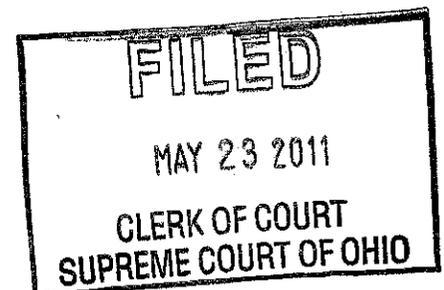


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STATEMENT OF THE CASE AND FACTS

On September 25, 1995, the grand jury indicted Appellant Paul E. Palmer on counts of attempted rape, aggravated burglary, aggravated robbery, robbery, and kidnapping. On December 11, 1995, Palmer entered a guilty plea to the stipulated lesser included offense of sexual battery in violation of R.C. 2907.04, a felony of the third degree; on the state's request, the court entered a nolle prosequi on the remaining counts. The trial court sentenced defendant to one and one-half years of incarceration, granting 112 days of credit. A judgment entry memorializing the trial court's proceedings was filed January 8, 1996; a corrected entry was filed on April 23, 1996. Because the disposition of this case also included recognition of 112 days of jail credit, the expected expiration of that sentence changed to approximately March 15, 1997.

Ohio's sexual offender registration system was the law created by the General Assembly when it enacted Ohio's version of Megan's Law in 1996. Am.Sub.H.B. No. 180, 146 Ohio Laws, Part II, 2560, 2601. Megan's Law provided for offender registration, classification, and community notification. But under that law, "a person whose prison term for a sexually oriented offense was completed before July 1, 1997, is not required to register under R.C. 2950.04(A)(1)(a) or periodically verify a current address under R.C. 2950.06(A)[.]" *State v. Champion*, 106 Ohio St.3d 120, 2005-Ohio-4098, 832 N.E.2d 718 at ¶13. Palmer—who completed his prison term before July 1, 1997-- therefore had no duty to register or verify his address under Megan's Law.

Ohio's sexual offender registration system underwent sweeping changes. On January 1, 2008, 2007 Am.Sub.S.B. No. 10 (referred to as "S.B. 10", "the Adam Walsh Act" or "the AWA"), became effective. S.B. 10 made wholesale revisions in Revised

Code Chapter 2950. The Act abandoned the former categories of sexually oriented offender, habitual sex offender, and sexual predators. Courts are not required to hold classification hearings as before. Instead, under S.B. 10 offenders are classified as Tier I, Tier II, or Tier III sex offenders (or child-victim offenders) based solely on the offender's offense. R.C. 2950.01.

After that date, Palmer became aware that the Ohio Attorney General had classified him as a Tier III under S.B. 10. On March 6, 2008, Palmer filed a petition to contest this classification.

While the petition was pending, the State filed new charges. On May 28, 2009, the Franklin County Grand Jury returned an indictment charging Palmer with failing to provide notice of change of address and failing to periodically verify his address.

Because the two matters presented interrelated issues, they were consolidated before the Honorable John Bessey, Judge of the Franklin County Common Pleas Court. On June 23, 2009, Palmer moved for immediate disposition of the pending petition.

The matters came on for hearing on September 16, 2009. Palmer, through counsel, contended that he had no duty to register under the prior law as enacted by H.B. 180. Counsel pointed out that this Court has been explicit on this point, that "a person whose prison term for a sexually oriented offense was completed before July 1, 1997, is not required to register under R.C. 2950.04(A)(1)(a) or periodically verify a current address under R.C. 2950.06(A)." *State v. Champion*, at ¶13. Since Palmer's sentence was completed prior to July 1, 1997, and because the court never determined him to be subject to registration requirements pursuant to the prior version of Chapter 2950, the

trial court apparently agreed that he could not be subject to registration requirements under S.B. 10.

Since the court determined that Palmer had no duty to register pursuant to the analysis of the petition issues, it further concluded that he had no duty to register under the analysis applicable to the new indictment, and dismissed that prosecution.

The State appealed to the Franklin County Court of Appeals. By Opinion rendered June 1, 2010, the appellate court reversed the judgment of the trial court.

On June 3, 2010, Palmer moved the appellate court to reconsider its decision in light of this Court's decision in *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753. By Decision and Entry filed August 10, 2010, the Court of Appeals denied reconsideration.

Palmer appealed to this Honorable Court. By Entry filed March 2, 2011, the Court accepted his appeal. Palmer now seeks reversal of the erroneous judgment of the Franklin County Court of Appeals.

ARGUMENT

Introduction

Upon his release from prison in March 1997, Appellant Paul Palmer was not subject to the registration and reporting requirements of Megan's Law. This Court's opinion in *State v. Champion* unquestionably holds that such an offender was not required to register under former R.C. 2950.04(A)(1)(a) or periodically verify a current address under former R.C. 2950.06(A).

But according to the Court of Appeals below, with the enactment of S.B. 10, Palmer suddenly became subject to the registration and reporting requirements applicable

to Tier III offenders. Under this new classification, Palmer was required to personally register with the local sheriff every 90 days for life and was also subject to community notification provisions.

The Court of Appeals found that S.B. 10 applied to Palmer even if Megan's Law did not. According to the Court,

“...we can conclude only that defendant's duties under the AWA are not premised on the time frame referenced in the law cited in *Champion* but on the language of the AWA which requires compliance, regardless of when defendant pleaded guilty to the offense. Accordingly, the provisions of the AWA apply to defendant.”

State v. Palmer, Franklin App. 09AP-956, 957 at ¶24.

This holding is contrary to the applicable statutes, the holdings of this Court, and the federal and state Constitutions.

First Proposition of Law

R.C. 2950.031 and 2950.032 are unconstitutional and unenforceable. Given the unconstitutionality of these sections, they provide no basis for reclassification of any sexual offender into the tier classification system created by the Adam Walsh Act and no registration duties arise from these sections. [*State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, applied.]

A. S.B. 10 Does Not Apply to Palmer

In *Bodyke*, this Court found that R.C. 2950.031 and 2950.032, the reclassification provisions in S.B. 10, are unconstitutional because they violate the separation-of-powers doctrine. As a remedy, the Court struck R.C. 2950.031 and 2950.032. These provisions are therefore of no force and effect.

R.C. 2950.031 explicitly stated that offenders “who prior to December 1, 2007, has registered a residence, school, institution of higher education, or place of employment” must be reclassified as tiered offenders. This group not only encompasses

those who were formally labeled by a court, but also those who were convicted prior to Megan's Law but serving a sentence for their sexually oriented offense after July 1, 1997, those who were convicted after Megan's Law was enacted but were not sought out to be labeled a predator, and those who had no duty to register but were improperly informed they had a duty to register. Neither R.C. 2950.031 nor 2950.032 distinguishes between any of these groups. Because this Court's holding in *Bodyke* severed these provisions in their entirety, none of these individuals fall within the requirements of S.B. 10.

What is more important is that this Court did not make any distinction in how individuals fell into this class of people who were unlawfully reclassified by R.C. 2950.031 and 2950.032. This Court chose to sever these statutes in their entirety, and reaffirmed that decision in *Chojnacki v Cordray*, 126 Ohio St.3d 321, 2010-Ohio-3212, 933 N.E.2d 800. The Tenth District recognized this in *State v. Hazlett*, 191 Ohio App.3d 105, 109, 2010-Ohio-6119, 944 N.E.2d 1220:

[T]he remedy of *Bodyke*, as later clarified and reaffirmed in *Chojnacki*, was complete and total severance of the provisions providing for the attorney general's authority to reclassify sex offenders. The severance makes no distinction between those classified judicially and those classified by operation of law. Moreover, after *Bodyke* was rendered, the Supreme Court was asked for clarification on this very issue, but declined to offer either reconsideration or clarification, which suggests the effect of severance is applicable to all sex offenders whether classified judicially or by operation of law.

The sole basis for reclassifying Palmer into a tier based registration system and for imposing S.B. 10 duties on him is by application of R.C. 2950.031. The Court of Appeals never addressed this issue, instead following the erroneous ruling of *State v. Bundy*, Montgomery App. No. 23063, 2009-Ohio-5395. *Bundy* engaged in the same flawed analysis as the Court of Appeals below. Significantly this Court reversed the

Bundy decision in *In re Sexual-Offender Reclassification Cases*, 126 Ohio St.3d 322, 2010-Ohio-3753, 933 N.E.2d 801, ¶ 55

Compliance with S.B. 10 is required only after the Ohio Attorney General completes the tier classification for that offender provided by R.C. 2950.031 and 2950.032. Since R.C. 2950.031 and 2950.032 are unconstitutional and completely severed, the Attorney General may not conduct and complete this assessment and reclassification of Palmer—and he may not be prosecuted for failing to comply with S.B. 10 requirements. See *State v. Gingell*, 128 Ohio St.3d 444, 2011-Ohio-1481, ___ N.E.2d ___ ¶ 8.

B. S.B. 10 May Not Be Applied Retrospectively to Offenders Who Were Not Subject to Megan’s Law

The *Bodyke* holding and severance remedy remove any doubt on the issue: Palmer had no duty to register or verify his address and, accordingly, could not be subject to prosecution for failing to comply with those duties. Although *Bodyke* offers further insight into the issues before this Court, the trial court made its decision prior to the release of the *Bodyke* decision and based its decision on *State v. Champion*. But even without discussion or application of the *Bodyke*, analysis, Palmer had no such duties because he was not subject to the requirements imposed by Megan’s Law. Since the trial court based its decision on *State v. Champion*, this Court is now faced with the question of whether S.B. 10 overruled *Champion*.

Under pre-S.B. 10 law, only offenders who were either sentenced after July 1, 1997, or released on or after that date from incarceration for the particular sex offense, were subject to the registration and verification requirements of the version of Chapter 2950 created by H.B. 180. See *State v. Bellman*, 86 Ohio St.3d 208, 1999-Ohio-95, 714

N.E.2d 381; *State v. Taylor*, 100 Ohio St.3d 172, 2003-Ohio-5452, 797 N.E.2d 504. The Court was explicit on this point in *State v. Champion*, holding that “a person whose prison term for a sexually oriented offense was completed before July 1, 1997, is not required to register under R.C. 2950.04(A)(1)(a) or periodically verify a current address under R.C. 2950.06(A).”

The Court of Appeals held that S.B. 10 is so broad as to make any sex offender, no matter the date of conviction, subject to Chapter 2950’s requirements. But, the language found throughout Chapter 2950 strongly indicates a more limited legislative intent more akin to that found in former Chapter 2950 and in line with this Court’s decision in *Champion*.

R.C. 2950.033 sets forth procedures for applying the provisions of Senate Bill 10 retrospectively to offenders whose duty to comply with the registration requirements of prior law was to expire prior to the January 1, 2008 enactment date of Senate Bill 10. It makes no mention of applying those requirements to offenders who had no previous duty to register.

R.C. 2950.03 establishes the notice procedure for those who are required to register. Furthermore, it provides that “each offender required to register” shall be provided notice. The language in this particular statute is composed identically as the statute this Court evaluated in *Champion*.

Former R.C. 2950.04 stated as follows:

Regardless of when the sexually oriented offense was committed, an offender who is sentenced for the sexually oriented offense to a prison term, a term of imprisonment, or any other type of confinement and, on or after July 1, 1997, is released in any manner from the prison term, term of imprisonment, or confinement...

Current R.C. 2950.03 reads as follows:

Regardless of when the person committed the sexually oriented offense or child-victim oriented offense, if the person is an offender who is sentenced to a prison term, a term of imprisonment, or any other type of confinement for any offense, and if on or after January 1, 2008, the offender is serving that term or is under that confinement, subject to division (A)(5) of this section, the official in charge of the jail, workhouse, state correctional institution, or other institution in which the offender serves the prison term, term of imprisonment, or confinement, or designee of that official, shall provide the notice to the offender before the offender is released pursuant to any type of supervised release or before the offender otherwise is released from the prison term, term of imprisonment, or confinement.

R.C. 2950.06(B)(4) directed how Megan's Law registrants should periodically verify their address:

If, prior to January 1, 2008, an offender or delinquent child registered with a sheriff under a duty imposed under section 2950.04 or 2950.041 of the Revised Code as a result of a conviction of, plea of guilty to, or adjudication as a delinquent child for committing a sexually oriented offense or a child-victim oriented offense as those terms were defined in section 2950.01 of the Revised Code prior to January 1, 2008, *the duty to register that is imposed on the offender or delinquent child pursuant to section 2950.04 or 2950.041 of the revised Code on and after January 1, 2008, is a continuation of the duty imposed upon the Offender prior to January 1, 2008*, under section 2950.04 or 2950.041 of the Revised Code and, for purposes of divisions B(1), (2), and (3) of this section, the offender's initial registration date related to that offense is the date on which the offender initially registered under section 2950.04 or 2950.041 of the Revised Code.

(Emphasis added.)

Similarly, R.C. 2905.07 provides direction on to determine *when* an offender's duty commences. R. C. 2950.07(A)(8) states:

If the offender's duty to register was imposed pursuant to section 2950.04 of the Revised Code as they existed prior to January 1, 2008, the offender's duty to comply with sections 2950.04 of the Revised Code as they exist on and after January 1, 2008, is a continuation of the offender's duty to register imposed prior to January 1, 2008, under

section 2950.04 of the Revised Code continues, after the date of commencement . . .

The court below improperly based its decision on the language contained in R.C. 2950.04(A)(2). This statute is a directive on how an offender should register only after registration pursuant to 2950.04(A)(1) has been followed. R.C. 2950.04(A)(2) must be interpreted in conjunction with R.C. 2950.04(A)(1). Paragraph (d) of this statute states:

After an offender who has registered pursuant to division (A)(1)(a) of this section is released from a prison term, a term of imprisonment, or any other type of confinement, the offender shall register as provided in division (A)(2) of this section. After a delinquent child who has registered pursuant to (A)(1)(b) of this section is released from the custody of the department of youth services or from a secure facility that is not operated by the department, the delinquent child shall register as provided in division (A)(3) of this section.

(Emphasis added.)

Interestingly enough, R.C. 2950.04(A)(4) addresses the duty of out of state offenders who move to Ohio. This portion of the statute requires registration only when “the offender or delinquent child has a duty to register as a sex offender or child-victim offender under the law of that other jurisdiction as a result of the conviction, guilty plea, or adjudication.” *Id.* It is illogical that the legislature would intend to impose new registration requirements on Ohio residents who had no prior duty under Megan’s Law, and yet only impose a duty to register on out of state offenders only if they had a duty to register under their previous state’s law.

None of the above listed portions of Chapter 2950 are directed in whole or in part to the class of individuals who never had a duty to register pursuant to Megan’s Law. There is no provision stating when these offenders are to register, who is to provide this class notice of a duty to register, or how they are to contest their new

classification/reclassification. Only those offenders who *were* subject to the provisions of Chapter 2950 under Megan's Law were retroactively incorporated into S.B. 10 via R.C. 2950.031 and 2950.032.

Interestingly, the Ohio Attorney General has recognized this. The Attorney General's Supplemental Brief filed in *Chojnacki* stated that "S.B. 10 applies retroactively to sex offenders who, as of July 1, 2007, were subject to registration under the old sex-offender system. R.C. 2950.033." (Supplemental Merit Brief of Appellee Ohio Attorney General Richard Cordray, page 4, June 23, 2009).

Since Palmer was never actually subject to the former law, he cannot now be held subject to its successor statutes. *Id.*; see, also, *State v. Cook*, Miami App. No. 2008 CA 19, 2008-Ohio-6543 ("applies retroactively to those offenders whose existing registration requirements would expire after July 1, 2007").

By contrast, the appellate court's expansive interpretation renders complex provisions such as R.C. 2909.033 and 2905.07 is little more than surplusage. It is a fundamental canon of statutory construction that a statute should not be construed so as to render any of its provisions mere surplusage. *See, e.g., Ratzlaf v. United States* (1994), 510 U.S. 135, 140-41, 114 S.Ct. 655, 126 L.Ed.2d 615, (noting that statutory language should not be construed so as to render certain words or phrases mere surplusage); *Bowsher v. Merck & Co* (1982), 460 U.S. 824, 833, 103 S.Ct. 1587, 75 L.Ed.2d 580, (restating "the settled principle of statutory construction that we must give effect . . . to every word of the statute"); *Astoria Federal Savings & Loan Ass'n v. Solimino* (1991), 501 U.S. 104, 112, 11 S.Ct. 2166, 115 L.Ed.2d 96; *Sprietsma v. Mercury Marine* (2003),

537 U.S. 51, 63, 123 S.Ct. 518, 2003 A.M.C. 1, 154 L.Ed.2d 466; *Bailey v. United States* (1995), 516 U.S. 137, 146, 116 S.Ct. 501, 133 L.Ed.2d 472.

C. S.B. 10 Is Unconstitutional as Applied to Offenders Who Had No Previous Duty to Register

If the legislature intended Chapter 2950 to be completely retroactive without limitations, S.B. 10 impermissibly violates the constitutional prohibitions against *ex post facto* and retrospective legislation as well as Palmer's constitutional right to both procedural due process and substantive due process as required by both the Ohio Constitution and the United States Constitution.

1. The retroactive application of Senate Bill 10 violates the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution

The retroactive application of S.B. 10 to crimes that occurred before July 1, 1997 violates the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution. Section 28, Article II of the Ohio Constitution provides that "the general assembly shall have no power to pass retroactive laws." Additionally, Section 10, Article I of the United States Constitution prohibits any legislation that "changes the punishment, and inflicts greater punishment, than the law annexed to the crime, when committed." *Miller v. Florida* (1987), 482 U.S. 423, 429, 107 S.Ct. 2446, 96 L.Ed.2d 351. Ex post facto laws are prohibited in order to ensure that legislative acts "give fair warning to their effect and permit individuals to rely on their meaning until explicitly changed." *Weaver v. Graham* (1981), 450 U.S. 24, 28-29, 101 S.Ct. 960, 67 L.Ed.2d 17. Section 28, Article II of the Ohio Constitution; Section 10, Article I of the United States Constitution.

a. **Senate Bill 10 violates Section 10, Article I of the United States Constitution.**

The Ex Post Facto Clause of the United States Constitution prevents the legislature from abusing its authority by enacting arbitrary, or vindictive legislation aimed at disfavored groups. See *Miller v. Florida*, 482 U.S. at 429. The Ex Post Facto Clause applies only to criminal statutes. *California Dept. of Corrections v. Morales* (1995), 514 U.S. 499, 504, 115 S.Ct. 1597, 131 L.Ed.2d 588; *Collins v. Youngblood* (1990), 497 U.S. 37, 43, 110 S.Ct. 2715, 111 L.Ed.2d 30.

Although S.B. 10's changes to former R.C. Chapter 2950 do not delete the language stating that "the exchange or release of [information required by the law] is not punitive," the purpose of the new statute has changed from that underlying Megan's Law. According to former R.C. Chapter 2950, an individual's classification and registration requirements were tied directly to his or her ongoing threat to the community. But under the new statutory scheme, an individual's registration and classification obligations depend only upon his or her offense of conviction. Thus, the statutory scheme has been transformed from a narrowly tailored solution to a punitive statutory scheme that does not consider the offender's risk to the community or likelihood of reoffending. Contrary to former R.C. Chapter 2950--which permitted a trial court to classify a defendant as a sexual predator, a habitual sexual offender, or a sexually oriented offender only after conducting a hearing and considering numerous factors--S.B. 10 assigns sex offenders to one of three tiers based solely on the offense that the defendant allegedly committed.

Additionally, the formal attributes of a legislative enactment, such as the manner of its codification and the enforcement procedures that it establishes, are probative of legislative intent. *Smith v. Doe* (2003), 538 U.S. 84, 94, 123 S.Ct. 1140, 155 L.Ed.2d 164.

Due to the fact that the legislature elected to place S.B. 10 squarely within Title 29, Ohio's Criminal Code, the enforcement mechanisms established by S.B. 10 are criminal in nature. Moreover, the failure of an individual to comply with the registration, verification, or notification requirements of S.B. 10 subjects the offender to criminal prosecution and criminal penalties. R.C. 2950.99.

Senate Bill 10 imposes burdens on defendants that have historically been regarded as punishment and operate as affirmative disabilities and restraints. While registering as a sex offender may have adverse consequences to a defendant, "running from mild personal embarrassment to social ostracism," the further limitation regarding where an offender may live causes S.B. 10 to resemble colonial punishments of "public shaming, humiliation, and banishment." *Smith v. Doe*, 538 U.S. at 98.

b. Senate Bill 10 violates Section 28, Article II of the Ohio Constitution.

Section 28, Article II of the Ohio Constitution forbids the enactment of retroactive laws. *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St.3d 100, 106, 522 N.E.2d 489. Ohio's Constitution affords its citizens greater protection against retroactive laws than does the Ex Post Facto Clause of the United States Constitution. *Van Fossen*, 36 Ohio St.3d at 105, footnote 5 ("[Ohio's Constitution of 1851 provides a] much stronger prohibition than the more narrowly constructed provision in Ohio's Constitution of 1802. Section 16, Article VIII of th[e 1802] Constitution stated: 'No ex post facto law, nor any law impairing the validity of contracts, shall ever be made,' merely reflecting the terms used in Section 10, Article I of the United States Constitution.").

In considering whether a particular law may be applied retrospectively, a reviewing court must first determine whether it should apply the rule of statutory

construction or immediately engage in the constitutional review of the statute. *Van Fossen* at 105. The issue of whether a statute may constitutionally be applied retrospectively does not arise unless there has been a prior determination that the General Assembly has specified that the statute so apply. *Id.* When "there is no clear indication of retroactive application, then the statute may only apply to cases which arise subsequent to its enactment." *Kiser v. Coleman* (1986), 28 Ohio St.3d 259, 262, 28 O.B.R. 337, 503 N.E.2d 753.

When the General Assembly has ordered that a new law be applied retroactively—as in unquestionably did with S.B. 10--, a reviewing court must determine whether the new law affects a person's substantive rights. *Kunkler v. Goodyear Tire & Rubber Co.* (1988), 36 Ohio St.3d 135, 137, 522 N.E.2d 477. A statute is substantive--and therefore unconstitutional if applied retroactively--if the statute "impairs or takes away vested rights, affects an accrued substantive right, or imposes new or additional burdens, duties, obligation or liabilities as to a past transaction, or creates a new right." *State v. Cook*, 83 Ohio St.3d 404, 411, 1998-Ohio-291, 700 N.E.2d 570.

Under S.B. 10 Palmer must now register as a sex offender for life. Under pre-S.B. 10 law, he had no obligation to register or report. The law unquestionably imposes new obligations and burdens which did not exist at the time that Palmer committed the alleged offense. Consequently, S.B. 10 not only violates the Ex Post Facto Clause of the United States Constitution, but it also violates the Retroactivity Clause of Section 28, Article II of the Ohio Constitution.

2. The expansive application of S.B. 10 violates Due Process

The Fifth and Fourteenth Amendments to the United States Constitution and §10, Article I, of the Ohio Constitution protect against deprivation of liberty or property by any state actor without due process of law. The Due Process Clause constrains the States in the use of their powers without a sufficiently fair and open procedural basis, but also has a substantive component that protects all citizens from the exercise of legislative and executive power without any reasonable justification. Offenders are denied a fair and open procedural basis upon any newly imposed affirmative duty to comply with the various provisions of Chapter 2950. There has been no evidence of any risk or harm of any kind legitimately asserted for the inclusion of this class of individuals in the sexual offender registry.

“[W]henver one is assailed in his person or his property, there he may defend” *Boddie v. Connecticut* (1971), 401 U.S. 371, 378, 91 S.Ct. 780, 28 L.Ed.2d 113 *citing Windsor v. McVeigh* (1876), 93 U.S. 274, 277, 23 L.Ed. 914. Procedural due process requires that one be provided with notice and the opportunity to be heard when the state seeks to infringe upon a protected liberty or property right “absent a countervailing state interest of overriding significance.” *Id.*

Here, there are no instructions how these individuals, who previously never had a duty to register, should now register. *See* R.C. 2950.03. Palmer has never been afforded notice as required nor been given an opportunity to be heard. If the State is correct in its interpretation of 2950(A)(2), these individuals would not be notified by the Ohio Attorney General, any court within the State of Ohio, nor the sheriff in their home counties. The State expects that since this classification is by operation of law that these individuals should just know they now have an affirmative duty to register, know that

failure to do so has criminal consequences, and accept that there are no contest provisions within Chapter 2950 to contest this labeling.

The Due Process Clause offers broad protections:

[N]ot merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

Meyer v. Nebraska (1923), 262 U.S. 390, 399, 43 S.Ct. 625.

The lower court's expansive interpretation and application of Chapter 2950 cannot be reasonably construed as rationally advancing some legitimate governmental purpose. *Reno* at 306. A challenge to the rational basis of a law must “present clear and convincing evidence of a presently existing state of facts which makes the Act unconstitutional and void when applied.” *State v. Small*, Franklin App. No 04AP-316, 2005-Ohio-3813, at ¶21. A law will survive such review “if it bears a real and substantial relation to the public health, safety, morals or general welfare of the public and if it is not unreasonable or arbitrary.” *Traditions Tavern v. City of Columbus*, Franklin App. No 06AP-367, 2006-Ohio-6655, at ¶26. As previously stated, the broadening of sex offender registration does not possess such “real and substantial relation”, but rather demonstrates all the hallmarks of an “unreasonable” and “arbitrary” law.

Second Proposition of Law

When the record unequivocally demonstrates that Chapter 2950 does not impose registration requirements on a defendant, Crim.R. 12 permits the trial court to dismiss an indictment that asserts a violation of those requirements.

The appellate court held that the trial court was without jurisdiction to dismiss the 2009 indictment filed against Palmer. The indictment, like Palmer's petition, raised the issue whether Palmer had a duty to comply with Chapter 2950's registration requirements.

As a general proposition, determination of whether a duty exists is a question of law for the court to decide. *Mussivand v. David* (1989), 45 Ohio.St.3d 314, 318, 544 N.E.2d 265. *Clemets v. Heston* (1985), 20 Ohio.App.3d 132, 20 O.B.R. 166, 485 N.E.2d 287. Certainly, then, the trial court could properly find in the petition case that Palmer had no duty to register, based upon *State v. Champion*. Here, the State asks the trial court to proceed through an unnecessary trial in order to make the same determination in the failure to register prosecution. Even if a jury would have found Palmer guilty, the trial court would be obligated to dismiss because there was no duty to register.

The gist of the trial court's ruling is that due to the absence of duty as a matter of law, the indictment does not charge an offense. Dismissal was proper pursuant to Crim.R. 12(C)(2). Further, it must be noted that the trial court also granted Palmer's petition, finding S.B. 10 inapplicable to him. It would be incongruous and unreasonable for the trial court to hold on the one hand that S.B. 10 is legally inapplicable to Palmer, while on the other forcing him to endure a criminal trial based upon the alleged violation of duties arising under S.B. 10. Because the reclassification under S.B. 10 was unlawful pursuant to *Bodyke*, it could not serve as the predicate for the crime for which Palmer was indicted.

Interestingly, this Court's opinion in *State v. Champion* reflects at least an implicit approval of this procedure. *Champion*, like the indictment at issue here, involved

allegations of failure to register. The Court described the facts in ¶ 7 of the *Champion* opinion:

The state charged Champion with a registration violation under R.C. 2950.06 because he had been convicted of GSI, a sexually oriented offense under R.C. 2950.01(D)(1)(a), and had been released from prison after July 1, 1997. *Champion filed a motion to dismiss the indictment, which was granted by the trial court after a hearing. The Court of Appeals for Cuyahoga County affirmed the dismissal of the indictment, determining that "[t]he plain language of R.C. 2950.04 requires that the offender be sentenced for or under confinement for a 'sexually oriented offense' on or after July 1, 1997 in order for the registration requirement to be applicable."* It also noted that there was insufficient evidence to indicate why Champion had been sent back to prison. *State v. Champion*, 8th Dist. No. 83157, 2004-Ohio-2009, 2004 WL 858763, at ¶ 15.

(Emphasis added.)

Contrary to the holding of the Court of Appeals, then, the trial court below properly exercised its jurisdiction in dismissing the indictment.

Third Proposition of Law

Upon determining that an offender is not a sexual offender subject to the requirements of Revised Code Chapter 2950, a trial court possesses jurisdiction to order law enforcement agencies to delete the offender's name from sexual offender databases.

After the trial court determined that Palmer was not subject to the Chapter 2950's requirements, it ordered that his "name be removed from all sexually oriented lists maintained by the local, state or federal government." (Judgment Entry, September 16, 2009). This was a proper exercise of the court's jurisdiction.

The court correctly determined that Palmer was not subject to the requirements of Chapter 2950. The inclusion of Palmer's name on any list generated by law enforcement personnel consistent with the purposes of Chapter 2950 is likewise improper, impermissible, and unsupported by law.

It should be noted that the order is limited by its terms to “sexually oriented lists.” Offender databases designed for other purposes (such as general investigative databases maintained by BCI or other law enforcement personnel) fall outside the scope of the order. Even in the absence of express statutory jurisdiction, Ohio courts historically have had jurisdiction to limit information contained in law enforcement records while nevertheless permitting law enforcement personnel to maintain records available for use in legitimate criminal investigations. See, e.g., *City of Pepper Pike v. Doe* (1981), 66 Ohio St.2d 374, 20 O.O.3d 334, 421 N.E.2d 1303. The trial court’s judgment was simply an exercise of this authority.

It should also be noted that this holding is perfectly consistent with the holding of *Bodyke*. When this Court struck down those provisions of S.B. 10 which empowered the Attorney General to both reclassify offenders and generate the lists in question, there was no longer a valid basis for maintaining Palmer's name on any “sexually oriented lists”. The Court of Appeals erroneously held to the contrary.

CONCLUSION

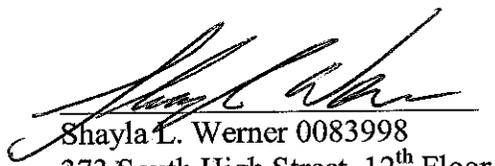
For the reasons set forth herein, Appellant Paul E. Palmer respectfully urges this Court to reverse the judgment of the Franklin County Court of Appeals.

Respectfully submitted,

Yeura R. Venters 0014879
Franklin County Public Defender



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Brief of Appellant Paul E. Palmer was served upon Steven L. Taylor, Assistant Franklin County Prosecuting Attorney, 373 S. High Street, Columbus, Ohio 43215 by hand delivery this 23rd day of May 2011.



David L. Strait 0024103

*Attorney for Appellant
Paul E. Palmer*

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

-vs-

PAUL E. PALMER,

Appellant

Case No.: 2010-1660

On Appeal From the
Franklin County Court of Appeals,
Tenth Appellate District

Case Nos. 09AP-956
09AP-957

APPENDIX

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ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Appellee,

-vs-

PAUL E. PALMER,

Appellant

Case No.:

10-1660

On Appeal From the
Franklin County Court of Appeals,
Tenth Appellate District

Court of Appeals

Case Nos. 09AP-956
09AP-957

NOTICE OF APPEAL OF APPELLANT
PAUL E. PALMER

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Franklin County Public Defender

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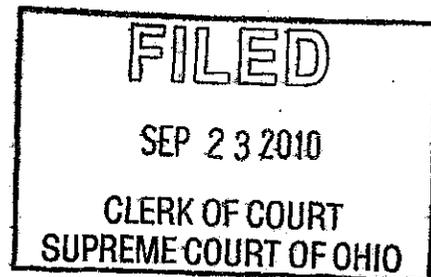
Ronald J. O'Brien 0017245
Franklin County Prosecuting Attorney

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NOTICE OF APPEAL OF APPELLANT PAUL E. PALMER

Appellant Paul E. Palmer gives notice of appeal to the Supreme Court of Ohio from judgment of the Franklin County Court of Appeals, Tenth Appellate District, entered in Court of Appeals Case Nos. 09AP-956 and 09AP-057 on June 3, 2010, which journalized the Opinion rendered June 1, 2010.

The Court of Appeals denied Appellant's motion for reconsideration on August 10, 2010.

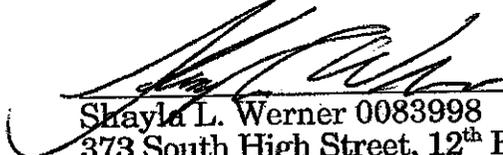
This case raises a substantial constitutional question and matters of public or great general interest.

Respectfully submitted,

Yeura R. Venters 0014879
Franklin County Public Defender



David L. Strait 0024103

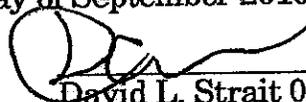


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Attorneys for Appellant Paul E. Palmer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Notice of Appeal was served upon Steven L. Taylor, Assistant Franklin County Prosecuting Attorney, 373 South High Street, 13th Floor, Columbus, OH 43215, by hand delivery this 23rd day of September 2010.



David L. Strait 0024103

Attorney for Appellant Paul E. Palmer

FILED 2010

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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State of Ohio,

Plaintiff-Appellant,

v

Paul E. Palmer,

Defendant-Appellee.

No. 09AP-956
(C P C No 95CR-5474)

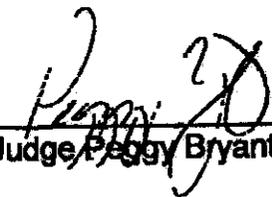
No. 09AP-957
(C P C No 09CR-3152)

(REGULAR CALENDAR)

JOURNAL ENTRY

For the reasons stated in the memorandum decision of this court rendered herein on August 10, 2010, it is the order of this court that the motion for reconsideration, filed on June 3, 2010, is denied. Costs assessed to defendant.

BRYANT, SADLER & CONNOR, JJ.

By  _____
Judge Peggy Bryant

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IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
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Plaintiff-Appellant, :
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v. :
 :
Paul E. Palmer, :
 :
Defendant-Appellee. :

Bessley
No. 09AP-956
(C.P.C. No 95CR-5474)
No. 09AP-957
(C.P.C No 09CR-3152)
(REGULAR CALENDAR)

MEMORANDUM DECISION

Rendered on August 10, 2010

Ron O'Brien, Prosecuting Attorney, and Steven L. Taylor, for appellant.

Yeura R. Venters, Public Defender, and David L. Strait, for appellee.

ON MOTION FOR RECONSIDERATION

BRYANT, J.

{¶1} Defendant-appellee, Paul E. Palmer, filed a motion on June 3, 2010 requesting reconsideration pursuant to App.R. 26(A) of our decision in this case. Because defendant does not raise any issue not previously considered and does not set forth an obvious error in our prior decision, defendant's motion is denied.

{¶2} The test generally applied upon the filing of a motion for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision or raises an issue for consideration that the court either did not consider at all or did not fully consider when it should have been. *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, 143. An application for reconsideration is not designed for use in instances where a party simply disagrees with the logic or conclusions of the court. *State v. Owens* (1996), 112 Ohio App.3d 334.

{¶3} In his motion for reconsideration, defendant asserts our decision is erroneous in light of the Supreme Court of Ohio's decision in *State v. Bodyke*, Slip Opinion No. 2010-Ohio-2424. In *Bodyke*, the Supreme Court of Ohio held R.C. 2950.031 and 2950.032 violate the separation-of-powers doctrine and ordered those provisions severed from S.B. 10. Id. at ¶¶66-67.

{¶4} Defendant's appeal did not raise constitutional issues. Rather, as we expressly noted, "[t]he parties' arguments do not involve a constitutional challenge to S.B. 10; they instead dispute whether the provisions of the AWA, by their very language, apply to defendant." *State v. Palmer*, 10th Dist No. 09AP-956, 2010-Ohio-2421, ¶18. Indeed, the statutory provisions at issue in defendant's case were the various subsections of R.C. 2950.04(A)(2); those provisions were not the subject of the *Bodyke* decision. Thus, *Bodyke* does not provide a basis to reconsider our decision in this case. On remand, defendant will be able to raise in the trial court not only *Bodyke*-related arguments but other constitutional issues as well.

{¶5} Defendant also asserts our decision is erroneous in that we did not consider the impact R.C. 2950.07(A)(8), which addresses not the applicability of the registration

requirements but rather when an offender's duty to register under R.C. 2950.04 commences. The appeal involved the applicability of R.C. 2950.04(A)(2) and the actual requirement of registration, not the timing involved in the registration requirements. See Decision at ¶¶21-24. As an examination of R.C. 2950.04(A)(2) addressed the trial court's decision and resolved the state's appeal, an in-depth discussion of R.C. 2950.07(A)(8) was not material to our decision. Defendant, however, may raise further challenges to S.B. 10, statutory or otherwise, in the trial court on remand.

{¶6} Because defendant's motion for reconsideration does not raise an issue not previously considered and does not set forth an obvious error in our prior decision, defendant's motion for reconsideration is denied.

Motion for reconsideration denied.

SADLER and CONNOR, JJ., concur.

Vx

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

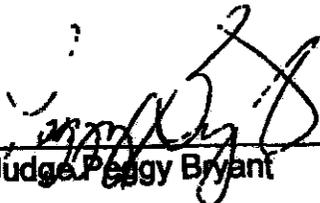
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State of Ohio,	:	
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Plaintiff-Appellant,	:	No. 09AP-956
	:	(C P C No 95CR-5474)
v	:	No. 09AP-957
	:	(C P C No 09CR-3152)
Paul E Palmer,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on June 1, 2010, and having sustained plaintiff's three assignments of error, it is the judgment and order of this court that the judgments of the Franklin County Court of Common Pleas are reversed, and these causes are remanded to that court for further proceedings in accordance with law consistent with said decision. Costs assessed to defendant.

BRYANT, SADLER & CONNOR, JJ

By  _____
Judge Peggy Bryant

✓
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COURT OF APPEALS
FRANKLIN COUNTY, OHIO

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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State of Ohio,	:	
	:	
Plaintiff-Appellant,	:	No. 09AP-956
	:	(C P C No 95CR-5474)
v.	:	No. 09AP-957
	:	(C P C No 09CR-3152)
Paul E. Palmer,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 1, 2010

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellant.

Yeura R. Venters, Public Defender, and *David L. Strait*, for appellee.

APPEALS from the Franklin County Court of Common Pleas.

BRYANT, J.

{¶1} Plaintiff-appellant, State of Ohio, appeals from judgments of the Franklin County Court of Common Pleas in case Nos. 09AP-956 and 09AP-957 that granted the motion to dismiss of defendant-appellee, Paul E. Palmer, and concluded defendant's 1995 conviction did not subject defendant to the provisions of R.C Chapter 2950, including any statutory duty to register or to verify his current address. Because the trial

court erred (1) in granting defendant's motion to dismiss, and (2) in concluding defendant is not subject to the provisions of R.C. Chapter 2950, we reverse.

I. Procedural History

{¶2} On September 25, 1995, defendant was indicted for one count each of attempted rape, aggravated burglary, aggravated robbery, robbery, and kidnapping, each with a specification alleging defendant was convicted of robbery on May 27, 1988. On December 11, 1995, defendant entered a guilty plea to the stipulated lesser included offense of the first count of the indictment, sexual battery in violation of R.C. 2907.04, a felony of the third degree, without specification; on the state's request, the court entered a nolle prosequi on the remaining counts. The trial court sentenced defendant to one and one-half years of incarceration, granting 112 days of credit. A judgment entry memorializing the trial court's proceedings was filed January 8, 1996; a corrected entry was filed on April 23, 1996.

{¶3} On March 6, 2008, defendant filed a "Petition to Contest Reclassification and Application of R.C. 2950.01, et seq." in case No. 09AP-956. According to the petition, defendant became aware that, pursuant to Ohio's Adam Walsh Child Protection and Safety Act of 2006, as enacted in R.C. 2950.01 et seq. ("AWA"), the Ohio Attorney General reclassified defendant as a Tier III Sex Offender based on his 1995 conviction. The petition notes that, as a result of his reclassification, defendant was required to register with the local sheriff's office every 90 days for life and was subject to the community notification provisions of R.C. 2950.11. Defendant's petition contested his reclassification and challenged the constitutionality of the AWA.

{¶4} On the same day, defendant filed a motion to stay enforcement of the community notification provisions in R.C. 2950.11 pending a determination of his petition contesting his reclassification. Although the state opposed both defendant's motion for stay and his petition contesting his reclassification, the trial court in March 2008 granted defendant's motion to stay enforcement.

{¶5} On May 28, 2009, defendant was indicted in case No. 09AP-957 on one count each of failure to provide notice of change of address in violation of R.C. 2950.05 and failure to verify current address in violation of R.C. 2950.06, both felonies of the third degree. Defendant responded with a motion to dismiss, filed July 15, 2009. Due to defendant's indictment in case No. 09AP-957 for violations of R.C. 2950.05 and 2950.06, defendant filed on June 23, 2009 a motion for immediate disposition of his petition challenging his reclassification in case No. 09AP-956.

{¶6} The state on July 28, 2009 responded in case No. 09AP-957 to defendant's motion to dismiss. The state initially asserted defendant's motion in effect asked the court to grant summary judgment, a mechanism not permitted in criminal cases. It further contended the AWA, by its clear terms, applied to defendant and made him subject to the notification and registration sections of the AWA, an argument that spilled over into the issues contested in case No. 09AP-956.

{¶7} On September 16, 2009, the trial court held a hearing on defendant's petition in case No. 09AP-956 in which it considered primarily the arguments the state raised in its memorandum opposing defendant's motion to dismiss in case No. 09AP-957. The trial court filed an entry the same day, granted the relief defendant requested in paragraph 20 of the petition and declared "that Defendant-Petitioner cannot properly be

classified under the Adam Walsh Act, and thus shall be free from all registration and notification requirements pursuant thereto." Accordingly, the court held "defendant is not under any statutory duty to verify his current address or to register as required by R.C. 2950.04 through 2950.06." Lastly, the trial court ordered defendant's name removed from all lists of sexually oriented offenders that the local, state, or federal governments maintain.

{¶8} By entry filed the same day in case No. 09AP-957, the trial court granted defendant's motion to dismiss, concluding defendant "is not under any statutory duty to verify his current address or to register as required by Revised Code Chapter 2950." The court ordered both that defendant's name be removed from all sexually oriented lists that the local, state, or federal governments maintain and that defendant be "released forthwith on this case."

II. Assignments of Error

{¶9} The state appeals both judgments, assigning three errors:

FIRST ASSIGNMENT OF ERROR

THE COMMON PLEAS COURT ERRED IN DISMISSING THE INDICTMENT BY GOING BEYOND THE FACE OF THE INDICTMENT AND CONCLUDING THAT DEFENDANT HAD NO DUTY TO REGISTER.

SECOND ASSIGNMENT OF ERROR

THE COMMON PLEAS COURT ERRED IN DETERMINING THAT R.C. CHAPTER 2950, AS EFFECTIVE JANUARY 1, 2008, HAS NO APPLICATION TO DEFENDANT.

THIRD ASSIGNMENT OF ERROR

THE COMMON PLEAS COURT ERRED IN ORDERING THAT DEFENDANT'S "NAME BE REMOVED FROM ALL

SEXUALLY ORIENTED LISTS MAINTAINED BY THE LOCAL, STATE OR FEDERAL GOVERNMENT," AS THE COURT LACKED JURISDICTION TO AFFORD SUCH BROAD INJUNCTIVE RELIEF.

III. First Assignment of Error—Motion to Dismiss

{¶10} The state's first assignment of error asserts the trial court erred in granting defendant's motion to dismiss the indictment. The state contends Crim.R. 12(C) "only allows a pretrial motion to dismiss if it raises a defense or objection 'capable of determination without the trial of the general issue,' the 'general issue' meaning the defendant's guilt or innocence for the offense charged." (Appellant's brief, 7.) The state contends defendant's motion was impermissible under Crim.R. 12(C) because it prematurely raised the issue to be determined at trial: "whether the State could prove [defendant] had a duty to register, to provide change of address, and to verify current address" under R.C. 2950.05 and 2950.06 as a result of his prior conviction. (Appellant's brief, 7.)

{¶11} "A motion to dismiss tests the sufficiency of the indictment, without regard to the quantity or quality of evidence that may be produced at trial." *State v. Preztak*, 181 Ohio App.3d 106, 2009-Ohio-621, ¶12, citing *State v. Patterson* (1989), 63 Ohio App.3d 91. "The issue as to the legal sufficiency of the evidence is not properly raised by a pretrial motion[.]" *State v. McNamee* (1984), 17 Ohio App.3d 175, 176; *State v. Hood* (Sept. 27, 2001), 10th Dist. No. 01AP-90 (stating that "when a trial court decides on the validity of a charging instrument, it is precluded from considering whether the prosecution could prove the elements of the charged offenses").

{¶12} As a result, "[a] pretrial motion must not involve a determination of the sufficiency of the evidence to support the indictment. If the indictment is valid on its face, a motion to dismiss should not be granted." *Prezta*, citing *State v. Eppinger*, 162 Ohio App.3d 795, 2005-Ohio-4155, citing *State v. Varner* (1991), 81 Ohio App.3d 85, 86 (stating "[t]he Ohio Rules of Criminal Procedure * * * do not allow for 'summary judgment' on an indictment prior to trial"); *Columbus v. Storey*, 10th Dist. No. 03AP-743, 2004-Ohio-3377, ¶7; *State v. Tipton* (1999), 135 Ohio App.3d 227, 228 (noting that "[w]hen a defendant in a criminal action files a motion to dismiss that goes beyond the face of the indictment, he is, essentially, moving for summary judgment")

{¶13} The Supreme Court of Ohio carved out an exception to the general rule, noting that a court may consider material outside the face of the indictment if the "motion did not embrace what would be the general issue at trial." *State v. Brady*, 119 Ohio St.3d 375, 2008-Ohio-4493, ¶18. Crim.R. 12(C), however, does not permit a court to determine a pretrial motion to dismiss if it requires the trial court also to determine the general issue for trial. *Id*

{¶14} Defendant's motion to dismiss contended "his continuing prosecution [under the noted statutes] is directly contrary to the Ohio Supreme Court's mandate in *State v. Champion*, 106 Ohio St.3d 120, 2005-Ohio-4098." Defendant pointed to the holding in *Champion*, which stated only offenders who were sentenced on or after July 1, 1997, released after that date, or declared a habitual sexual offender immediately prior to that date were subject to the registration and verification requirements of R.C. Chapter 2950. *Id.* at ¶3-6 Defendant compared the chronology of his own 1996 conviction to *Champion*, observing he completed his obligations under that conviction on March 15, 1997.

{¶15} Defendant's motion to dismiss does not challenge the face of the indictment or contend that it fails to assert violations of R.C. 2950.05 and 2950.06. Instead, defendant asserts the state is unable to prove the allegations of the indictment due to the dates of defendant's past conviction. Because defendant's arguments not only draw upon evidence outside the face of the indictment but address the very issue to be determined at trial, the trial court erred in granting defendant's motion to dismiss the indictment.

{¶16} Indeed, the state's first assignment of error presents an issue remarkably similar to *State v. Caldwell*, 8th Dist. No. 92219, 2009-Ohio-4881, where the indictment charged Caldwell with failing to notify the sheriff of a change of address, a duty arising out of his conviction on February 16, 2003 for gross sexual imposition. Caldwell moved to dismiss the indictment, contending the sentencing court specifically determined he had no legal duty to register and therefore could not have been reclassified as a Tier I sex offender under the Adam Walsh Act. In determining the trial court erred when it granted Caldwell's motion, the appellate court observed that the "motion necessarily questions the state's ability to prove the indictment, which implicitly alleged that appellee did have a duty to register." *Id.* at ¶4. Noting Caldwell did not contend the indictment facially failed to charge an offense, "but rather that the state cannot prove that he committed the offense charged," the Eighth District determined the common pleas court erred in dismissing the indictment "at this early stage of the proceedings." *Id.*

{¶17} Because defendant's motion to dismiss did not challenge the face of the indictment, but rather contended the state would not be able to prove defendant violated R.C. 2950.05 or 2950.06 due to the date of defendant's release from imprisonment, defendant's motion exceeded the permissible bounds of a pretrial motion under Crim.R.

12(C). The trial court erred in granting defendant's motion to dismiss. The state's first assignment of error is sustained.

IV. Second and Third Assignments of Error – Duty under S.B. 10

{¶18} The state's second assignment of error contends the trial court erred in concluding the provisions of the AWA do not apply to defendant. The state's third assignment of error, a corollary to the second, contends the trial court erred in ordering defendant's name removed from the lists of sexually oriented offenders the local, state, and federal governments maintain. The parties' arguments do not involve a constitutional challenge to S.B. 10; they instead dispute whether the provisions of the AWA, by their very language, apply to defendant.

{¶19} "The polestar of construction and interpretation of statutory language is legislative intention." *State ex rel. Francis v. Sours* (1944), 143 Ohio St. 120, 124. "In determining the legislative intent of a statute 'it is the duty of this court to give effect to the words used [in a statute], not to delete words used or to insert words not used.'" (Emphasis sic.) *Wheeling Steel Corp. v. Porterfield* (1970), 24 Ohio St.2d 24, 28, quoting *Columbus-Suburban Coach Lines v. Pub. Util. Comm.* (1969), 20 Ohio St.2d 125, 127.

{¶20} "[C]ourts do not have authority to ignore the plain and unambiguous language under the guise of judicial interpretation, but rather in such situations the courts must give effect to the words used." *In re Burchfield* (1988), 51 Ohio App.3d 148, 152, citing *Dougherty v. Torrance* (1982), 2 Ohio St.3d 69, 70; *Ohio Dental Hygienists Assn. v. Ohio State Dental Bd.* (1986), 21 Ohio St.3d 21, 23, *State v. Krutz* (1986), 28 Ohio St.3d 36, 38, certiorari denied (1987), 481 U.S. 1028, 107 S.Ct. 1953. "Where the

language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted." *Sears v. Weimer* (1944), 143 Ohio St. 312, paragraph five of the syllabus.

{¶21} To support its assignment of error, the state points to the language of R.C. 2950.04(A)(2) of the AWA, which states that "[r]egardless of when the sexually oriented offense was committed, each offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense shall comply" with the registration requirements described in R.C. 2950.04(A)(2)(a), (b), (c), (d), and (e). Focusing on the initial clause of R.C. 2950.04(A)(2), the state contends that the date of defendant's conviction or release from imprisonment is immaterial to his statutory duties.

{¶22} The trial court relied on the Supreme Court's decision in *Champion* to grant defendant's motion. Applying the law then in effect, *Champion* determined that "a person whose prison term for a sexually oriented offense was completed before July 1, 1997, is not required to register under R.C. 2950.04(A)(1)(a) or periodically verify a current address under R.C. 2950.06(A).]" *Id.* at ¶13. The state, however, notes *Champion* was premised on statutory language that the AWA substantially changed.

{¶23} Former R.C. 2950.04(A)(1)(a), (b), and (c) based the statutory duties of registration and address verification on whether, as pertinent here, the defendant was released from incarceration on or after July 1, 1997. The AWA is much broader and specifically deletes the time frame references found in the former version of the statute. As a result, an offender, "regardless of when the sexually oriented offense was

committed," must comply with the requirements set forth in R.C. 2950.04(A)(2)(a), (b), (c), (d), and (e) if the offender was convicted of, pleaded guilty to or is convicted of or pleads guilty to a sexually oriented offense. *State v. Hollis*, 8th Dist. No. 91467, 2009-Ohio-2368, ¶¶22, 24 (noting S.B. 10 "clearly states that it applies to offenders whose crimes were committed before the act took effect," leaving the trial court with "no option but to apply the AWA, in spite of the date of [defendant's] offense"); *State v. Bundy*, 2d Dist. No. 23063, 2009-Ohio-5395, ¶¶54, 55, appeal allowed, 124 Ohio St.3d 1473 (stating that even if defendant "did not have an obligation to register his address at the time of his initial conviction in 2003, he was required to register when the new law became effective in January 2008" because "the law that became effective in January 2008, applies to all offenders who have been convicted of a sexually oriented offense, regardless of when the offense was committed").

{¶24} Based on the statutory language, we can conclude only that defendant's duties under the AWA are not premised on the time frame referenced in the law cited in *Champion* but on the language of the AWA which requires compliance, regardless of when defendant pleaded guilty to the offense. Accordingly, the provisions of the AWA apply to defendant. The state's second assignment of error is sustained.

{¶25} The state's third assignment of error asserts the trial court erred in removing defendant's name from the various lists that local, state, and federal governments maintain. Because the basis for the trial court order was its conclusion that defendant had no duty under the notification and registration provision of the AWA, the trial court's order to remove defendant's name from the stated lists likewise must be reversed. The state's third assignment of error is sustained.

{¶26} Having sustained the state's three assignments of error, we reverse the judgments of the trial court and remand for further proceedings consistent with this decision.

*Judgments reversed
and cases remanded.*

SADLER and CONNOR, JJ., concur.

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO,
Plaintiff-Respondent,
v.
PAUL E. PALMER,
Defendant-Petitioner.

Case No.: 09 CR 3152

Judge: BESSEY

TERMINATION NO.	16
BY:	<i>[Signature]</i>

ENTRY

For good cause shown, the Court hereby grants Defendant's Motion to Dismiss. The defendant is not under any statutory duty to verify his current address or to register as required by Revised Code Chapter 2950. It is hereby ordered that Defendant-Petitioner's name be removed from all sexually oriented lists maintained by the local, state or federal government. Defendant is to be released forthwith on this case.

IT IS SO ORDERED.

John B Bessey
JUDGE

APPROVED BY:

Shayla L. Werner
SHAYLA L. WERNER 0083998
Counsel for Defendant-Petitioner

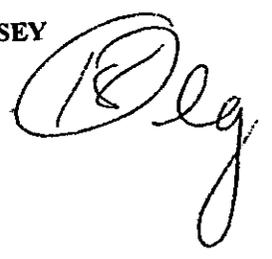
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IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO,
Plaintiff-Respondent,
v.
PAUL E. PALMER,
Defendant-Petitioner.

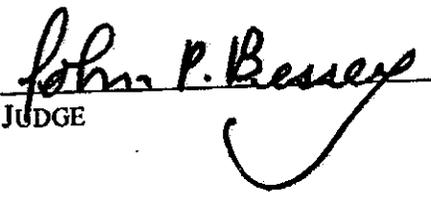
Case No.: 95 CR 5474
Judge: BESSEY



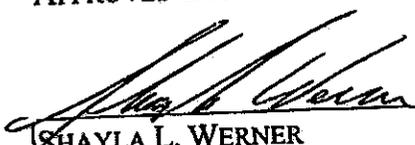
ENTRY

For good cause shown, the Court hereby GRANTS Defendant-Petitioner's relief requested in Paragraph 20 of his PETITION TO CONTEST RECLASSIFICATION and declares that Defendant-Petitioner is not subject to Revised Code Chapter 2950 based on his 1995 conviction. Furthermore, the defendant is not under any statutory duty to verify his current address or to register as required by R.C. 2950.04 through 2950.06. It is hereby ordered that Defendant-Petitioner's name be removed from all sexually oriented lists maintained by the local, state or federal government.

IT IS SO ORDERED.


JUDGE

APPROVED BY:


SHAYLA L. WERNER 0083998
Counsel for Defendant-Petitioner

FILED
IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

CRIMINAL DIVISION

3750804

STATE OF OHIO,

Plaintiff,

vs.

PAUL E. PALMER,

Defendant.

TERMINATION NO 13 BY: NM

January Term, 1996

Case No. 95CR-09-5474

JUDGE BESSEY

ENTRY

In the Court of Common Pleas for the County of Franklin, State of Ohio, during the term begun on January 2, 1996.

On January 5, 1996, came the Prosecuting Attorney on behalf of the State of Ohio, the Defendant being in Court in custody of the Sheriff and the Court being fully advised in the premises that the Defendant was in Court and being represented by counsel. Michael Oser.

The Court finds that on December 11, 1995, the Defendant entered a plea of guilty to **stipulated lesser included offense of Count One** of the Indictment, to wit: **Sexual Battery without Specification**, a violation of Section **2907.04** of the Ohio Revised Code, a **Felony** of the **Third** degree and was found guilty of said charge by the Court.

Upon application of the Prosecuting Attorney and for good cause shown, it is hereby **ORDERED** that nolle prosequi be entered for Counts 2, 3, 4 and 5 of the Indictment.

The Court afforded Counsel an opportunity to speak on behalf of the Defendant and addressed the Defendant personally affording him an opportunity to make a statement on his own behalf and present information in mitigation of punishment.

23760805

The Court has considered all matters required by sections 2929.12 and 2951.02 of the Ohio Revised code, and it is the sentence of the Court that the Defendant pay the costs of this prosecution and serve **One and One-Half (1 1/2) Year Determinate Sentence** at the **OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS**.

The Court has factually found that Defendant has 112 days of jail credit up to and including this sentencing date and hereby certifies the same to the Ohio Department of Corrections. The Defendant is to receive jail time credit for all additional jail time served while awaiting transportation to the institution from the date of imposition of the sentence

John P. Bessey

JOHN P. BESSEY, JUDGE
Common Pleas Court
Franklin County, Ohio

Costs: \$ _____

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2950.03 Notice of duty to register and periodically verify information.

(A) Each person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense or a child-victim oriented offense and who has a duty to register pursuant to section 2950.04 or 2950.041 of the Revised Code and each person who is adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and who is classified a juvenile offender registrant based on that adjudication shall be provided notice in accordance with this section of the offender's or delinquent child's duties imposed under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code and of the offender's duties to similarly register, provide notice of a change, and verify addresses in another state if the offender resides, is temporarily domiciled, attends a school or institution of higher education, or is employed in a state other than this state. The following official shall provide the notice required under this division to the specified person at the following time:

- (1) Regardless of when the person committed the sexually oriented offense or child-victim oriented offense, if the person is an offender who is sentenced to a prison term, a term of imprisonment, or any other type of confinement for any offense, and if on or after January 1, 2008, the offender is serving that term or is under that confinement, subject to division (A)(5) of this section, the official in charge of the jail, workhouse, state correctional institution, or other institution in which the offender serves the prison term, term of imprisonment, or confinement, or a designee of that official, shall provide the notice to the offender before the offender is released pursuant to any type of supervised release or before the offender otherwise is released from the prison term, term of imprisonment, or confinement.
- (2) Regardless of when the person committed the sexually oriented offense or child-victim oriented offense, if the person is an offender who is sentenced on or after January 1, 2008 for any offense, and if division (A)(1) of this section does not apply, the judge shall provide the notice to the offender at the time of sentencing.
- (3) If the person is a delinquent child who is classified a juvenile offender registrant on or after January 1, 2008, the judge shall provide the notice to the delinquent child at the time specified in division (B) of section 2152.82, division (C) of section 2152.83, division (C) of section 2152.84, or division (E) of section 2152.85 of the Revised Code, whichever is applicable.
- (4) If the person is a delinquent child who is classified as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant on or after January 1, 2008, the judge shall provide the notice to the delinquent child at the time specified in division (B) of section 2152.86 of the Revised Code.
- (5) If the person is an offender or delinquent child in any of the following categories, the attorney general, department of rehabilitation and correction, or department of youth services shall provide the notice to the offender or delinquent child at the time and in the manner specified in

section 2950.031 or division (A) or (B) of section 2950.032 of the Revised Code, whichever is applicable:

(a) An offender or delinquent child who prior to December 1, 2007, has registered a residence, school, institution of higher education, or place of employment address pursuant to section 2950.04, 2950.041, or 2950.05 of the Revised Code;

(b) An offender or delinquent child who registers with a sheriff pursuant to section 2950.04 or 2950.041 of the Revised Code on or after December 1, 2007, previously had not registered under either section with that sheriff or any other sheriff, and was convicted of, pleaded guilty to, or was classified a juvenile offender registrant relative to the sexually oriented offense or child-victim oriented offense upon which the registration was based prior to December 1, 2007;

(c) An offender who on December 1, 2007, is serving a prison term in a state correctional institution for a sexually oriented offense or child-victim oriented offense or each delinquent child who has been classified a juvenile offender registrant relative to a sexually oriented offense or child-victim oriented offense and who on that date is confined in an institution of the department of youth services for the sexually oriented offense or child-victim oriented offense;

(d) An offender or delinquent child who on or after December 2, 2007, commences a prison term in a state correctional institution or confinement in an institution of the department of youth services for a sexually oriented offense or child-victim oriented offense and who was convicted of, pleaded guilty to, or was classified a juvenile offender registrant relative to the sexually oriented offense or child-victim oriented offense prior to that date.

(6) If the person is an offender or delinquent child who on or after July 1, 2007, and prior to January 1, 2008, is convicted of or pleads guilty to a sexually oriented offense or a child-victim oriented offense and is not sentenced to a prison term for that offense or is classified a juvenile offender registrant relative to a sexually oriented offense or child-victim oriented offense and is not committed to the custody of the department of youth services for that offense, the sentencing court or juvenile court shall provide the notice to the offender or delinquent child at the time and in the manner specified in division (C) of section 2950.032 of the Revised Code.

(7) If the person is an offender or delinquent child who has a duty to register in this state pursuant to division (A)(4) of section 2950.04 or 2950.041 of the Revised Code, the offender or delinquent child is presumed to have knowledge of the law and of the offender's or delinquent child's duties imposed under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code.

(B)(1) The notice provided under division (A) of this section shall inform the offender or delinquent child of the offender's or delinquent child's duty to register, to provide notice of a change in the offender's or delinquent child's residence address or in the offender's school, institution of higher education, or place of employment address, as applicable, and register the new address, to periodically verify the offender's or delinquent child's residence address or the offender's school, institution of higher education, or place of employment address, as applicable, and, if applicable, to provide notice of the offender's or delinquent child's intent to reside,

pursuant to sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code. The notice shall specify that, for an offender, it applies regarding residence addresses or school, institution of higher education, and place of employment addresses and that, for a delinquent child, it applies regarding residence addresses. Additionally, it shall inform the offender of the offender's duties to similarly register, provide notice of a change in, and verify those addresses in states other than this state as described in division (A) of this section. A notice provided under division (A)(1), (2), (3), or (4) of this section shall comport with the following:

(a) If the notice is provided to an offender under division (A)(1) or (2) of this section, the official, official's designee, or judge shall require the offender to read and sign a form stating that the offender's duties to register, to file a notice of intent to reside, if applicable, to register a new residence address or new school, institution of higher education, or place of employment address, and to periodically verify those addresses, and the offender's duties in other states as described in division (A) of this section have been explained to the offender. If the offender is unable to read, the official, official's designee, or judge shall certify on the form that the official, designee, or judge specifically informed the offender of those duties and that the offender indicated an understanding of those duties.

(b) If the notice is provided to a delinquent child under division (A)(3) or (4) of this section, the judge shall require the delinquent child and the delinquent child's parent, guardian, or custodian to read and sign a form stating that the delinquent child's duties to register, to file a notice of intent to reside, if applicable, to register a new residence address, and to periodically verify that address have been explained to the delinquent child and to the delinquent child's parent, guardian, or custodian. If the delinquent child or the delinquent child's parent, guardian, or custodian is unable to read, the judge shall certify on the form that the judge specifically informed the delinquent child or the delinquent child's parent, guardian, or custodian of those duties and that the delinquent child or the delinquent child's parent, guardian, or custodian indicated an understanding of those duties.

(2) The notice provided under divisions (A)(1) to (4) of this section shall be on a form prescribed by the bureau of criminal identification and investigation and shall contain all of the information specified in division (A) of this section and all of the information required by the bureau. The notice provided under divisions (A)(1) to (4) of this section shall include, but is not limited to, all of the following:

(a) For any notice provided under divisions (A)(1) to (4) of this section, an explanation of the offender's periodic residence address or periodic school, institution of higher education, or place of employment address verification process or of the delinquent child's periodic residence address verification process, an explanation of the frequency with which the offender or delinquent child will be required to verify those addresses under that process, a statement that the offender or delinquent child must verify those addresses at the times specified under that process or face criminal prosecution or a delinquent child proceeding, and an explanation of the offender's duty to similarly register, verify, and reregister those addresses in another state if the offender resides in another state, attends a school or institution of higher education in another state, or is employed in another state.

(b) If the notice is provided under division (A)(3) or (4) of this section, a statement that the delinquent child has been classified by the adjudicating juvenile court judge or the judge's successor in office a juvenile offender registrant and, if applicable, a public-registry qualified juvenile offender registrant and has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code;

(c) If the notice is provided under division (A)(3) or (4) of this section, a statement that, if the delinquent child fails to comply with the requirements of sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code, both of the following apply:

(i) If the delinquent child's failure occurs while the child is under eighteen years of age, the child is subject to proceedings under Chapter 2152. of the Revised Code based on the failure, but if the failure occurs while the child is eighteen years of age or older, the child is subject to criminal prosecution based on the failure.

(ii) If the delinquent child's failure occurs while the child is under eighteen years of age, unless the child is emancipated, as defined in section 2919.121 of the Revised Code, the failure of the parent, guardian, or custodian to ensure that the child complies with those requirements is a violation of section 2919.24 of the Revised Code and may result in the prosecution of the parent, guardian, or custodian for that violation.

(3)(a) After an offender described in division (A)(1) or (2) of this section has signed the form described in divisions (B)(1) and (2) of this section or the official, official's designee, or judge has certified on the form that the form has been explained to the offender and that the offender indicated an understanding of the duties indicated on it, the official, official's designee, or judge shall give one copy of the form to the offender, within three days shall send one copy of the form to the bureau of criminal identification and investigation in accordance with the procedures adopted pursuant to section 2950.13 of the Revised Code, shall send one copy of the form to the sheriff of the county in which the offender expects to reside, and shall send one copy of the form to the sheriff of the county in which the offender was convicted or pleaded guilty if the offender has a duty to register pursuant to division (A)(1) of section 2950.04 or 2950.041 of the Revised Code.

(b) After a delinquent child described in division (A)(3) or (4) of this section and the delinquent child's parent, guardian, or custodian have signed the form described in divisions (B)(1) and (2) of this section or the judge has certified on the form that the form has been explained to the delinquent child or the delinquent child's parent, guardian, or custodian and that the delinquent child or the delinquent child's parent, guardian, or custodian indicated an understanding of the duties and information indicated on the form, the judge shall give a copy of the form to both the delinquent child and to the delinquent child's parent, guardian, or custodian, within three days shall send one copy of the form to the bureau of criminal identification and investigation in accordance with the procedures adopted pursuant to section 2950.13 of the Revised Code, shall send one copy of the form to the sheriff of the county in which the delinquent child expects to reside, and shall send one copy of the form to the sheriff of the county in which the child was adjudicated a delinquent child if the delinquent child has a duty to register pursuant to division (A)(1) of section 2950.04 or 2950.041 of the Revised Code.

(C) The official, official's designee, judge, chief of police, or sheriff who is required to provide notice to an offender or delinquent child under divisions (A)(1) to (4) of this section shall determine the offender's or delinquent child's name, identifying factors, and expected future residence address in this state or any other state, shall obtain the offender's or delinquent child's criminal and delinquency history, and shall obtain a photograph and the fingerprints of the offender or delinquent child. Regarding an offender, the official, designee, or judge also shall obtain from the offender the offender's current or expected future school, institution of higher education, or place of employment address in this state, if any. If the notice is provided by a judge under division (A)(2), (3), or (4) of this section, the sheriff shall provide the offender's or delinquent child's criminal and delinquency history to the judge. The official, official's designee, or judge shall obtain this information and these items prior to giving the notice, except that a judge may give the notice prior to obtaining the offender's or delinquent child's criminal and delinquency history. Within three days after receiving this information and these items, the official, official's designee, or judge shall forward the information and items to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to section 2950.13 of the Revised Code, to the sheriff of the county in which the offender or delinquent child expects to reside and to the sheriff of the county in which the offender or delinquent child was convicted, pleaded guilty, or adjudicated a delinquent child if the offender or delinquent child has a duty to register pursuant to division (A)(1) of section 2950.04 or 2950.041 of the Revised Code, and, regarding an offender, to the sheriff of the county, if any, in which the offender attends or will attend a school or institution of higher education or is or will be employed. If the notice is provided under division (A)(3) or (4) of this section and if the delinquent child has been committed to the department of youth services or to a secure facility, the judge, in addition to the other information and items described in this division, also shall forward to the bureau and to the sheriff notification that the child has been so committed. If it has not already done so, the bureau of criminal identification and investigation shall forward a copy of the fingerprints and conviction data received under this division to the federal bureau of investigation.

Effective Date: 07-31-2003; 04-29-2005; 2007 SB10 01-01-2008

2950.031 Tier-classification of registered sex offenders.

(A)(1) At any time on or after July 1, 2007, and not later than December 1, 2007, the attorney general shall determine for each offender or delinquent child who prior to December 1, 2007, has registered a residence, school, institution of higher education, or place of employment address pursuant to section 2950.04, 2950.041, or 2950.05 of the Revised Code the offender's or delinquent child's new classification as 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 under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed, and, regarding a delinquent child, whether the child is a public registry-qualified juvenile offender registrant.

(2) At any time on or after July 1, 2007, and not later than December 1, 2007, the attorney general shall send to each offender or delinquent child who prior to December 1, 2007, has registered a residence, school, institution of higher education, or place of employment address pursuant to section 2950.04, 2950.041, or 2950.05 of the Revised Code a registered letter that contains the information described in this division. The registered letter shall be sent return receipt requested to the last reported address of the person and, if the person is a delinquent child, the last reported address of the parents of the delinquent child. The letter sent to an offender or to a delinquent child and the delinquent child's parents pursuant to this division shall notify the offender or the delinquent child and the delinquent child's parents of all of the following:

(a) The changes in Chapter 2950. of the Revised Code that will be implemented on January 1, 2008;

(b) Subject to division (A)(2)(c) of this section, the offender's or delinquent child's new classification as 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 under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed and the duration of those duties, whether the delinquent child is classified a public registry-qualified juvenile offender registrant, and the information specified in division (B) of section 2950.03 of the Revised Code to the extent it is relevant to the offender or delinquent child;

(c) The fact that the offender or delinquent child has a right to a hearing as described in division (E) of this section, the procedures for requesting the hearing, and the period of time within which the request for the hearing must be made.

(d) If the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in

effect prior to January 1, 2008, a summary of the provisions of section 2950.033 of the Revised Code and the application of those provisions to the offender or delinquent child, provided that this division applies to a delinquent child only if the child is in a category specified in division (C) of section 2950.033 of the Revised Code.

(3) The attorney general shall make the determinations described in division (A)(1) of this section for each offender or delinquent child who has registered an address as described in that division, even if the offender's duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date or the delinquent child is in a category specified in division (C) of section 2950.033 of the Revised Code and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date. The attorney general shall send the registered letter described in division (A)(2) of this section to each offender or delinquent child who has registered an address as described in that division even if the offender's duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of section 2950.033 of the Revised Code, and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date. Section 2950.033 of the Revised Code applies to any offender who has registered an address as described in division (A)(1) or (2) of this section and whose duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of section 2950.033 of the Revised Code, and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date.

(B) If a sheriff informs the attorney general pursuant to section 2950.043 of the Revised Code that an offender or delinquent child registered with the sheriff pursuant to section 2950.04 or 2950.041 of the Revised Code on or after December 1, 2007, that the offender or delinquent child previously had not registered under either section with that sheriff or any other sheriff, and that the offender or delinquent child was convicted of, pleaded guilty to, or was classified a juvenile offender registrant relative to the sexually oriented offense or child-victim oriented offense upon which the registration was based prior to December 1, 2007, within fourteen days after being so informed of the registration and receiving the information and material specified in division (D) of that section, the attorney general shall determine for the offender or delinquent child all of the matters specified in division (A)(1) of this section. Upon making the determinations, the attorney general immediately shall send to the offender or to the delinquent child and the delinquent child's parents a registered letter pursuant to division (A)(2) of this section that contains the information specified in that division.

(C) The attorney general shall maintain the return receipts for all offenders, delinquent children, and parents of delinquent children who are sent a registered letter under division (A) or (B) of

this section. For each offender, delinquent child, and parents of a delinquent child, the attorney general shall send a copy of the return receipt for the offender, delinquent child, or parents to the sheriff with whom the offender or delinquent child most recently registered a residence address and, if applicable, a school, institution of higher education, or place of employment address and to the prosecutor who handled the case in which the offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the sexually oriented offense or child-victim oriented offense that resulted in the offender's or child's registration duty under section 2950.04 or 2950.041 of the Revised Code. If a return receipt indicates that the offender, delinquent child, or parents of a delinquent child to whom the registered letter was sent does not reside or have temporary domicile at the listed address, the attorney general immediately shall provide notice of that fact to the sheriff with whom the offender or delinquent child registered that residence address.

(D) The attorney general shall mail to each sheriff a list of all offenders and delinquent children who have registered a residence address or a school, institution of higher education, or place of employment address with that sheriff and to whom a registered letter is sent under division (A) or (B) of this section. The list shall specify the offender's or delinquent child's new classification as 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 under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed, and, regarding a delinquent child, whether the child is a public registry-qualified juvenile offender registrant.

(E) An offender or delinquent child who is in a category described in division (A)(2) or (B) of this section may request as a matter of right a court hearing to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. The offender or delinquent child may contest the manner in which the letter sent to the offender or delinquent child pursuant to division (A) or (B) of this section specifies that the new registration requirements apply to the offender or delinquent child or may contest whether those new registration requirements apply at all to the offender or delinquent child. To request the hearing, the offender or delinquent child not later than the date that is sixty days after the offender or delinquent child received the registered letter sent by the attorney general pursuant to division (A)(2) of this section shall file a petition with the court specified in this division. If the offender or delinquent child resides in or is temporarily domiciled in this state and requests a hearing, the offender or delinquent child shall file the petition with, and the hearing shall be held in, the court of common pleas or, for a delinquent child, the juvenile court of the county in which the offender or delinquent child resides or temporarily is domiciled. If the offender does not reside in and is not temporarily domiciled in this state, the offender or delinquent child shall file the petition with, and the hearing shall be held in, the court of common pleas of the county in which the offender registered a school, institution of higher education, or place of employment address, but if the offender has registered addresses of that nature in more than one county, the offender may file such a petition in the court of only one of those counties.

If the offender or delinquent child requests a hearing by timely filing a petition with the appropriate court, the offender or delinquent child shall serve a copy of the petition on the

prosecutor of the county in which the petition is filed. The prosecutor shall represent the interests of the state in the hearing. In any hearing under this division, the Rules of Civil Procedure or, if the hearing is in a juvenile court, the Rules of Juvenile Procedure apply, except to the extent that those Rules would by their nature be clearly inapplicable. The court shall schedule a hearing, and shall provide notice to the offender or delinquent child and prosecutor of the date, time, and place of the hearing.

If an offender or delinquent child requests a hearing in accordance with this division, until the court issues its decision at or subsequent to the hearing, the offender or delinquent child shall comply prior to January 1, 2008, with Chapter 2950. of the Revised Code as it exists prior to that date and shall comply on and after January 1, 2008, with Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on that date. If an offender or delinquent child requests a hearing in accordance with this division, at the hearing, all parties are entitled to be heard, and the court shall consider all relevant information and testimony presented relative to the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. If, at the conclusion of the hearing, the court finds that the offender or delinquent child has proven by clear and convincing evidence that the new registration requirements do not apply to the offender or delinquent child in the manner specified in the letter sent to the offender or delinquent child pursuant to division (A) or (B) of this section, the court shall issue an order that specifies the manner in which the court has determined that the new registration requirements do apply to the offender or delinquent child. If at the conclusion of the hearing the court finds that the offender or delinquent child has proven by clear and convincing evidence that the new registration requirements do not apply to the offender or delinquent child, the court shall issue an order that specifies that the new registration requirements do not apply to the offender or delinquent child. The court promptly shall serve a copy of an order issued under this division upon the sheriff with whom the offender or delinquent child most recently registered under section 2950.04, 2950.041, or 2950.05 of the Revised Code and upon the bureau of criminal identification and investigation. The offender or delinquent child and the prosecutor have the right to appeal the decision of the court issued under this division.

If an offender or delinquent child fails to request a hearing in accordance with this division within the applicable sixty-day period specified in this division, the failure constitutes a waiver by the offender or delinquent child of the offender's or delinquent child's right to a hearing under this division, and the offender or delinquent child is bound by the determinations of the attorney general contained in the registered letter sent to the offender or child.

If a juvenile court issues an order under division (A)(2) or (3) of section 2152.86 of the Revised Code that classifies a delinquent child a public-registry qualified juvenile offender registrant and if the child's delinquent act was committed prior to January 1, 2008, a challenge to the classification contained in the order shall be made pursuant to division (D) of section 2152.86 of the Revised Code.

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2950.032 Tier-classification of incarcerated sex offenders.

(A)(1) At any time on or after July 1, 2007, and not later than December 1, 2007, the attorney general shall do all of the following:

(a) For each offender who on December 1, 2007, will be serving a prison term in a state correctional institution for a sexually oriented offense or child-victim oriented offense, determine the offender's classification relative to that offense as 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 under Chapter 2950. of the Revised Code as it will exist under the changes in that chapter that will be implemented on January 1, 2008, and the offender's duties under Chapter 2950. of the Revised Code as so changed and provide to the department of rehabilitation and correction a document that describes that classification and those duties;

(b) For each delinquent child who has been classified a juvenile offender registrant relative to a sexually oriented offense or child-victim oriented offense and who on December 1, 2007, will be confined in an institution of the department of youth services for the sexually oriented offense or child-victim oriented offense, determine the delinquent child's classification relative to that offense as 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 under Chapter 2950. of the Revised Code as it will exist under the changes in that chapter that will be implemented on January 1, 2008, the delinquent child's duties under Chapter 2950. of the Revised Code as so changed, and whether the delinquent child is a public registry-qualified juvenile offender registrant and provide to the department a document that describes that classification, those duties, and whether the delinquent child is a public registry-qualified juvenile offender registrant.

(c) For each offender and delinquent child described in division (A)(1)(a) or (b) of this section, determine whether the attorney general is required to send a registered letter to that offender or that delinquent child and delinquent child's parents pursuant to section 2950.031 of the Revised Code relative to the sexually oriented offense or child-victim oriented offense for which the offender or delinquent child is serving the prison term or is confined and, if the attorney general is required to send such a letter to that offender or that delinquent child and delinquent child's parents relative to that offense, include in the document provided to the department of rehabilitation and correction or the department of youth services under division (A)(1)(a) or (b) of this section a conspicuous notice that the attorney general will be sending the offender or delinquent child and delinquent child's parent the registered letter and that the department is not required to provide to the offender or delinquent child the written notice described in division (A)(2) of this section.

(2) At any time on or after July 1, 2007, and not later than December 1, 2007, except as otherwise described in this division, the department of rehabilitation and correction shall provide to each offender described in division (A)(1)(a) of this section and the department of youth services shall provide to each delinquent child described in division (A)(1)(b) of this section and

to the delinquent child's parents a written notice that contains the information described in this division. The department of rehabilitation and correction and the department of youth services are not required to provide the written notice to an offender or a delinquent child and the delinquent child's parents if the attorney general included in the document provided to the particular department under division (A)(1)(a) or (b) of this section notice that the attorney general will be sending that offender or that delinquent child and the delinquent child's parents a registered letter and that the department is not required to provide to that offender or that delinquent child and parents the written notice. The written notice provided to an offender or a delinquent child and the delinquent child's parents pursuant to this division shall notify the offender or delinquent child of all of the following:

(a) The changes in Chapter 2950. of the Revised Code that will be implemented on January 1, 2008;

(b) Subject to division (A)(2)(c) of this section, the offender's or delinquent child's classification as 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 under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed and the duration of those duties, whether the delinquent child is classified a public registry-qualified juvenile offender registrant, and the information specified in division (B) of section 2950.03 of the Revised Code to the extent it is relevant to the offender or delinquent child;

(c) The fact that the offender or delinquent child has a right to a hearing as described in division (E) of this section, the procedures for requesting the hearing, and the period of time within which the request for the hearing must be made;

(d) If the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to January 1, 2008, a summary of the provisions of section 2950.033 of the Revised Code and the application of those provisions to the offender or delinquent child, provided that this division applies regarding a delinquent child only if the child is in a category specified in division (A) of section 2950.033 of the Revised Code.

(3) The attorney general shall make the determinations described in divisions (A)(1)(a) and (b) of this section for each offender or delinquent child who is described in either of those divisions even if the offender's duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of section 2950.033 of the Revised Code, and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date. The department of rehabilitation and correction shall provide to each offender described in division (A)(1)(a) of this section and the department of youth services shall provide to each delinquent child described in division (A)(1)(b) of this section the notice described in division (A)(2) of this section, even if

the offender's duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of section 2950.033 of the Revised Code, and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date. Section 2950.033 of the Revised Code applies regarding any offender described in division (A)(1)(a) or (b) of this section whose duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date and any delinquent child who is in a category specified in division (A) of section 2950.033 of the Revised Code and whose duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date.

(B) If on or after December 2, 2007, an offender commences a prison term in a state correctional institution or a delinquent child commences confinement in an institution of the department of youth services for a sexually oriented offense or a child-victim oriented offense and if the offender or delinquent child was convicted of, pleaded guilty to, or was classified a juvenile offender registrant relative to the sexually oriented offense or child-victim oriented offense on or before that date, as soon as practicable, the department of rehabilitation and correction or the department of youth services, as applicable, shall contact the attorney general, inform the attorney general of the commencement of the prison term or institutionalization, and forward to the attorney general information and material that identifies the offender or delinquent child and that describes the sexually oriented offense resulting in the prison term or institutionalization, the facts and circumstances of it, and the offender's or delinquent child's criminal or delinquency history. Within fourteen days after being so informed of the commencement of the prison term or institutionalization and receiving the information and material specified in this division, the attorney general shall determine for the offender or delinquent child all of the matters specified in division (A)(1)(a), (b), or (c) of this section and immediately provide to the appropriate department a document that describes the offender's or delinquent child's classification and duties as so determined.

Upon receipt from the attorney general of a document described in this division that pertains to an offender or delinquent child, the department of rehabilitation and correction shall provide to the offender or the department of youth services shall provide to the delinquent child, as applicable, a written notice that contains the information specified in division (A)(2) of this section.

(C) If, on or after July 1, 2007, and prior to January 1, 2008, an offender is convicted of or pleads guilty to a sexually oriented offense or a child-victim oriented offense and the court does not sentence the offender to a prison term for that offense or if, on or after July 1, 2007, and prior to January 1, 2008, a delinquent child is classified a juvenile offender registrant relative to a sexually oriented offense or a child-victim oriented offense and the juvenile court does not commit the child to the custody of the department of youth services for that offense, the court at the time of sentencing or the juvenile court at the time specified in division (B) of section 2152.82, division (C) of section 2152.83, division (C) of section 2152.84, division (E) of section

2152.85, or division (A) of section 2152.86 of the Revised Code, whichever is applicable, shall do all of the following:

(1) Provide the offender or the delinquent child and the delinquent child's parents with the notices required under section 2950.03 of the Revised Code, as it exists prior to January 1, 2008, regarding the offender's or delinquent child's duties under this chapter as it exists prior to that date;

(2) Provide the offender or the delinquent child and the delinquent child's parents with a written notice that contains the information specified in divisions (A)(2)(a) and (b) of this section;

(3) Provide the offender or the delinquent child and the delinquent child's parents a written notice that clearly indicates that the offender or delinquent child is required to comply with the duties described in the notice provided under division (C)(1) of this section until January 1, 2008, and will be required to comply with the duties described in the notice provided under division (C)(2) of this section on and after that date.

(D)(1) Except as otherwise provided in this division, the officer or employee of the department of rehabilitation and correction or the department of youth services who provides an offender or a delinquent child and the delinquent child's parents with the notices described in division (A)(2) or (B) of this section shall require the offender or delinquent child to read and sign a form stating that the changes in Chapter 2950. of the Revised Code that will be implemented on January 1, 2008, the offender's or delinquent child's classification as a tier I sex offender, a tier II sex offender, or a tier III sex offender, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed and the duration of those duties, the delinquent child's classification as a public registry-qualified juvenile offender registrant if applicable, the information specified in division (B) of section 2950.03 of the Revised Code to the extent it is relevant to the offender or delinquent child, and the right to a hearing, procedures for requesting the hearing, and period of time within which the request for the hearing must be made have been explained to the offender or delinquent child.

Except as otherwise provided in this division, the judge who provides an offender or delinquent child with the notices described in division (C) of this section shall require the offender or delinquent child to read and sign a form stating that all of the information described in divisions (C)(1) to (3) of this section has been explained to the offender or delinquent child.

If the offender or delinquent child is unable to read, the official, employee, or judge shall certify on the form that the official, employee, or judge specifically informed the offender or delinquent child of all of that information and that the offender or delinquent child indicated an understanding of it.

(2) After an offender or delinquent child has signed the form described in division (D)(1) of this section or the official, employee, or judge has certified on the form that the form has been explained to the offender or delinquent child and that the offender or delinquent child indicated an understanding of the specified information, the official, employee, or judge shall give one copy of the form to the offender or delinquent child, within three days shall send one copy of the

form to the bureau of criminal identification and investigation in accordance with the procedures adopted pursuant to section 2950.13 of the Revised Code, and shall send one copy of the form to the sheriff of the county in which the offender or delinquent child expects to reside and one copy to the prosecutor who handled the case in which the offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the sexually oriented offense or child-victim oriented offense that resulted in the offender's or child's registration duty under section 2950.04 or 2950.041 of the Revised Code.

(E) An offender or delinquent child who is provided a notice under division (A)(2) or (B) of this section may request as a matter of right a court hearing to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. The offender or delinquent child may contest the matters that are identified in division (E) of section 2950.031 of the Revised Code. To request the hearing, an offender or delinquent child who is provided a notice under division (A)(2) of this section shall file a petition with the appropriate court not later than the date that is sixty days after the offender or delinquent child is provided the notice under that division, and an offender or delinquent child who is provided a notice under division (B) of this section shall file a petition with the appropriate court not later than the date that is sixty days after the offender or delinquent child is provided the notice under that division. The request for the hearing shall be made in the manner and with the court specified in division (E) of section 2950.031 of the Revised Code, and, except as otherwise provided in this division, the provisions of that division regarding the service of process and notice regarding the hearing, the conduct of the hearing, the determinations to be made at the hearing, and appeals of those determinations also apply to a hearing requested under this division. If a hearing is requested as described in this division, the offender or delinquent child shall appear at the hearing by video conferencing equipment if available and compatible, except that, upon the court's own motion or the motion of the offender or delinquent child or the prosecutor representing the interests of the state and a determination by the court that the interests of justice require that the offender or delinquent child be present, the court may permit the offender or delinquent child to be physically present at the hearing. An appearance by video conferencing equipment pursuant to this division has the same force and effect as if the offender or delinquent child were physically present at the hearing. The provisions of division (E) of section 2950.031 of the Revised Code regarding the effect of a failure to timely request a hearing also apply to a failure to timely request a hearing under this division.

If a juvenile court issues an order under division (A)(2) or (3) of section 2152.86 of the Revised Code that classifies a delinquent child a public-registry qualified juvenile offender registrant and if the child's delinquent act was committed prior to January 1, 2008, a challenge to the classification contained in the order shall be made pursuant to division (D) of section 2152.86 of the Revised Code.

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2950.033 Continuing duty to comply with terminated provisions.

(A) If, on or before July 1, 2007, an offender who has been convicted of or pleaded guilty to a sexually oriented offense or a child-victim oriented offense or a delinquent child in a category specified in division (C) of this section has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code based on that offense and if the offender's or delinquent child's duty to comply with those sections based on that offense is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to January 1, 2008, notwithstanding that scheduled termination of those duties, the offender's or delinquent child's duties under those sections shall not terminate as scheduled and shall remain in effect for the following period of time:

(1) If the offender or delinquent child is in a category described in division (A)(1) of section 2950.031 of the Revised Code, receives a registered letter from the attorney general pursuant to division (A)(2) of that section, and timely requests a hearing in accordance with division (E) of that section to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, or the tier classification of the offender or delinquent child specified by the attorney general, the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code shall continue at least until the court issues its decision at or subsequent to the hearing. The offender's or delinquent child's duty to comply with those sections shall continue in accordance with, and for the duration specified in, the determinations of the attorney general that are specified in the registered letter the offender or delinquent child received from the attorney general, unless the court's decision terminates the offender's or delinquent child's duty to comply with those sections or provides a different duration for which the offender or delinquent child has a duty to comply with them.

(2) If the offender or delinquent child is in a category described in division (A)(1) of section 2950.031 of the Revised Code, receives a registered letter from the attorney general pursuant to division (A)(2) of that section, and does not timely request a hearing in accordance with division (E) of that section to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, or the tier classification of the offender or delinquent child specified by the attorney general, the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code shall continue in accordance with, and for the duration specified in, the determinations of the attorney general that are specified in the registered letter the offender or delinquent child received from the attorney general.

(3) If the offender or delinquent child is in a category described in division (A)(1)(a) or (b) of section 2950.032 of the Revised Code, receives a notice from the department of rehabilitation and correction or department of youth services pursuant to division (A)(2) of that section, and

timely requests a hearing in accordance with division (E) of that section to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, or the tier classification of the delinquent child specified by the attorney general the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code shall continue in the same manner and for the same duration as is described in division (A)(1) of this section regarding offenders and delinquent children in a category described in division (A)(1) of section 2950.031 of the Revised Code, who receive a registered letter from the attorney general pursuant to division (A)(2) of that section, and who timely request a hearing in accordance with division (E) of that section.

(4) If the offender or delinquent child is in a category described in division (A)(1)(a) or (b) of section 2950.032 of the Revised Code, receives a notice from the department of rehabilitation and correction or department of youth services pursuant to division (A)(2) of that section, and does not timely request a hearing in accordance with division (E) of that section to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, or the tier classification of the delinquent child specified by the attorney general the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code shall continue in the same manner and for the same duration as is described in division (A)(2) of this section regarding offenders and delinquent children in a category described in division (A)(1) of section 2950.031 of the Revised Code, who receive a registered letter from the attorney general pursuant to division (A)(2) of that section, and who do not timely request a hearing in accordance with division (E) of that section.

(5) If the offender or delinquent child is in a category described in division (A)(1) of section 2950.031 of the Revised Code but does not receive a registered letter from the attorney general pursuant to division (A)(2) of that section, or if the offender or delinquent child is in a category described in division (A)(1)(a) or (b) of section 2950.032 of the Revised Code but does not receive a notice from the department of rehabilitation and correction or department of youth services pursuant to division (A)(2) of that section, notwithstanding the failure of the offender or delinquent child to receive the registered letter or the notice, the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code shall continue in accordance with, and for the duration specified in, the provisions of Chapter 2950. of the Revised Code as they will exist under the changes to the provisions that will be implemented on January 1, 2008.

(B) An offender or a delinquent child in a category specified in division (C) of this section who, on or before July 1, 2007, has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code based on a conviction of, plea of guilty to, or adjudication as a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and whose duty to comply with those sections is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to January 1, 2008, is presumed to have knowledge of the law, the content of division (A) of this section and its application to the offender or delinquent child, and the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as it will exist under the

changes that will be implemented on January 1, 2008. Any failure of any such offender or delinquent child to receive a registered letter from the attorney general pursuant to division (A)(2) of section 2950.031 of the Revised Code or to receive a written notice from the department of rehabilitation and correction or department of youth services pursuant to division (A)(2) of section 2950.032 of the Revised Code does not negate, limit, or modify the presumption specified in this division.

(C) Divisions (A) and (B) of this section apply to a person who is adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense only if the person is so adjudicated prior to January 1, 2008, and, under the version of section 2950.01 of the Revised Code that is to take effect on January 1, 2008, will be a public registry-qualified juvenile offender registrant relative to that offense.

Effective Date: 2007 SB10 07-01-2007

2950.04 Duty to register - form.

(A)(1)(a) Immediately after a sentencing hearing is held on or after January 1, 2008, for an offender who is convicted of or pleads guilty to a sexually oriented offense and is sentenced to a prison term, a term of imprisonment, or any other type of confinement and before the offender is transferred to the custody of the department of rehabilitation and correction or to the official in charge of the jail, workhouse, state correctional institution, or other institution where the offender will be confined, the offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender was convicted of or pleaded guilty to the sexually oriented offense.

(b) Immediately after a dispositional hearing is held on or after January 1, 2008, for a child who is adjudicated a delinquent child for committing a sexually oriented offense, is classified a juvenile offender registrant based on that adjudication, and is committed to the custody of the department of youth services or to a secure facility that is not operated by the department and before the child is transferred to the custody of the department of youth services or the secure facility to which the delinquent child is committed, the delinquent child shall register personally with the sheriff, or the sheriff's designee, of the county in which the delinquent child was classified a juvenile offender registrant based on that sexually oriented offense.

(c) A law enforcement officer shall be present at the sentencing hearing or dispositional hearing described in division (A)(1)(a) or (b) of this section to immediately transport the offender or delinquent child who is the subject of the hearing to the sheriff, or the sheriff's designee, of the county in which the offender or delinquent child is convicted, pleads guilty, or is adjudicated a delinquent child.

(d) After an offender who has registered pursuant to division (A)(1)(a) of this section is released from a prison term, a term of imprisonment, or any other type of confinement, the offender shall register as provided in division (A)(2) of this section. After a delinquent child who has registered pursuant to division (A)(1)(b) of this section is released from the custody of the department of youth services or from a secure facility that is not operated by the department, the delinquent child shall register as provided in division (A)(3) of this section.

(2) Regardless of when the sexually oriented offense was committed, each offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense shall comply with the following registration requirements described in divisions (A)(2)(a), (b), (c), (d), and (e) of this section:

(a) The offender shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the offender's coming into a county in which the offender resides or temporarily is domiciled for more than three days.

(b) The offender shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the offender attends a school or institution of

higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state.

(c) The offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(d) The offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state more than three days or for an aggregate period of fourteen or more days in that calendar year.

(e) The offender shall register with the sheriff, or the sheriff's designee, or other appropriate person of the other state immediately upon entering into any state other than this state in which the offender attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than this state for more than three days or for an aggregate period of fourteen or more days in that calendar year regardless of whether the offender resides or has a temporary domicile in this state, the other state, or a different state.

(3)(a) Each child who is adjudicated a delinquent child for committing a sexually oriented offense and who is classified a juvenile offender registrant based on that adjudication shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the delinquent child's coming into a county in which the delinquent child resides or temporarily is domiciled for more than three days.

(b) In addition to the registration duty imposed under division (A)(3)(a) of this section, each public registry-qualified juvenile offender registrant shall comply with the following additional registration requirements:

(i) The public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the registrant attends a school or institution of higher education on a full-time or part-time basis regardless of whether the registrant resides or has a temporary domicile in this state or another state.

(ii) The public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county in which the registrant is employed if the registrant resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(iii) The public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county in which the registrant then is employed if the registrant does not reside or have a temporary domicile in this state and has been employed at

any location or locations in this state more than three days or for an aggregate period of fourteen or more days in that calendar year.

(iv) The public registry-qualified juvenile offender registrant shall register with the sheriff, or the sheriff's designee, or other appropriate person of the other state immediately upon entering into any state other than this state in which the registrant attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than this state for more than three days or for an aggregate period of fourteen or more days in that calendar year regardless of whether the registrant resides or has a temporary domicile in this state, the other state, or a different state.

(c) If the delinquent child is committed for the sexually oriented offense to the department of youth services or to a secure facility that is not operated by the department, this duty begins when the delinquent child is discharged or released in any manner from custody in a department of youth services secure facility or from the secure facility that is not operated by the department if pursuant to the discharge or release the delinquent child is not committed to any other secure facility of the department or any other secure facility.

(4) Regardless of when the sexually oriented offense was committed, each person who is convicted, pleads guilty, or is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a sexually oriented offense shall comply with the following registration requirements if, at the time the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than three days, the offender or public registry-qualified juvenile offender registrant enters this state to attend a school or institution of higher education, or the offender or public registry-qualified juvenile offender registrant is employed in this state for more than the specified period of time, the offender or delinquent child has a duty to register as a sex offender or child-victim offender under the law of that other jurisdiction as a result of the conviction, guilty plea, or adjudication:

(a) Each offender and delinquent child shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the offender's or delinquent child's coming into the county in which the offender or delinquent child resides or temporarily is domiciled for more than three days.

(b) Each offender or public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the offender or public registry-qualified juvenile offender registrant attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender or public registry-qualified juvenile offender registrant resides or has a temporary domicile in this state or another state.

(c) Each offender or public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender or public registry-qualified juvenile offender registrant is employed if the offender resides or has a temporary

§ 2950.04 Duty to register.

(A)(1) Each of the following types of offender who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense shall register personally with the sheriff of the county within seven days of the offender's coming into a county in which the offender resides or temporarily is domiciled for more than seven days:

(a) Regardless of when the sexually oriented offense was committed, an offender who is sentenced for the sexually oriented offense to a prison term, a term of imprisonment, or any other type of confinement and, on or after July 1, 1997, is released in any manner from the prison term, term of imprisonment, or confinement;

(b) Regardless of when the sexually oriented offense was committed, an offender who is sentenced for a sexually oriented offense on or after July 1, 1997, and to whom division (A)(1)(a) of this section does not apply;

(c) If the sexually oriented offense was committed prior to July 1, 1997, and neither division (A)(1)(a) nor division (A)(1)(b) of this section applies, an offender who, immediately prior to July 1, 1997, was a habitual sex offender who was required to register under Chapter 2950. of the Revised Code.

(2) Each child who is adjudicated a delinquent child for committing a sexually oriented offense and who is classified a juvenile sex offender registrant based on that

adjudication shall register personally with the sheriff of the county within seven days of the delinquent child's coming into a county in which the delinquent child resides or temporarily is domiciled for more than seven days. If the delinquent child is committed for the sexually oriented offense to the department of youth services or to a secure facility that is not operated by the department, this duty begins when the delinquent child is discharged or released in any manner from custody in a department of youth services secure facility or from the secure facility that is not operated by the department, if pursuant to the discharge or release the delinquent child is not committed to any other secure facility of the department or any other secure facility. The delinquent child does not have a duty to register under this division while the child is in a department of youth services secure facility or in a secure facility that is not operated by the department.

(3) If divisions (A)(1) and (2) of this section do not apply, each following type of offender and each following type of delinquent child shall register personally with the sheriff of the county within seven days of the offender's or delinquent child's coming into a county in which the offender or delinquent child resides or temporarily is domiciled for more than seven days:

(a) Regardless of when the sexually oriented offense was committed, a person who is convicted of, pleads guilty to, or is adjudicated a delinquent child for committing a sexually oriented offense in another state or in a federal court, military court, or an Indian tribal court, if, on or after July 1, 1997, for offenders, or January 1, 2002, for delinquent children, the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than seven days, and if, at the time the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than seven days, the offender or delinquent child has a duty to register as a sex offender under the law of that other jurisdiction as a result of the conviction, guilty plea, or adjudication.

(b) Regardless of when the sexually oriented offense was committed, a person who is convicted of, pleads guilty to, or is adjudicated a delinquent child for committing a sexually oriented offense in another state or in a federal court, military court, or an Indian tribal court, if, on or after July 1, 1997, for offenders, or January 1, 2002, for delinquent children, the offender or delinquent child is released from imprisonment, confinement, or detention imposed for that offense, and if, on or after July 1, 1997, for offenders, or January 1, 2002, for delinquent children, the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than seven days. The duty to register as described in this division applies to an offender regardless of whether the offender, at the time of moving to and residing in this state or temporarily being domiciled in this state for more than seven days, has a duty to register as a sex offender under the law of the jurisdiction in which the conviction or guilty plea occurred. The duty to register as described in this division applies to a delinquent child only if the delinquent child, at the time of moving

to and residing in this state or temporarily being domiciled in this state for more than seven days, has a duty to register as a sex offender under the law of the jurisdiction in which the delinquent child adjudication occurred or if, had the delinquent child adjudication occurred in this state, the adjudicating juvenile court judge would have been required to issue an order classifying the delinquent child as a juvenile sex offender registrant pursuant to section 2152.82 or division (A) of section 2152.83 of the Revised Code.

(4) If division (A)(1)(a) of this section applies and if, subsequent to the offender's release, the offender is adjudicated to be a sexual predator under division (C) of section 2950.09 of the Revised Code, the offender shall register within seven days of the adjudication with the sheriff of the county in which the offender resides or temporarily is domiciled for more than seven days and shall register with the sheriff of any county in which the offender subsequently resides or temporarily is domiciled for more than seven days within seven days of coming into that county.

(5) A person who is adjudicated a delinquent child for committing a sexually oriented offense is not required to register under division (A)(2) of this section unless the delinquent child committed the offense on or after January 1, 2002, is classified a juvenile sex offender registrant by a juvenile court judge pursuant to an order issued under section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code based on that adjudication, and has a duty to register pursuant to division (A)(2) of this section.

(B) An offender or delinquent child who is required by division (A) of this section to register personally shall obtain from the sheriff or from a designee of the sheriff a registration form that conforms to division (C) of this section, shall complete and sign the form, and shall return the completed form together with the offender's or delinquent child's photograph to the sheriff or the designee. The sheriff or designee shall sign the form and indicate on the form the date on which it is so returned. The registration required under this division is complete when the offender or delinquent child returns the form, containing the requisite information, photograph, signatures, and date, to the sheriff or designee.

(C) The registration form to be used under divisions (A) and (B) of this section shall contain the current residence address of the offender or delinquent child who is registering, the name and address of the offender's or delinquent child's employer, if the offender or delinquent child is employed at the time of registration or if the offender or delinquent child knows at the time of registration that the offender or delinquent child will be commencing employment with that employer subsequent to registration, and any other information required by the bureau of criminal identification and investigation and shall include the offender's or delinquent child's photograph. Additionally, if the offender or delinquent child has been adjudicated as being a sexual predator relative to the sexually oriented offense in question and the court has not subsequently determined pursuant to division (D) of section 2950.09, sec-

tion 2152.84, or section 2152.85 of the Revised Code that the offender or delinquent child no longer is a sexual predator, or if the judge determined pursuant to division (C) of section 2950.09 or pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code that the offender or delinquent child is a habitual sex offender and the determination has not been removed pursuant to section 2152.84 or 2152.85 of the Revised Code, the offender or delinquent child shall include on the signed, written registration form all of the following information:

(1) A specific declaration that the person has been adjudicated as being a sexual predator or has been determined to be a habitual sex offender, whichever is applicable;

(2) If the offender or delinquent child has been adjudicated as being a sexual predator, the identification license plate number of each motor vehicle the offender or delinquent child owns and of each motor vehicle registered in the offender's or delinquent child's name.

(D) After an offender or delinquent child registers with a sheriff pursuant to this section, the sheriff shall forward the signed, written registration form and photograph to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to section 2950.13 of the Revised Code. The bureau shall include the information and materials forwarded to it under this division in the state registry of sex offenders established and maintained under section 2950.13 of the Revised Code.

(E) No person who is required to register pursuant to divisions (A) and (B) of this section shall fail to register as required in accordance with those divisions or that division.

(F) An offender or delinquent child who is required to register pursuant to divisions (A) and (B) of this section shall register pursuant to this section for the period of time specified in section 2950.07 of the Revised Code.

(C) If an offender or delinquent child who is required by division (A) of this section to register is adjudicated a sexual predator or a habitual sexual offender subject to community notification under division (C)(2) or (E) of section 2950.09 of the Revised Code, or if an offender who is required by division (A) of this section to register has that duty as a result of a conviction of or plea of guilty to an aggravated sexually oriented offense committed on or after the effective date of this amendment, the offender or delinquent child also shall send the sheriff of the county in which the offender or delinquent child intends to reside written notice of the offender's or delinquent child's intent to reside in the county. The offender or delinquent child shall send the notice of intent to reside at least twenty days prior to the date the offender or delinquent child begins to reside in the county. The notice of intent to reside shall contain the following information:

- (1) The offender's or delinquent child's name;
- (2) The address or addresses at which the offender or delinquent child intends to reside;
- (3) The sexually oriented offense of which the offender was convicted, to which the offender pleaded

guilty, or for which the child was adjudicated a delinquent child;

(A) A statement that the offender or delinquent child has been adjudicated as being a sexual predator and that, as of the date of the notice, the court has not entered a determination that the offender or delinquent child no longer is a sexual predator, a statement that the sentencing or reviewing judge has determined that the offender or delinquent child is a habitual sex offender and that, as of the date of the notice, the determination has not been removed pursuant to section 2152.84 or 2152.85 of the Revised Code, or a statement that the offender was convicted of or pleaded guilty to an aggravated sexually oriented offense committed on or after the effective date of this amendment.

HISTORY: 146 v H 180 (Eff 7-1-97); 147 v H 565 (Eff 3-30-99); 148 v H 502 (Eff 3-15-2001); 149 v S 3 (Eff 1-1-2002); 149 v S 175 (Eff 5-7-2002); 149 v H 485 (Eff 6-13-2002); 149 v H 393, Eff 7-5-2002.

Not analogous to former RC § 2950.04 (130 v 670), repealed 146 v H 180, § 2, eff 7-1-97.

See provisions, § 3 of HB 485 (149 v —) following RC § 2929.13.

See provisions, § 5 of HB 485 (149 v —) following RC § 2950.01.

See Comment, Legislative Service Commission following RC § 2950.01.

UNITED STATES CONSTITUTION

Article I, Section 10 - Powers prohibited of States

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment

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 CONSITUTION

§ 10, Article I Trial for crimes; witness

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

(As amended September 3, 1912.)

§28, Article II, Retroactive laws

The General Assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.