

**IN THE
SUPREME COURT OF OHIO**

IN RE: BRUCE S. : NO. 2012-0059
: On Appeal from the Hamilton County
: Court of Appeals, First Appellate
: District
: Court of Appeals
: Case Number C-110042
:

MERIT BRIEF OF PLAINTIFF-APPELLANT

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STATEMENT OF FACTS

On October 28, 2008, a complaint was filed in juvenile court against Bruce S. for Rape, a first degree felony offense if committed by an adult. The actual rape offense occurred on September 1, 2007. He admitted to the charge and was adjudged delinquent. On November 25, 2008, the judge imposed a commitment to the Department of Youth Services (DYS) for a minimum period of twelve months to a maximum period until age twenty-one. Bruce S. was informed that he would automatically be required to register as a Tier III sex offender and the magistrate decided that community notification was appropriate. He appealed the Tier III classification as well as the imposition of community notification.

On December 16, 2009, the First District Court of Appeals reversed the Tier III classification because the juvenile court did not exercise its discretion in the tier classification process as provided for by R.C. 2152.831. The case was remanded to the juvenile court for a new hearing to determine the appropriate sex-offender classification. *See In re Bruce S.*, 1st Dist. No. C-081300 (Dec. 16, 2009).

Pursuant to the court of appeals' remand order, a juvenile court magistrate held a new hearing on May 19, 2010. At this hearing, the magistrate used its discretion in considering the appropriate tier for Bruce S. and the necessity of community notification. The magistrate considered the exhibits presented at the first classification hearing (DYS notes and report from Dr. Barzman) as well as Bruce S.'s "rap sheet." (State's Exhibit 1) The magistrate applied the factors provided in R.C. 2152.83 and specified the factors supporting a Tier III classification and community notification. (T.d. 47) The magistrate noted that Bruce S. had a delinquency adjudication for anally penetrating his four-year-

old cousin and while receiving treatment at the Hillcrest Training School for that offense, revealed the offense involved in the current case where he forced his nine-year-old cousin to perform oral sex on him. Dr. Barzman's report described approximately four other incidents he characterized as a "history of hyper-sexuality" that occurred prior to the above referenced offenses where no charges were filed against Bruce S. but where he was placed in a sexual offender treatment program. (T.d. 47) The magistrate's decision lists the following factors he found applicable to Bruce S.:

1. The nature and number of rapes involving separate victims.
2. The public interest and safety.
3. The history of sexual activity and the treatment provided which was unsuccessful in preventing the defendant from raping 2 young children.
4. The age of the defendant in relation to his victims.
5. The defendant's prior delinquency record and history of violent and aggressive behavior.
6. The young age of his adjudicated victims; namely, age 4 and 9.
7. The offense involving multiple victims.
8. A previous adjudication of Rape.
9. The use of force in one rape to keep the child from screaming.
10. The anal penetration of a 4 year old when the defendant was age 17.
11. The offenses of rape involving a family or household member of the defendant.

(T.d. 47)

The magistrate's decision to classify Bruce S. as a Tier III sex offender with community notification was accepted and approved by a juvenile court judge on December 20, 2010. On appeal from that decision, Bruce S. claimed that the application of the Senate Bill 10 version of R.C. Chapter 2950 to juveniles violated both the state and federal constitutional right to due process, that the trial court erred by failing to appoint a guardian ad litem, subjecting him to community notification, and in notifying him of the duties of a public registry qualified juvenile offender registrant.

The First District Court of Appeals determined that since Bruce S. committed his offense on September 1, 2007, the Senate Bill 10 classification, registration, and community-notification provisions could not be applied to him. The matter was remanded for a sex-offender classification under the Megan's Law version of R.C. Chapter 2950. The First District Court of Appeals further recognized that its decision is in conflict with the Eighth District Court of Appeals decision in *State v. Scott*, 8th Dist. No. 91890, 2011-Ohio-6255, and certified the following question to this Court: "May Senate Bill 10's classification, registration, and community-notification provisions be constitutionally applied to a sex offender who had committed his sex offense between the July 1, 2007, repeal of Megan's Law and the January 1, 2008, effective date of Senate Bill 10's classification, registration, and community-notification provisions?"

ARGUMENT

Proposition of Law No. I: The Senate Bill 10 version of R.C. Chapter 2950 is appropriately applied to those sex offenders who committed their sexually oriented offense on or after its enactment on June 30, 2007.

Subsequent to this Court's decision in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, ¶15, the First District Court of Appeals and the Eighth District Court of Appeals have interpreted the decision differently as to determining the appropriate "enactment date" for the application of the Senate Bill 10 version of R.C. Chapter 2950. *In re Bruce S.*, 1st Dist. No. C-110042, 2011-Ohio-6634 and *State v. Scott*, 8th Dist. No. 91890, 2011-Ohio-6255.

Senate Bill 10

In an effort to make sex offender registration consistent throughout the nation, the United States Congress enacted the Adam Walsh Child Protection and Safety Act (AWA) and its subsection, the Sex Offender Registration and Notification Act (SORNA), on July 27, 2006. 42 U.S. §§ 16901, et seq. The Ohio General Assembly enacted Senate Bill 10 in 2007 primarily to amend Ohio's sex offender registration and notification statutes to comply with the federal law. 2007 Am.Sub.S.B. No. 10. In doing so, the General Assembly amended seventy-three statutes, adopted eleven new statutes, and repealed four statutes spanning twenty-two different chapters of the Ohio Revised Code. Senate Bill 10 was divided into six sections and totaled approximately four-hundred and fifty-eight pages. These statutes pertain to a multitude of persons and entities including victims, adult and juvenile offenders, landlords and tenants, school officials, the courts, law

enforcement agencies, the Ohio Attorney General's Office, prosecutors, and law directors.

Section 1 of Senate Bill 10 sets forth the actual statutory language for each statute. Section 2 repeals seventy-two statutes which were amended and four statutes which were completely removed from the statutory scheme. Section 3 sets forth the effective dates of July 1, 2007 for some statutes and January 1, 2008 for other statutes. Section 4 states: "Sections 1 to 3 of this act shall take effect on July 1, 2007." Section 5 then provides:

This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that the changes to the state's Sex Offender Registration and Notification Law made by this act are crucially needed to provide increased protection and security for the state's residents from persons who have been convicted of, or found to be delinquent children for committing, a sexually oriented offense or a child-victim oriented offense and to conform that Law *by July 1, 2007*, to recently enacted requirements of federal law. Therefore this act shall take immediate effect. (Emphasis added.)

Section 6 then identifies those statutes presented as composites of other pieces of legislation and applies R.C. 1.52 (B) indicating that "amendments are to be harmonized if reasonably capable of simultaneous operation."

Senate Bill 10 was passed by the Senate on May 16, 2007 and by the House on June 27, 2007. It was signed by Governor Strickland on June 30, 2007.

Constitutional Provisions

Generally, laws passed by the General Assembly are subject to a referendum by the voters so "[n]o law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided." Ohio Constitution, Article II, Section 1(c). "The 'except as herein provided' clause has undoubted reference to the provision in section 1d of article 2

to the effect that laws providing for tax levies, etc., and emergency laws shall go into immediate effect.” *State v. Lathorp*, 93 Ohio St.79, 87, 112 N.E. 209 (1915). This constitutional exception specifically provides:

Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a ye and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a ye and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum.

Ohio Constitution, Article II, Section 1(d).

Just three years after the above quoted constitutional provision was adopted in 1912, the Ohio Supreme Court had the opportunity to interpret it and concluded:

There is a class of laws not subject to the 90-day period. Laws providing for the state levies, appropriations for current expenses of the state government and state institutions, and emergency laws, as defined in section 1d of article 2, go into immediate effect by the express language of the Constitution. This, of course, must be understood as meaning that such laws shall go into immediate effect as soon as they shall have been signed by the Governor.

Lathorp at 87-88.

Enactment/Effective Date of Senate Bill 10

Section 5 of Senate Bill 10 clearly establishes its status as an emergency law and it appears the appropriate procedure was followed in the enactment process. *See* 2007 Am.Sub.S.B. No. 10. record of votes. Therefore, Senate Bill 10 was enacted on June 30, 2007 when it was signed by Governor Strickland.

In *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, ¶15, this Court concluded, “that S.B. 10, as applied to Williams and any other sex offender who committed an offense prior to the enactment of S.B. 10, violates Section 28, Article

II of the Ohio Constitution, which prohibits the General Assembly from enacting retroactive laws.” *Id.* at ¶22. “When we consider all of the changes enacted by S.B. 10 in aggregate, we conclude that imposing the current registration requirements on a sex offender whose crime was committed prior to the enactment of S.B. 10 is punitive.” *Id.* at ¶20. Thus, the enactment date of Senate Bill 10 has clearly been identified by this Court as the significant point in time for its application. Throughout *Williams*, this Court specifically identified those offenders who committed their sex offense “prior to the enactment of Senate Bill 10” as the group of offenders constitutionally offended. *Id.* at syllabus paragraph, ¶7, ¶16, ¶¶20-22. This Court recognized that “[t]he current statutory scheme, S.B. 10, was enacted in 2007.” *Id.* at ¶7. It further summarized the issue before it and the argument set forth by *Williams* in the court of appeals “that the provisions of S.B. 10 cannot constitutionally be applied to a defendant whose offense occurred before July 1, 2007.” *Id.* at ¶4.

Conflict between *State v. Scott* and *In re Bruce S.*

Pursuant to this Court’s remand order for the “application of *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108” in *State v. Scott*, 130 Ohio St.3d 260, 2011-Ohio-5343, ___ N.E.2d ___, the Eighth District Court of Appeals correctly held “[c]onsistent with the holding in *Williams*, we find Scott’s classification under AWA was constitutional because the offenses took place after the enactment of S.B. 10 in June 2007.” *State v. Scott*, 8th Dist. No. 91890, 2011-Ohio-6255. The First District Court of Appeals did not recognize the significance of the June 30, 2007 enactment date of Senate Bill 10 when it decided *In re Bruce S.* Interestingly, counsel for Bruce S. did recognize the significance and actually conceded in the appeal before the First District that Bruce S.

“committed his offense on September 1, 2007, after the enactment of S.B. 10.” (*See* August 17, 2011 Brief of Bruce S. at page 5) The issue certified by the First District and now before this Court was not even addressed in the briefing.

The State of Ohio has found no difference as to the enactment date of Senate Bill 10 as applied to juvenile sex offenders versus adult offenders that would explain the conflict between the First and Eighth appellate districts. The substance of Senate Bill 10 was effective as soon as it was signed by the governor. It was only its operation in certain respects that was postponed by the General Assembly for the administrative convenience of those entities charged with various duties under the law. Obviously, the enormity of this legislation required a period of transition to the new statutory scheme. In Section 5, the General Assembly clearly intended Senate Bill 10 to go into immediate effect and specified “by July 1, 2007” which was merely one day after it was signed by Governor Strickland.

Since Bruce S. committed the sex offense at issue in the present case on September 1, 2007, Senate Bill 10 appropriately applies to him. The juvenile court utilized the statutory factors in exercising its discretion to classify Bruce S. as a Tier III sex offender and appropriately found community notification necessary.

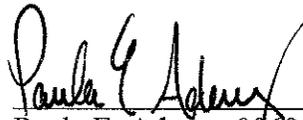
CONCLUSION

The First District Court of Appeals' decision is wrong in that it fails to recognize June 30, 2007 as the enactment date of Senate Bill 10. The Eighth District Court of Appeals correctly applied *State v. Williams* and upheld a sex-offender classification under Senate Bill 10 when the sex "offenses took place during the date range of July 1, 2007 through August 31, 2007." *Scott* at ¶¶ 4-5.

This conflict between the First and Eighth Appellate Districts must be decided in favor of the decision from the Eighth District Court of Appeals. The decision of the First District Court of Appeals must be reversed. A reversal will clarify to all of the appellate districts the holding in *State v. Williams* that the Senate Bill 10 version of R.C. Chapter 2950 applies to those offenders who committed sex offenses after June 30, 2007.

Respectfully Submitted,

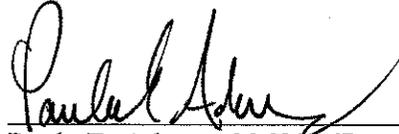
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CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing Memorandum in Response, by United States mail, addressed to Amanda J. Powell, Ohio Public Defender's Office, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215, counsel of record, this 10th day of May, 2012.



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APPENDIX

ORIGINAL

IN THE
SUPREME COURT OF OHIO

IN RE: BRUCE S. : NO. 12-0059
: On Appeal from the Hamilton County
: Court of Appeals, First Appellate
: District
: Court of Appeals
: Case Number C-110042

NOTICE OF CERTIFICATION OF CONFLICT

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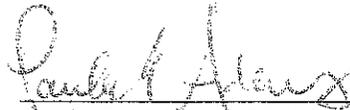
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CERTIFICATION OF SERVICE

I hereby certify that I have sent a copy of the foregoing Memorandum in Response, by United States mail, addressed to Amanda J. Powell, Ohio Public Defender's Office, 250 East Broad Street, Suite 1400, Columbus, OH 43215, counsel of record, this 14th day of January, 2012.



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APPENDIX

In re. Bruce S., 1st Dist. No. C-110042, 2011-Ohio-6634A-1
State v. Scott, 8th Dist. No. 91890, 2011-Ohio-6255 B-1

APPENDIX

A-1

In re Bruce S. 2011 WL 6826422
 Court of Appeals of Ohio, First District, Hamilton County. December 23, 2011 Slip Copy 2011 -Ohio- 6634

CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio,
 First District, Hamilton County.

In re BRUCE S.

No. C-110042. Decided Dec. 23, 2011.

Criminal Appeal from Hamilton County Juvenile Court.

Attorneys and Law Firms

Joseph T. Deters, Hamilton County Prosecuting Attorney, and Paula E. Adams, Assistant Prosecuting Attorney, for Appellee State of Ohio.

Office of the Ohio Public Defender and Amanda J. Powell, Assistant State Public Defender, for Appellant Bruce S.

Opinion

PER CURIAM.

{¶ 1} Appellant Bruce S. admitted to and was adjudicated delinquent for committing an act on September 1, 2007, that, if committed by an adult, would have constituted the sexually-oriented offense of rape. The juvenile court, believing that Am.Sub.S.B. No. 10 ("Senate Bill 10") required it to classify Bruce S. as a Tier III sex offender, classified Bruce S. as a Tier III sex offender subject to community notification. We reversed the Tier III classification on appeal, holding that the juvenile court had discretion to classify Bruce S. as a Tier I, a Tier II, or a Tier III offender, and that the failure of the trial court to exercise that discretion was reversible error. *In re Bruce S.* (Dec. 16, 2009), 1st Dist. No. C-081300. We remanded the case to the juvenile court for a new hearing to determine Bruce S.'s appropriate sex-offender classification.

{¶ 2} A juvenile court magistrate held a new classification hearing on May 19, 2010. The magistrate ordered Bruce S. to register pursuant to Senate Bill 10 as a Tier III juvenile sex offender subject to community notification. The trial court overruled Bruce S.'s objections to the magistrate's decision and on December 20, 2010, adopted it as the judgment of the court. Bruce S. has appealed his classification under Senate Bill 10 as a Tier III juvenile-sex-offender registrant subject to community notification.

{¶ 3} On July 13, 2011, the Ohio Supreme Court decided *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, which held that Senate Bill 10's classification, registration, and community-notification provisions could not constitutionally be retroactively applied to sex offenders who had committed their sex offenses prior to its enactment. Senate Bill 10 was enacted June 27, 2007. Senate Bill 10 repealed Ohio's former sex-offender classification, registration, and community-notification provisions ("Megan's Law"), Am.Sub.H.B. No. 180, 146 Ohio Laws, Part II, 2560, enacted in 1996, amended in 2003 by Am. Sub.S.B. No. 5, 150 Ohio Laws, Part IV, 6556, effective July 1, 2007. Senate Bill 10's registration, classification, and community-notification provisions, including those regarding the classification of juveniles as Tier I, Tier II or Tier III sex offenders, became effective January 1, 2008.

{¶ 4} "Where an act of the General Assembly amends an existing section of the Revised Code * * *, postpones the effective date of the amended section for [a certain period of time] after the effective date of the act, and repeals the 'existing' section in a standard form of

RELATED TOPICS

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Defendants Challenging Constitutionality of Classification Procedure of Sex Offender Registration Act

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repealing clause used for many years by the General Assembly for the purpose of complying with Section 15(D) of Article II of the Constitution of Ohio, the constitutionally mandated repealing clause must be construed to take effect upon the effective date of the amended section in order to prevent a hiatus in statutory law, during which neither the repealed section nor the amended section is in effect." *Cox v. Ohio Dept. of Transp.*, (1981), 67 Ohio St.2d 501, 508, 424 N.E.2d 597.

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*2 ¶¶ 5) The repealing clause of a statute does not take effect until the amended provisions of the act come into operation. See *id.*; *State v. Brown*, 8th Dist. No. 90798, 2009-Ohio-127, reversed in part on other grounds, *In re Sexual Offender Classification Cases*, 126 Ohio St.3d 322, 2010-Ohio-3753, 933 N.E.2d 801; *In re Carr*, 5th Dist. No. 08 CA 19, 2008-Ohio-5689; *In re Marcio A.*, 5th Dist. No.2007 CA 00149, 2008-Ohio-4523. Senate Bill 10's classification, registration, and community-notification provisions became effective on January 1, 2008. Prior to that date, including the period from Senate Bill 10's enactment to its January 1, 2008 effective date, Ohio's former sex-offender classification, registration and community-notification provisions were in effect. See *State v. Brown*, *supra*; *In re Carr*, *supra*; *In re Marcio A.*, *supra*.

¶¶ 6) Bruce S. committed his offense on September 1, 2007, prior to the effective date of Senate Bill 10's registration, classification, and community-notification provisions, and during the time that Megan's Law was in effect. Therefore, Senate Bill 10's classification, registration, and community-notification provisions may not be applied to him. See *State v. Williams*, *supra*. The judgment of the juvenile court classifying Bruce S. as a Tier III juvenile sex offender under Senate Bill 10 must be reversed, and this cause must be remanded for Bruce S.'s sexual-offender classification under Megan's Law.

¶¶ 7) Our disposition of this appeal renders Bruce S.'s four assignments of error moot. Therefore, we do not address them. The judgment of the trial court is reversed, and this cause is remanded for further proceedings consistent with law and this opinion.

¶¶ 8) We recognize that our opinion in this case is in conflict with the opinion rendered by the Eighth Appellate District in *State v. Scott*, 8th Dist. No. 91890, 2011-Ohio-6255, holding that Senate Bill 10's classification provisions may be constitutionally applied to a sex offender who had committed his offenses during the period from July 1, 2007 through August 31, 2007. Therefore, pursuant to Section 3(B)(4), Article IV, of the Ohio Constitution, we sua sponte certify a conflict to the Ohio Supreme Court for review and final determination.

¶¶ 9) We certify this question to the Supreme Court of Ohio: May Senate Bill 10's classification, registration, and community-notification provisions be constitutionally applied to a sex offender who had committed his sex offense between the July 1, 2007, repeal of Megan's Law and the January 1, 2008, effective date of Senate Bill 10's classification, registration, and community-notification provisions?

Judgment reversed and cause remanded.

SUNDERMANN, P.J., CUNNINGHAM and FISCHER, JJ.

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APPENDIX

B-1

State v. Scott 2011 WL 6150058
Court of Appeals of Ohio, Eighth District, Cuyahoga County, December 8, 2011 Slip Copy 2011-Ohio-6255
CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio,
Eighth District, Cuyahoga County.

STATE of Ohio, Plaintiff-Appellee
v.
Joseph SCOTT, Defendant-Appellant.

No. 91890. Decided Dec. 8, 2011.

Criminal Appeal from the Cuyahoga County Court of Common Pleas, Case No. CR-505742.

Attorneys and Law Firms

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Joseph Scott, Mansfield, OH, pro se.

William D. Mason, Cuyahoga County Prosecutor, by Pinkey S. Carr, Diane Smilanick, Assistant Prosecuting Attorneys, Cleveland, OH, for appellee.

Before: S. GALLAGHER, J., KILBANE, A.J., and BLACKMON, J.

Opinion

SEAN C. GALLAGHER, J.

*1 ¶1 This appeal is before this court on remand from the Ohio Supreme Court for application of *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, and *State v. Dunlap*, 129 Ohio St.3d 461, 2011-Ohio-4111, 953 N.E.2d 816. *State v. Scott*, 130 Ohio St.3d260, 2011-Ohio-5343, —N.E.2d —.

¶2 In *State v. Scott*, Cuyahoga App. No. 91890, 2010-Ohio-3057, this court affirmed Scott's convictions of gross sexual imposition and attempted rape. The Ohio Supreme Court accepted review on propositions of law VII ("Gross sexual imposition against a child under 13 is not a strict liability offense. The act of sexual contact must be recklessly performed.") and IX ("The Adam Walsh Act does not apply to persons whose offenses were committed prior to the AWA's effective date"). The Ohio Supreme Court has remanded the case to this court for application of the *Williams* and *Dunlap* decisions.

¶3 In *Williams*, the court held as follows: "S.B. 10, as applied to defendants who committed sex offenses prior to its enactment, violates Section 28, Article II of the Ohio Constitution, which prohibits the General Assembly from passing retroactive laws." (Emphasis added.) *Id.* at ¶ 20. S.B. 10, a.k.a. the Adam Walsh Act ("the AWA"), was enacted on June 27, 2007, and made effective on January 1, 2008.

¶4 Here, the subject offenses took place during the date range of July 1, 2007 through August 31, 2007. Scott argues that he cannot be classified as a sex offender because his offenses occurred between the repeal of Ohio's Megan's Law and the effective date of the AWA, thereby evading Ohio's sexual registration laws. We disagree.

¶5 Consistent with the holding in *Williams*, we find Scott's classification under the AWA was constitutional because the offenses took place after the "enactment" of S.B. 10 in June 2007. Therefore, we uphold his sex-offender classification under the AWA.

{¶ 6} In *Dunlap*, the court addressed the mens rea element of gross sexual imposition involving victims under 13 years of age. The court held that "the applicable mens rea of sexual contact, as defined in R.C. 2907.01(B), is purpose." *Id.* at ¶ 26. The court recognized its holding in *State v. Horner*, 126 Ohio St.3d 466, 2010-Ohio-3830, 935 N.E.2d 26, ¶ 45. that "when the indictment fails to charge the mens rea of the crime, but tracks the language of the criminal statute describing the offense, the indictment provides the defendant with adequate notice of the charges against him and is, therefore, not defective." *Id.* at ¶ 17. The court found that "Dunlap's indictment tracked the language of R.C. 2907.05(A)(4), so, pursuant to *Horner*, even if the indictment failed to charge a mens rea, it was not defective." *Id.* Because the indictment was not defective and the jury was properly instructed on the element of sexual contact as set forth in R.C. 2907.01(B), the court found the trial court did not err. *Id.* at ¶ 27. A review of the indictment on Count 16 for gross sexual imposition reflects that it tracked the language of R.C. 2907.05(A)(4). Further, the jury was instructed on the element of sexual contact and provided the definition set forth in R.C. 2907.01(B). Consistent with *Dunlap*, we find the indictment herein was not defective, the jury was properly instructed, and the trial court did not err.

{¶ 7} Consistent with our decision herein, we modify our prior opinion. The judgment of the trial court remains affirmed.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, A.J., and PATRICIA ANN BLACKMON, J., concur.

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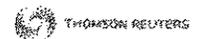
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IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE: BRUCE S.

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APPEAL NO. C-110042
TRIAL NO. 08-15538X

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OPINION.

Criminal Appeal From: Hamilton County Juvenile Court

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: December 23, 2011

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Paula E. Adams*,
Assistant Prosecuting Attorney, for Appellee State of Ohio,

Office of the Ohio Public Defender and *Amanda J. Powell*, Assistant State Public
Defender, for Appellant Bruce S.

Please note: This case has been removed from the accelerated calendar.

B

Per Curiam.

{¶1} Appellant Bruce S. admitted to and was adjudicated delinquent for committing an act on September 1, 2007, that, if committed by an adult, would have constituted the sexually-oriented offense of rape. The juvenile court, believing that Am.Sub.S.B. No. 10 ("Senate Bill 10") required it to classify Bruce S. as a Tier III sex offender, classified Bruce S. as a Tier III sex offender subject to community notification. We reversed the Tier III classification on appeal, holding that the juvenile court had discretion to classify Bruce S. as a Tier I, a Tier II, or a Tier III offender, and that the failure of the trial court to exercise that discretion was reversible error. *In re Bruce S.* (Dec. 16, 2009), 1st Dist. No. C-081300. We remanded the case to the juvenile court for a new hearing to determine Bruce S.'s appropriate sex-offender classification. ~~2-11-2010-63~~

{¶2} A juvenile court magistrate held a new classification hearing on May 19, 2010. The magistrate ordered Bruce S. to register pursuant to Senate Bill 10 as a Tier III juvenile sex offender subject to community notification. The trial court overruled Bruce S.'s objections to the magistrate's decision and on December 20, 2010, adopted it as the judgment of the court. Bruce S. has appealed his classification under Senate Bill 10 as a Tier III juvenile-sex-offender registrant subject to community notification.

{¶3} On July 13, 2011, the Ohio Supreme Court decided *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, which held that Senate Bill 10's classification, registration, and community-notification provisions could not constitutionally be retroactively applied to sex offenders who had committed their sex offenses prior to its enactment. Senate Bill 10 was enacted June 27, 2007.

Senate Bill 10 repealed Ohio's former sex-offender classification, registration, and community-notification provisions ("Megan's Law"), Am.Sub.H.B. No. 180, 146 Ohio Laws, Part II, 2560, enacted in 1996, amended in 2003 by Am. Sub.S.B. No. 5, 150 Ohio Laws, Part IV, 6556, effective July 1, 2007. Senate Bill 10's registration, classification, and community-notification provisions, including those regarding the classification of juveniles as Tier I, Tier II or Tier III sex offenders, became effective January 1, 2008.

{¶4} "Where an act of the General Assembly amends an existing section of the Revised Code * * *, postpones the effective date of the amended section for [a certain period of time] after the effective date of the act, and repeals the 'existing' section in a standard form of repealing clause used for many years by the General Assembly for the purpose of complying with Section 15(D) of Article II of the Constitution of Ohio, the constitutionally mandated repealing clause must be construed to take effect upon the effective date of the amended section in order to prevent a hiatus in statutory law, during which neither the repealed section nor the amended section is in effect." *Cox v. Ohio Dept. of Transp.* (1981), 67 Ohio St.2d 501, 508, 424 N.E.2d 597.

{¶5} The repealing clause of a statute does not take effect until the amended provisions of the act come into operation. See *id.*; *State v. Brown*, 8th Dist. No. 90798, 2009-Ohio-127, reversed in part on other grounds, *In re Sexual Offender Classification Cases*, 126 Ohio St.3d 322, 2010-Ohio-3753, 933 N.E.2d 801; *In re Carr*, 5th Dist. No. 08 CA 19, 2008-Ohio-5689; *In re Marcio A.*, 5th Dist. No. 2007 CA 00149, 2008-Ohio-4523. Senate Bill 10's classification, registration, and community-notification provisions became effective on January 1, 2008. Prior to that date, including the period from Senate Bill 10's enactment to its January 1, 2008

effective date, Ohio's former sex-offender classification, registration and community-notification provisions were in effect. See *State v. Brown*, supra; *In re Carr*, supra; *In re Marcio A.*, supra.

{¶6} Bruce S. committed his offense on September 1, 2007, prior to the effective date of Senate Bill 10's registration, classification, and community-notification provisions, and during the time that Megan's Law was in effect. Therefore, Senate Bill 10's classification, registration, and community-notification provisions may not be applied to him. See *State v. Williams*, supra. The judgment of the juvenile court classifying Bruce S. as a Tier III juvenile sex offender under Senate Bill 10 must be reversed, and this cause must be remanded for Bruce S.'s sexual-offender classification under Megan's Law.

{¶7} Our disposition of this appeal renders Bruce S.'s four assignments of error moot. Therefore, we do not address them. The judgment of the trial court is reversed, and this cause is remanded for further proceedings consistent with law and this opinion.

{¶8} We recognize that our opinion in this case is in conflict with the opinion rendered by the Eighth Appellate District in *State v. Scott*, 8th Dist. No. 91890, 2011-Ohio-6255, holding that Senate Bill 10's classification provisions may be constitutionally applied to a sex offender who had committed his offenses during the period from July 1, 2007 through August 31, 2007. Therefore, pursuant to Section 3(B)(4), Article IV, of the Ohio Constitution, we sua sponte certify a conflict to the Ohio Supreme Court for review and final determination.

{¶9} We certify this question to the Supreme Court of Ohio: May Senate Bill 10's classification, registration, and community-notification provisions be constitutionally applied to a sex offender who had committed his sex offense between

the July 1, 2007, repeal of Megan's Law and the January 1, 2008, effective date of Senate Bill 10's classification, registration, and community-notification provisions?

Judgment reversed and cause remanded.

SUNDERMANN, P.J., CUNNINGHAM and FISCHER, JJ.

Please note:

The court has recorded its own entry this date.

§ 2.01c The referendum[\[View Article Table of Contents\]](#)

The second aforesated power reserved by the people is designated the referendum, and the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided. When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to one hundred twenty-five days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect.

(Adopted September 3, 1912. HJR 3; Amended, effective November 4, 2008.)

§ 2.01d Emergency laws; not subject to referendum[\[View Article Table of Contents\]](#)

Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a ye and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a ye and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum.

(Adopted September 3, 1912.)

D

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-CITE-

42 USC Sec. 16901

01/03/2012 (112-90)

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 151 - CHILD PROTECTION AND SAFETY

SUBCHAPTER I - SEX OFFENDER REGISTRATION AND NOTIFICATION

-HEAD-

Sec. 16901. Declaration of purpose

-STATUTE-

In order to protect the public from sex offenders and offenders against children, and in response to the vicious attacks by violent predators against the victims listed below, Congress in this chapter establishes a comprehensive national system for the registration of those offenders:

(1) Jacob Wetterling, who was 11 years old, was abducted in 1989 in Minnesota, and remains missing.

(2) Megan Nicole Kanka, who was 7 years old, was abducted, sexually assaulted, and murdered in 1994, in New Jersey.

(3) Pam Lychner, who was 31 years old, was attacked by a career offender in Houston, Texas.

(4) Jetseta Gage, who was 10 years old, was kidnapped, sexually assaulted, and murdered in 2005, in Cedar Rapids, Iowa.

(5) Dru Sjodin, who was 22 years old, was sexually assaulted and murdered in 2003, in North Dakota.

(6) Jessica Lunsford, who was 9 years old, was abducted,

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sexually assaulted, buried alive, and murdered in 2005, in Homosassa, Florida.

(7) Sarah Lunde, who was 13 years old, was strangled and murdered in 2005, in Ruskin, Florida.

(8) Amie Zyla, who was 8 years old, was sexually assaulted in 1996 by a juvenile offender in Waukesha, Wisconsin, and has become an advocate for child victims and protection of children from juvenile sex offenders.

(9) Christy Ann Fornoff, who was 13 years old, was abducted, sexually assaulted, and murdered in 1984, in Tempe, Arizona.

(10) Alexandra Nicole Zapp, who was 30 years old, was brutally attacked and murdered in a public restroom by a repeat sex offender in 2002, in Bridgewater, Massachusetts.

(11) Polly Klaas, who was 12 years old, was abducted, sexually assaulted, and murdered in 1993 by a career offender in California.

(12) Jimmy Ryce, who was 9 years old, was kidnapped and murdered in Florida on September 11, 1995.

(13) Carlie Brucia, who was 11 years old, was abducted and murdered in Florida in February, 2004.

(14) Amanda Brown, who was 7 years old, was abducted and murdered in Florida in 1998.

(15) Elizabeth Smart, who was 14 years old, was abducted in Salt Lake City, Utah in June 2002.

(16) Molly Bish, who was 16 years old, was abducted in 2000 while working as a lifeguard in Warren, Massachusetts, where her remains were found 3 years later.

(17) Samantha Runnion, who was 5 years old, was abducted, sexually assaulted, and murdered in California on July 15, 2002.

-SOURCE-

(Pub. L. 109-248, title I, Sec. 102, July 27, 2006, 120 Stat. 590.)

-REFTEXT-

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 109-248, July 27, 2006, 120 Stat. 587, known as the Adam Walsh Child Protection and Safety Act of 2006. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

-MISC1-

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110-400, Sec. 1, Oct. 13, 2008, 122 Stat. 4224, provided that: "This Act [enacting sections 16915a and 16915b of this title, amending section 16981 of this title, and enacting provisions set out as a note under section 16981 of this title] may be cited as the 'Keeping the Internet Devoid of Sexual Predators Act of 2008' or the 'KIDS Act of 2008'."

SHORT TITLE

Pub. L. 109-248, Sec. 1(a), July 27, 2006, 120 Stat. 587, provided that: "This Act [enacting this chapter, sections 3765, 3797ee, and 3797ee-1 of this title, chapter 109B and sections 2252C, 2257A, 2260A, 3299, and 4248 of Title 18, Crimes and Criminal Procedure, amending sections 671, 5772, 5780, 13032, and 14135a of this title, section 1101 of Title 8, Aliens and Nationality, sections 1001, 1153, 1154, 1201, 1227, 1466, 1467, 1591, 2241, 2242, 2243, 2244, 2245, 2251, 2252, 2252A, 2252B, 2253, 2254, 2255, 2257, 2258, 2260, 2422, 2423, 3142, 3509, 3559, 3563, 3583, 3592, 3621, 3771, 4042, 4209, 4241, and 4247 of Title 18, section 841 of Title 21, Food and Drugs, section 534 of Title 28, Judiciary and Judicial Procedure, repealing sections 14071 to 14073 of this title, enacting provisions set out as notes under sections

671, 5611, 13701, and 14071 of this title, sections 2251 and 2257 of Title 18, and provisions listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, and amending provisions set out as notes under section 13751 of this title and section 951 of Title 10, Armed Forces] may be cited as the 'Adam Walsh Child Protection and Safety Act of 2006'."

Pub. L. 109-248, title I, Sec. 101, July 27, 2006, 120 Stat. 590, provided that: "This title [enacting this subchapter and chapter 109B of Title 18, Crimes and Criminal Procedure, amending sections 671, 5772, 5780, 13032, and 14135a of this title, sections 1001, 3563, 3583, 4042, and 4209 of Title 18, and section 534 of Title 28, Judiciary and Judicial Procedure, repealing sections 14071 to 14073 of this title, enacting provisions set out as notes under sections 671 and 14071 of this title and provisions listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, and amending provisions set out as a note under section 951 of Title 10, Armed Forces] may be cited as the 'Sex Offender Registration and Notification Act'."



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