

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Case No. 2014-0363
 :
 v. : On Discretionary Appeal from the
 : Clark County Court of Appeals,
 TRAVIS BLANKENSHIP, : 2nd Appellate District, Case No.
 : 2012-CA-74
 Defendant-Appellant. :

MERIT BRIEF OF APPELLEE STATE OF OHIO

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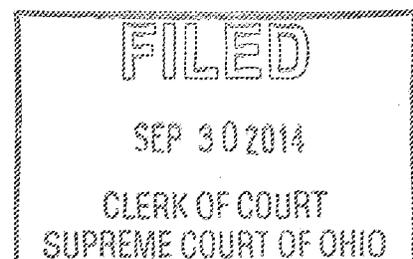


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STATEMENT OF THE CASE

On May 3, 2012, Travis Blankenship waived Indictment and pleaded guilty to a Bill of Information to one count of unlawful sexual conduct with a minor in violation of R.C. 2907.04(A), a fourth degree felony. *State v. Blankenship*, 2d. Dist. Clark No. 2012-CA-74, 2014-Ohio-232, ¶ 2. The trial court ordered a pre-sentence investigation report and scheduled disposition for August 20, 2012. *Transcript of Disposition*, September 28, 2012, at 1. On that date, the trial court ordered disposition to be reassigned to September 28, 2012 because Blankenship had made contact with the victim after entering his plea. *Id.*

On September 28, 2012, the trial court sentenced Blankenship to five years of community control and classified him as a Tier II Sex Offender pursuant to R.C. 2950.01(F)(1)(b). *Id.* at 8; 11. The court further ordered Blankenship to pay a \$2,500 fine and to serve six months in the Clark County Jail. *Id.* at 9; 10. However, Blankenship did not serve six months in jail because the trial court granted his motion for early release and, as such, he served an aggregate of twelve days in the Clark County Jail. *Entry Ordering Early Release.*

Blankenship filed a timely Notice of Appeal on October 24, 2012. *Notice of Appeal.* On direct appeal, the Court of Appeals of Ohio, Second Appellate District, Clark County overruled Blankenship's single assignment of error, addressing the Eighth Amendment issue. *State v. Blankenship*, 2d. Dist. Clark No. 2012-CA-74, 2014-Ohio-232. The appellate court concluded that "[u]nlike the offender in *In re C.P.*, Blankenship was not a juvenile when he committed his sex offense. Because he does not fit within the category at issue in *In re C.P.*, the Ohio Supreme Court's Eighth Amendment analysis in that case has little, if any, applicability to him." *Id.* at ¶ 7.

Blankenship submitted a timely Notice of Appeal and Memorandum in Support of Jurisdiction to the Supreme Court of Ohio. On May 28, 2014, this Court accepted Blankenship's appeal. *Notice of Appeal; Memorandum in Support of Jurisdiction; Entry*, May 28, 2014.

STATEMENT OF FACTS

On October 11, 2011, Blankenship, who was twenty-one years old at the time, engaged in sexual conduct with M.H., who was fifteen years old at the time, when Blankenship knew that M.H. was fifteen years old. *Bill of Information*.

Blankenship and M.H. began communicating through a social media site called PhoneZoo.com. *Pre-Sentence Investigation Report*. Through that communication Blankenship told the victim that he was twenty-one years old, and the victim informed Blankenship that she was fifteen. *Id.* Blankenship and M.H. began a sexual relationship and had sexual intercourse on at least two different dates. *Id.* M.H. reported that it was consensual on every occasion and that the sexual intercourse had occurred in Clark County, Ohio. *Id.*

Prior to sentencing, Blankenship's attorney hired Dr. David Roush to evaluate Blankenship. *Transcript of Disposition* at 5. Blankenship's trial counsel explained at disposition:

"I chose Dr. Roush to do the evaluation on Travis because I believe him to be among the more conservative professionals who provide treatment to sex offenders, and I was pretty confident that we would end up with the kind of report that we got. And when I talked to Dr. Roush, I told him what I wanted; and he said, 'Well, if I'm gonna go out on a limb like that or come up with something like that, I want to spend a lot of time with this young man and I want to be very sure before I go forward.' And what I told him was I planned to appeal any sex offender registration requirement that was imposed by the Court."

Transcript of Disposition at 5.

Dr. Roush opined that Blankenship is not a "sexual offender and significant deliberation is recommended before labeling him as such." *Psychological Evaluation*, pg. 10. Dr. Roush opined that Blankenship "has no difficulty following or understanding concrete instructions, nor

any difficulties with more abstract concepts.” However, while the pre-sentence investigation was pending and he was under evaluation by Dr. Roush, Blankenship had contact with the victim in violation of the court’s order. Furthermore, Blankenship failed to disclose this violation to Dr. Roush. *Transcript of Disposition* at 8.

Once this information came to light, the trial court postponed sentencing. *Id.* at 3. The trial court ordered Dr. Roush to re-evaluate Blankenship to determine if any results from the original evaluation would be altered and, as such, Dr. Roush conducted a second evaluation on August 17, 2012. *Id.*; *Supplemental Report to Original Psychological Evaluation*.

Dr. Roush concluded that Blankenship’s contact with the victim did not alter the outcome of the original evaluation or the recommendations made in the original psychological evaluation. *Id.*

At disposition, the trial court stated that Blankenship had been convicted of a sexually-oriented offense and, as such, the court classified Blankenship as a Tier II sexual offender. *Transcript of Disposition*, September 28, 2012, at 11. The only reason the court had received a psychologist’s report in this matter was because Blankenship’s trial counsel planned to appeal any sex offender registration requirement. *Id.* at 5.

ARGUMENT

Appellee's Proposition of Law I: The R.C. Chapter 2950 Tier II registration requirements for those persons convicted of having unlawful sexual conduct with a minor when the offender is twenty-one years old and the victim is fifteen years old are not so extreme as to be grossly disproportionate to the crime or shocking to a reasonable person and to the community's sense of justice.

In his sole proposition of law, Blankenship contends requiring him to register as a Tier II sex offender constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution and Article I, Section 9 of the Ohio Constitution. In support, he relies on Dr. Roush's opinion that he is not a sex offender, is not likely to commit another sex offense, and does not require sexual offender therapy. *Psychological Evaluation*, pg. 10. Blankenship argues that his registration period serves no penological purpose in this case. *Blankenship* at ¶ 3.

First and foremost, Travis Blankenship is a sex offender. "Sex offender" is a legal classification under Ohio law. Pursuant to the Ohio Revised Code, a "sex offender" is a person who is convicted of or pleads guilty to committing a sexually oriented offense. R.C. 2950.01(B)(1).

Blankenship urges this Court to extend its holding of *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729. In that case, this Court recently held that R.C. 2152.86 violates the constitutional prohibition against cruel and unusual punishment contained in the Eighth Amendment to the United States Constitution and the Ohio Constitution, Article I, Section 9 to the extent that it imposes mandatory, lifetime sex offender registration requirements on juvenile offenders tried within the juvenile system. *Id.* at ¶ 58.

This Court should not extend *In re C.P.* to Blankenship's case. Blankenship's punishment does not constitute cruel and unusual punishment under the Eighth Amendment or the Ohio

Constitution, Article I, Section 9. This case is distinguishable from *In re C.P.* because Blankenship is not a juvenile nor is he required to register as a sex offender for the remainder of his life. This Court will find that there is no clear national consensus against adult sex offender registries. Lastly, this Court will determine in the exercise of its own independent judgment that the punishment in question does not violate the Constitution. Therefore, this Court's holding in *In re C.P.* has little, if any, applicability to Blankenship. *State v. Blankenship*, 2d. Dist. Clark No. 2012-CA-74, 2014-Ohio-232 at ¶ 7.

I. Cruel and Unusual Punishment Under the Eighth Amendment

The Eighth Amendment to the United States Constitution states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." That the Eighth Amendment prohibits torture is elemental. *Id.* at ¶ 25, quoting *Wilkinson v. Utah*, 99 U.S. 130, 136, 25 L.Ed. 345 (1878). But the bulk of Eighth Amendment jurisprudence concerns not whether a particular punishment is barbaric, but whether it is disproportionate to the crime. *In re C.P.* at ¶ 25. Central to the Constitution's prohibition against cruel and unusual punishment is the "precept of justice that punishment for crime should be graduated and proportioned to [the] offense." *In re C.P.* at ¶ 25, quoting *Weems v. United States*, 217 U.S. 349, 367, 30 S.Ct. 544, 54 L.Ed. 793 (1910). "Proportionality review falls within two general classifications: the first involves challenges to the length of term-of-years sentences given all the circumstances in a particular case.' The second, which until recently was applied only in capital cases, involves 'cases in which the Court implements the proportionality standard by certain categorical restrictions.'" *Id.* at ¶26, quoting *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 2021, 176 L.Ed.2d 825 (2010).

In determining whether a punishment is “cruel and unusual,” reviewing courts must give substantial deference to the “broad authority” that the legislature has to determine the “types and limits of punishments for crimes.” *State v. Weitbrecht*, 86 Ohio St.3d 268, 271, 1999 Ohio 113, 715 N.E.2d 167 (1999) at ¶373. Generally, punishments that fall within the terms of a valid statute are not cruel and unusual. *McDougle v. Maxwell*, 1 Ohio St.2d 68, 70, 203 N.E.2d 334 (1964). The question is whether, after deferring to the legislature's authority to define offenses and set the punishment for them, and after giving the legislature's determination the presumption of constitutionality to which it is entitled, the reviewing court can say that the penalty that the legislature has deemed appropriate is so disproportionate to the crime as to shock any reasonable person and the community's sense of justice. See also *State v. Hairston*, 118 Ohio St.3d 289, 2008-Ohio-2338, 888 N.E.2d 1073, ¶ 13-14 quoting *State v. Weitbrecht*, 86 Ohio St.3d 368, 373, 1999-Ohio-113, 715 N.E.2d 167; *Harmelin v. Michigan*, 501 U.S. 957, 997, 111 S.Ct. 2680 (1991) (reiterating the validity of the “gross disproportionality” standard and acknowledging that it can be met only in a very limited number of cases).

This Court's decision in *In re C.P.* involved the second classification—proportionality review based on categorical restrictions. This Court noted that this classification itself involved two subsets, one based on the nature of the offense and one based on the characteristics of the offender. *In re C.P.* at ¶ 27. *In re C.P.* dealt with the second subset, the characteristics of the offender. *Id.* Specifically, this Court considered the offender's status as a juvenile and whether *that particular characteristic* made the imposition of automatic, lifetime sex offender registration and notification requirements unconstitutionally disproportional. (emphasis added). *Id.* at ¶ 27-58. *In re C.P.* only addressed juvenile offenders.

The First District Court of Appeals is the only other Court of Appeals to address whether the Tier II registration requirement for a conviction of unlawful sexual conduct with a minor is cruel and unusual punishment. In *State v. Bradley*, 1st Dist. Hamilton Nos. C-090309, C-090310, 2011-Ohio-6266, the First District determined that the Tier II registration requirements associated with a conviction for unlawful sexual conduct with a minor, did not amount to cruel and unusual punishment because the punishment was not so extreme as to be grossly disproportionate to the crime, or shocking to a reasonable person and to the community's sense of justice. *Id.* at ¶ 13. In *Bradley*, the court concluded that "the legislature has determined that the way to protect the public from sexual offenders such as Bradley is to classify them as Tier II offenders and require them to register for 25 years and to verify their information every 180 days." *Id.* at ¶ 22.

The record reflected that Bradley met the victim over the internet when he was thirty and she was fourteen years old. *Id.* at ¶ 2. The victim testified that Bradley knew how old she was and that she was a freshman in high school. *Id.* Their relationship continued until June 21, 2010 when Bradley tried to put his penis into her vagina while in his a car at the Sharonville Recreation Center and she said, "No." *Id.* at ¶ 2-3. A short time later, the two left the Sharonville Recreation Center and the police stopped the car because it was owned by someone with a suspended driver's license. *Id.* at ¶ 4. Eventually, the truth came out and Bradley was charged with unlawful sexual conduct with a minor. *Id.* The Court of Appeals concluded that the requirement that Bradley register as a sexual offender for 25 years and verify his information every 180 days does not constitute one of those rare cases where punishment is so extreme as to be grossly disproportionate to the crime or that it is shocking to a reasonable person and to the

community's sense of justice. *Id.* at ¶ 13. See *State v. Hairston*, 118 Ohio St.3d 289, 2008 Ohio 2338, 888 N.E.2d 1073, ¶14.

Similar to *Bradley* and unlike *In re C.P.*, Blankenship was an adult when he committed his sex offense. Blankenship does not fit within the category at issue in *In re C.P.* and this Court's analysis has very little applicability. Blankenship fails to clearly identify any other group into which he does fit where a categorical rule might be established prohibiting Tier II sex offender registration as cruel and unusual punishment. At best, Blankenship argues that where young adult offenders who present a relatively low risk of recidivism and who did not use drugs or alcohol to facilitate their sex offense, the Court should impose a categorical prohibition of Tier II sex offender registration. *Blankenship* at ¶ 3. However, to do so would create a slippery slope.

As this Court noted in *In re C.P.*, when considering Eighth Amendment challenges on the basis of cruel and unusual punishment, courts engage "in a two-step process in adopting categorical rules in regard to punishment: first, the court considers whether there is a national consensus against the sentencing practice at issue, and second, the court determines 'in the exercise of its own independent judgment whether the punishment in question violates the Constitution.'" *In re C.P.* at ¶ 29, quoting *Graham v. Florida*, 560 U.S.48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010).

a) National Consensus

On appeal, Blankenship concedes the lack of national consensus. *Appellant's Brief* at 8. In fact, he admits that all states have some form of sex offender registration requirements. *Id.* However, he attempts to paint a picture where society is not in favor of sex offender registration requirements because only seventeen states have substantially implemented SORNA's requirements. See Department of Justice's Office of Sex Offender Sentencing, Monitoring,

Apprehending, Registering, and Tracking, *Jurisdictions that have substantially implemented SORNA*, http://www.smart.gov/newsroom_jurisdictions_sorna.htm (accessed September 15, 2014). However, ninety jurisdictions (seventeen states, three territories, and seventy tribes) have substantially implemented SORNA's requirements. *Id.* And in fact, many states that have not substantially complied with SORNA, such as California, have their own sex offender systems in place to protect their citizens. *Summary of California Law on Sex Offenders*, <http://www.meganslaw.ca.gov/registration/law.aspx?lang=ENGLISH> (accessed September 15, 2014). In fact, the national consensus is largely in support of sex offender registries as indicated in a Gallup poll, which determined that 94% of Americans are in favor of laws requiring registration for people convicted of child molestation. *Sex Offender Registries Are Underutilized by the Public*, http://www.gallup.com/poll/16705/Sex_offender_Registries-Underutilized-Public.aspx (accessed September 17, 2014).

The State agrees that other states addressing Eighth Amendment challenges to mandatory sex offender classification for adults have rested on findings that the registration schemes were civil in nature and not punitive. *See, e.g., Buck v. Commonwealth*, 308 S.W.3d 661, 2010 Ky. LEXIS 95 (April 22, 2010) (Holding the amendments to Sex Offender Registration Act (SORA), Ky. Rev. Stat. Ann. § 17.510 (2006), had not changed the character of the statute to the point of rendering Kentucky's sex offender registration scheme punitive because SORA was a remedial measure with a rational connection to the nonpunitive goal of protection of public safety. There was nothing in the SORA amendments that was drastic enough to render it punitive).

This Court, however, has established that the enhanced sex offender reporting and notification requirements enacted by Am.Sub.S.B. No. 10 ("S.B. 10") are punitive in nature. *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, at ¶ 16. "No one

change compels [this Court's] conclusion that S.B. 10 is punitive. It is a matter of degree whether a statute is so punitive that its retroactive application is unconstitutional." *Id.* at ¶ 21. Rather than a national consensus against sex offender registries, the contrary appears to be true: the "national consensus" is in favor of sex offender registries. As the appellate court noted, this fact strongly militates against his Eighth Amendment challenge. *State v. Blankenship*, 2d Dist. No. 2012-CA-74, 2014-Ohio-232, ¶ 10.

b) Independent Review

After this Court determines the national consensus of the sentencing practice, the next step is an independent review. Under the independent review analysis, there are three considerations: (1) the culpability of the offender at issue in light of his crime and characteristics; (2) the severity of the punishment in question; (3) and the penological justification. *Graham* 560 U.S. at ¶ 67-68, 130 S.Ct. 2011.

Culpability of the Offender

The first consideration in the independent review analysis is assessing the culpability of the offender. As a matter of law, Blankenship's conviction for a sexually oriented offense makes him a sex offender. *See* R.C. 2950.01(B)(1). As this Court stated to in *In re C.P.*, "Ohio has developed a system for juveniles that assumes that children are not as culpable for their acts as adults." *In re C.P.* at ¶ 39. In *Graham*, the United States Supreme Court stated:

Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of "irretrievably depraved character" than are the actions of adults. *Roper*, 543 U.S., at 570, 125 S.Ct. 1183, 161 L.Ed.2d 1. It remains true that "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. *Ibid.*

Graham at 2026-2027. Blankenship is an adult and as such, *Roper*, *In re C.P.* and *Graham* do not apply to him.

Blankenship met M.H. over the internet and he knew the victim's age before twice having sex with her. *Pre-Sentence Investigation Report*. While the criminal case against him was pending, he violated a court order by having contact with M.H. He then lied and denied having the contact. *Transcript of Disposition* at 3. Blankenship explained to the psychologist that he continued to have contact with M.H. out of concern and fear regarding her father. *Supplemental Report to Original Psychological Evaluation* at 2. While Blankenship may argue that he had a loving and caring relationship with his victim, his behavior is also typical of grooming behavior by sexual predators. Blankenship twice offended the victim and blatantly violated a court order not to be in contact with the victim. These facts demonstrate a higher degree of culpability.

Severity of the Punishment

The second consideration in the independent review analysis is to assess the severity of the punishment. Blankenship faced a maximum prison sentence of up to eighteen months in the Ohio State Penitentiary. However, the trial court imposed a six-month jail sentence, court costs and fines. The court granted judicial release after Blankenship had served twelve days of that six-month sentence. Blankenship was then placed on five years of community control. *Transcript of Disposition* at 9-10; *Entry Ordering Early Release*. An important consideration in addressing severity of the punishment is the nature of the offenses to which the penalty may apply. *In re C.P.* at 42. The nature of this particular offense is that Blankenship engaged in a sexual relationship with a young and therefore impressionable girl. Blankenship knew of her young age and engaged in this sexual relationship despite her age. If M.H. had been three years younger, Blankenship's punishment would have been mandatory life in prison with possibility of parole after ten years.

This Court in *In re C.P.* opined that the registration and notification requirements for life or even twenty-five years are different for a juvenile compared to such a penalty for adults. *In re C.P.* at 45. Once again, Blankenship is not a juvenile. He is an adult. Society has drawn a line between juveniles and adults. If M.H. had been less than thirteen years of age, Blankenship would have committed rape and would be serving life in prison with a possibility of parole as well as having to register for life as a sex offender if he were released from the penitentiary. *See* R.C. 2971.03(B)(2); R.C. 2950.01(G)(1)(a). *See State v. Johnson*, 8th Dist. No. 93004, 2010-Ohio-2214 (Holding that the Ohio General Assembly has considered the severity of the crime when determining the appropriate sentencing range for a conviction under the child rape provision in R.C. 2907.02(A)(1)(b). Therefore, the imposition of life in prison with the possibility of parole after ten years for the act of digitally penetrating an 11-year-old did not constitute cruel and unusual punishment).

Blankenship's overall punishment including registering as a Tier II sex offender is not so severe as to violate the Eighth Amendment to the United States Constitution.

Penological Justification

The third and final consideration in the independent review analysis is to assess the penological justification. *Graham*, 560 U.S. at 67, 130 S.Ct. 2011. The stated purpose of S.B. 10 and its registration and community notification requirements is to "protect the safety and general welfare of the people of this state." R.C. 2950.02(B). The General Assembly has determined that "to protect the safety and general welfare of the people of this state," notice and dissemination of sex offender registries "will further the governmental interest of public safety and public scrutiny of the criminal, juvenile, and mental health systems as long as the information released is rationally related to the furtherance of those goals." R.C. 2950.02(B).

Because this Court held that S.B. 10 was punitive in nature in *State v. Williams*, the purposes and principles of felony sentencing are relevant to the consideration of penological justification. R.C. 2929.11(A) establishes the purposes and principles of felony sentencing for adults:

A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

Requiring Blankenship to register as a Tier II sex offender fulfills the goals of R.C. 2929.11 and S.B. 10 to protect the public from future crime by the offender. His requirement of registering as a sex offender is justified as retribution and deterrence.

After assessing all considerations under the independent review analysis, Blankenship's requirement to register as a Tier II sex offender is not cruel and unusual punishment. His culpability is not diminished in terms of the goals and purposes of sex offender classification requirements as explicated in S.B. 10. The punishment the trial court imposed on Blankenship was not so severe as to violate the Eighth Amendment. Lastly, Blankenship's registration requirement is justified as retribution and deterrence. As such, requiring Blankenship to be classified as a Tier II sex offender and to fulfill the requirements of said registration does not violate the Eighth Amendment's prohibition against cruel and unusual punishment.

II. Cruel and Unusual Punishment Under Ohio Law

Blankenship also argues under Ohio law that R.C. 2950's requirement that he be classified and required to register as a sex offender for twenty-five years is shocking to any

reasonable person. The Ohio Constitution, Article I, Section 9, contains its own prohibition against cruel and unusual punishment. It provides unique protection for Ohioans:

The Ohio Constitution is a document of independent force. In the areas of individual rights and civil liberties, the United States Constitution, where applicable to the states, provides a floor below which state court decisions may not fall. As long as state courts provide at least as much protection as the United States Supreme Court has provided in its interpretation of the federal Bill of Rights, state courts are unrestricted in according greater civil liberties and protections to individuals and groups.

Arnold v. Cleveland, 67 Ohio St.3d 35, 616 N.E.2d 163 (1993), paragraph one of the syllabus.

"A punishment does not violate the constitutional prohibition against cruel and unusual punishments, if it be not so greatly disproportionate to the offense as to shock the sense of justice of the community." *State v. Chaffin* 30 Ohio St.2d 13, 282 N.E.2d 46, paragraph three of the syllabus (1972). This Court has recognized that cases involving cruel and unusual punishments are rare, "limited to those involving sanction which under the circumstances would be considered shocking to any reasonable person." *In re C.P.* at ¶ 60, quoting *McDougle v. Maxwell*, 1 Ohio St.2d 68, 70, 203 N.E.2d 334 (1964). Lack of proportionality is a key factor. *In re C.P.* at ¶ 60.

Requiring Blankenship to verify his information every six months for twenty-five years is not so greatly disproportionate to Blankenship's crime. Furthermore, requiring Blankenship to register as a sex offender is not shocking to any reasonable person in this state. Blankenship engaged in sexual intercourse with a young and impressionable fifteen-year-old girl when he was an adult. This is a clear violation of the law and any reasonable Ohioan would not be shocked by his Tier II registration requirements. As previously stated, 94% of Americans are in favor of laws requiring registration for people convicted of sex crimes against children. *See Sex Offender Registries Are Underutilized by the Public*, http://www.gallup.com/poll/16705/Sex_offender_Registries-Underutilized-Public.aspx (accessed September 17, 2014).

Blankenship's friends, family members, and past employers provided letters to the court. *Pre-Sentence Investigation*. Blankenship argues that these letters demonstrate that society believes his classification as a sex offender is shocking. *Appellant's Brief* at 6. Perhaps those closest to Blankenship were shocked by having a loved one receive such a sanction. But to any reasonable Ohioan and especially the family of M.H and all victims and families who have been affected by sexual offenders in this state, registration is by no means shocking. Rather it is a consolation and comfort to the families and victims of sexual offenses. Because this mandatory classification and registration requirement does not "shock the sense of justice of the community" it therefore does not violate Ohio's prohibition against cruel and unusual punishment.

CONCLUSION

Blankenship committed a sex offense against a minor while Blankenship was an adult. Thus, Blankenship is a sex offender under Ohio law. It is not cruel and unusual punishment to classify him as a sex offender and require him to register for twenty-five years because there is a lack of national consensus against adult sex offender registries and this Court will determine in the exercise of its own independent judgment that the punishment in question does not violate the Constitution. Lastly, Blankenship's punishment is not shocking to any reasonable person and to the community's sense of justice. Consequently, this Court should affirm Blankenship's classification as a Tier II sex offender.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Answer Brief of Appellee, State of Ohio, was served by regular U.S. Mail upon Katherine R. Ross-Kinzie, Assistant State Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215, this 30th day of September, 2014.



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STATE OF OHIO

KRS § 17.510

Current through the 2014 Regular Session Annotations current through June 1, 2014

Michie's Kentucky Revised Statutes Annotated > TITLE III Executive Branch > CHAPTER 17
Public Safety > Sex Offender Registration

17.510. Registration system for adults who have committed sex crimes or crimes against minors -- Persons required to register -- Manner of registration -- Penalties -- Notifications of violations required.

- (1) The cabinet shall develop and implement a registration system for registrants which includes creating a new computerized information file to be accessed through the Law Information Network of Kentucky.
- (2) A registrant shall, on or before the date of his or her release by the court, the parole board, the cabinet, or any detention facility, register with the appropriate local probation and parole office in the county in which he or she intends to reside. The person in charge of the release shall facilitate the registration process.
- (3) Any person required to register pursuant to subsection (2) of this section shall be informed of the duty to register by the court at the time of sentencing if the court grants probation or conditional discharge or does not impose a penalty of incarceration, or if incarcerated, by the official in charge of the place of confinement upon release. The court and the official shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register has been explained to the person. The court and the official in charge of the place of confinement shall require the releasee to complete the acknowledgment form and the court or the official shall retain the original completed form. The official shall then send the form to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601.
- (4) The court or the official shall order the person to register with the appropriate local probation and parole office which shall obtain the person's fingerprints, DNA sample, and photograph. Thereafter, the registrant shall return to the appropriate local probation and parole office not less than one (1) time every two (2) years in order for a new photograph to be obtained, and the registrant shall pay the cost of updating the photo for registration purposes. Any registrant who has not provided a DNA sample as of July 1, 2009, shall provide a DNA sample to the appropriate local probation and parole office when the registrant appears for a new photograph to be obtained. Failure to comply with this requirement shall be punished as set forth in subsection (11) of this section.
- (5)
 - (a) The appropriate probation and parole office shall send the registration form containing the registrant information, fingerprint card, and photograph, and any special conditions imposed by the court or the Parole Board, to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601. The appropriate probation and parole office shall send the DNA sample to the Department of Kentucky State Police forensic laboratory in accordance with administrative regulations promulgated by the cabinet.
 - (b) The Information Services Center, upon request by a state or local law enforcement

agency, shall make available to that agency registrant information, including a person's fingerprints and photograph, where available, as well as any special conditions imposed by the court or the Parole Board.

- (c) Any employee of the Justice and Public Safety Cabinet who disseminates, or does not disseminate, registrant information in good faith compliance with the requirements of this subsection shall be immune from criminal and civil liability for the dissemination or lack thereof.
- (6) Any person who has been convicted in a court of any state or territory, a court of the United States, or a similar conviction from a court of competent jurisdiction in any other country, or a court martial of the United States Armed Forces of a sex crime or criminal offense against a victim who is a minor and who has been notified of the duty to register by that state, territory, or court, or who has been committed as a sexually violent predator under the laws of another state, laws of a territory, or federal laws, or has a similar conviction from a court of competent jurisdiction in any other country, shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register with the appropriate local probation and parole office in the county of residence within five (5) working days of relocation. No additional notice of the duty to register shall be required of any official charged with a duty of enforcing the laws of this Commonwealth.
- (7) If a person is required to register under federal law or the laws of another state or territory, or if the person has been convicted of an offense under the laws of another state or territory that would require registration if committed in this Commonwealth, that person upon changing residence from the other state or territory of the United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register within five (5) working days with the appropriate local probation and parole office in the county of residence, employment, vocation, or schooling. A person required to register under federal law or the laws of another state or territory shall be presumed to know of the duty to register in the Commonwealth. As used in this subsection, "employment" or "carry on a vocation" includes employment that is full-time or part-time for a period exceeding fourteen (14) days or for an aggregate period of time exceeding thirty (30) days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. As used in this subsection, "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.
- (8) The registration form shall be a written statement signed by the person which shall include registrant information, including an up-to-date photograph of the registrant for public dissemination.
- (9) For purposes of KRS 17.500 to 17.580 and 17.991, a post office box number shall not be considered an address.
- (10)
 - (a) If the residence address of any registrant changes, but the registrant remains in the

same county, the person shall register, on or before the date of the change of address, with the appropriate local probation and parole office in the county in which he or she resides.

(b)

1. If the registrant changes his or her residence to a new county, the person shall notify his or her current local probation and parole office of the new residence address on or before the date of the change of address.
2. The registrant shall also register with the appropriate local probation and parole office in the county of his or her new residence no later than five (5) working days after the date of the change of address.

(c) If the electronic mail address or any instant messaging, chat, or other Internet communication name identities of any registrant changes, or if the registrant creates or uses any new Internet communication name identities, the registrant shall register the change or new identity, on or before the date of the change or use or creation of the new identity, with the appropriate local probation and parole office in the county in which he or she resides.

(d)

1. As soon as a probation and parole office learns of the person's new address under paragraph (b)1. of this subsection, that probation and parole office shall notify the appropriate local probation and parole office in the county of the new address of the effective date of the new address.
2. As soon as a probation and parole office learns of the person's new address under paragraph (b)2. of this subsection or learns of the registrant's new or changed electronic mail address or instant messaging, chat, or other Internet communication name identities under paragraph (c) of this subsection, that office shall forward this information as set forth under subsection (5) of this section.

(11) Any person required to register under this section who knowingly violates any of the provisions of this section or prior law is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.

(12) Any person required to register under this section or prior law who knowingly provides false, misleading, or incomplete information is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.

(13)

(a) The cabinet shall verify the addresses and the electronic mail address and any instant messaging, chat, or other Internet communication name identities of individuals required to register under this section. Verification shall occur at least once every ninety (90) days for a person required to register under KRS 17.520(2) and at least once every calendar year for a person required to register under KRS 17.520(3). If the cabinet determines that a person has moved or has created or changed any electronic mail address or any instant messaging, chat, or other Internet communication name identities used by the person without providing his or her new address, electronic mail address, or

instant messaging, chat, or other Internet communication name identity to the appropriate local probation and parole office or offices as required under subsection (10)(a), (b), and (c) of this section, the cabinet shall notify the appropriate local probation and parole office of the new address or electronic mail address or any instant messaging, chat, or other Internet communication name identities used by the person. The office shall then forward this information as set forth under subsection (5) of this section. The cabinet shall also notify the appropriate court, Parole Board, and appropriate Commonwealth's attorney, sheriff's office, probation and parole office, corrections agency, and law enforcement agency responsible for the investigation of the report of noncompliance.

- (b) An agency that receives notice of the noncompliance from the cabinet under paragraph (a) of this subsection:
1. Shall consider revocation of the parole, probation, postincarceration supervision, or conditional discharge of any person released under its authority; and
 2. Shall notify the appropriate county or Commonwealth's Attorney for prosecution.

History

(Repealed and reenact. Acts 2009, ch. 105, § 5, effective March 27, 2009; 2009, ch. 100, § 6, effective June 25, 2009; 2011, ch. 2, § 92, effective June 8, 2011.)

KENTUCKY REVISED STATUTES ANNOTATED

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ORC Ann. 2152.86

Current through Legislation passed by the 130th General Assembly and filed with the Secretary of State through File 140 (SB 143)

Page's Ohio Revised Code Annotated > TITLE 21. COURTS -- PROBATE -- JUVENILE
> CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS
> JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAW

§ 2152.86. Court's duty on or after January 1, 2008 to classify child as juvenile offender registrant, specify compliance with SORN law, and additionally classify child as public registry-qualified juvenile offender registrant; reclassification

- (A) (1) The court that, on or after January 1, 2008, adjudicates a child a delinquent child for committing an act shall issue as part of the dispositional order an order that classifies the child a juvenile offender registrant, specifies that the child has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code, and additionally classifies the child a public registry-qualified juvenile offender registrant if the child was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the act, the court imposed on the child a serious youthful offender dispositional sentence under section 2152.13 of the Revised Code, and the child is adjudicated a delinquent child for committing, attempting to commit, conspiring to commit, or complicity in committing any of the following acts:
- (a) A violation of section 2907.02 of the Revised Code, division (B) of section 2907.05 of the Revised Code, or section 2907.03 of the Revised Code if the victim of the violation was less than twelve years of age;
 - (b) A violation of section 2903.01, 2903.02, or 2905.01 of the Revised Code that was committed with a purpose to gratify the sexual needs or desires of the child;
 - (c) A violation of division (B) of section 2903.03 of the Revised Code.
- (2) Upon a child's release, on or after January 1, 2008, from the department of youth services, the court shall issue an order that classifies the child a juvenile offender registrant, specifies that the child has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code, and additionally classifies the child a public registry-qualified juvenile offender registrant if all of the following apply:
- (a) The child was adjudicated a delinquent child, and a juvenile court imposed on the child a serious youthful offender dispositional sentence under section 2152.13 of the Revised Code for committing one of the acts described in division (A)(1)(a) or (b) of this section or for committing on or after the effective date of this amendment a violation of division (B) of section 2903.03 of the Revised Code.
 - (b) The child was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the act.
 - (c) The court did not issue an order classifying the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to

division (A)(1) of this section.

- (3) If a court issued an order classifying a child a juvenile offender registrant pursuant to section 2152.82 or 2152.83 of the Revised Code prior to January 1, 2008, not later than February 1, 2008, the court shall issue a new order that reclassifies the child as a juvenile offender registrant, specifies that the child has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code, and additionally classifies the child a public registry-qualified juvenile offender registrant if all of the following apply:
 - (a) The sexually oriented offense that was the basis of the previous order that classified the child a juvenile offender registrant was an act described in division (A)(1)(a) or (b) of this section.
 - (b) The child was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the act.
 - (c) The court imposed on the child a serious youthful offender dispositional sentence under section 2152.13 of the Revised Code for the act described in division (A)(1)(a) or (b) of this section.

(B)

- (1) If an order is issued under division (A)(1), (2), or (3) of this section, the classification of tier III sex offender/child-victim offender automatically applies to the delinquent child based on the sexually oriented offense the child committed, subject to a possible reclassification pursuant to division (D) of this section for a child whose delinquent act was committed prior to January 1, 2008. If an order is issued under division (A)(2) of this section regarding a child whose delinquent act described in division (A)(1)(a) or (b) of this section was committed prior to January 1, 2008, or if an order is issued under division (A)(3) of this section regarding a delinquent child, the order shall inform the child and the child's parent, guardian, or custodian, that the child has a right to a hearing as described in division (D) of this section and inform the child and the child's parent, guardian, or custodian of the procedures for requesting the hearing and the period of time within which the request for the hearing must be made. Section 2152.831 of the Revised Code does not apply regarding an order issued under division (A)(1), (2), or (3) of this section.
- (2) The judge that issues an order under division (A)(1), (2), or (3) of this section shall provide to the delinquent child who is the subject of the order and to the delinquent child's parent, guardian, or custodian the notice required under divisions (A) and (B) of section 2950.03 of the Revised Code and shall provide as part of that notice a copy of the order required under division (A)(1), (2), or (3) of this section. The judge shall include the order in the delinquent child's dispositional order and shall specify in the dispositional order that the order issued under division (A)(1), (2), or (3) of this section was made pursuant to this section.
- (C) An order issued under division (A)(1), (2), or (3) of this section shall remain in effect for the period of time specified in section 2950.07 of the Revised Code as it exists on and after January 1, 2008, subject to a judicial termination of that period of time as provided in

section 2950.15 of the Revised Code, subject to a possible reclassification of the child pursuant to division (D) of this section if the child's delinquent act was committed prior to January 1, 2008. If an order is issued under division (A)(1), (2), or (3) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division. If an order is issued under division (A)(3) of this section, the duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code based upon that order shall be considered, for purposes of section 2950.07 of the Revised Code and for all other purposes, to be a continuation of the duty to comply with those sections imposed upon the child prior to January 1, 2008, under the order issued under section 2152.82, 2152.83, 2152.84, or 2152.85 and Chapter 2950. of the Revised Code.

- (D)** (1) If an order is issued under division (A)(2) of this section regarding a delinquent child whose delinquent act described in division (A)(1)(a) or (b) of this section was committed prior to January 1, 2008, or if an order is issued under division (A)(3) of this section regarding a delinquent child, except as otherwise provided in this division, the child may request as a matter of right a court hearing to contest the court's classification in the order of the child as a public registry-qualified juvenile offender registrant. To request the hearing, not later than the date that is sixty days after the delinquent child is provided with the copy of the order, the delinquent child shall file a petition with the juvenile court that issued the order.

If the delinquent child requests a hearing by timely filing a petition with the juvenile court, the delinquent child shall serve a copy of the petition on the prosecutor who handled the case in which the delinquent child was adjudicated a delinquent child for committing the sexually oriented offense or child-victim oriented offense that resulted in the delinquent child's registration duty under section 2950.04 or 2950.041 of the Revised Code. The prosecutor shall represent the interest of the state in the hearing. In any hearing under this division, 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 delinquent child and the delinquent child's parent, guardian, or custodian and to the prosecutor of the date, time, and place of the hearing.

If the delinquent child requests a hearing in accordance with this division, until the court issues its decision at or subsequent to the hearing, the delinquent child shall comply with Chapter 2950. of the Revised Code as it exists on and after January 1, 2008. If a 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 issue of whether the child should be classified a public registry-qualified juvenile offender registrant. Notwithstanding the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant, the court may terminate that classification if it determines by clear and convincing evidence that the classification is in error.

If the court decides to terminate the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant, the court shall issue an order that specifies that it has determined that the child is not a public registry-qualified juvenile offender registrant and

that it has terminated the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant. The court promptly shall serve a copy of the order upon the sheriff with whom the delinquent child most recently registered under section 2950.04 or 2950.041 of the Revised Code and upon the bureau of criminal identification and investigation. The delinquent child and the prosecutor have the right to appeal the decision of the court issued under this division.

If the 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 delinquent child of the delinquent child's right to a hearing under this division, and the delinquent child is bound by the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant.

- (2) An order issued under division (D)(1) of this section is independent of any order of a type described in division (F) of section 2950.031 of the Revised Code or division (E) of section 2950.032 of the Revised Code, and the court may issue an order under both division (D)(1) of this section and an order of a type described in division (F) of section 2950.031 of the Revised Code or division (E) of section 2950.032 of the Revised Code. A court that conducts a hearing under division (D)(1) of this section may consolidate that hearing with a hearing conducted for the same delinquent child under division (F) of section 2950.031 of the Revised Code or division (E) of section 2950.032 of the Revised Code.

History

152 v S 10, § 1, eff. 1-1-08; 2012 SB 160, § 1, eff. Mar. 22, 2013.

Page's Ohio Revised Code Annotated:

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ORC Ann. 2971.03

Current through Legislation passed by the 130th General Assembly and filed with the Secretary of State through File 140 (SB 143)

Page's Ohio Revised Code Annotated > TITLE 29. CRIMES -- PROCEDURE > CHAPTER 2971. SENTENCING OF SEXUALLY VIOLENT PREDATORS

§ 2971.03. Sentencing of sexually violent offender with predator specification

(A) Notwithstanding divisions (A) and (D) of section 2929.14, section 2929.02, 2929.03, 2929.06, 2929.13, or another section of the Revised Code, other than divisions (B) and (C) of section 2929.14 of the Revised Code, that authorizes or requires a specified prison term or a mandatory prison term for a person who is convicted of or pleads guilty to a felony or that specifies the manner and place of service of a prison term or term of imprisonment, the court shall impose a sentence upon a person who is convicted of or pleads guilty to a violent sex offense and who also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that offense, and upon a person who is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that offense, as follows:

- (1) If the offense for which the sentence is being imposed is aggravated murder and if the court does not impose upon the offender a sentence of death, it shall impose upon the offender a term of life imprisonment without parole. If the court sentences the offender to death and the sentence of death is vacated, overturned, or otherwise set aside, the court shall impose upon the offender a term of life imprisonment without parole.
- (2) If the offense for which the sentence is being imposed is murder; or if the offense is rape committed in violation of division (A)(1)(b) of section 2907.02 of the Revised Code when the offender purposely compelled the victim to submit by force or threat of force, when the victim was less than ten years of age, when the offender previously has been convicted of or pleaded guilty to either rape committed in violation of that division or a violation of an existing or former law of this state, another state, or the United States that is substantially similar to division (A)(1)(b) of section 2907.02 of the Revised Code, or when the offender during or immediately after the commission of the rape caused serious physical harm to the victim; or if the offense is an offense other than aggravated murder or murder for which a term of life imprisonment may be imposed, it shall impose upon the offender a term of life imprisonment without parole.
- (3) (a) Except as otherwise provided in division (A)(3)(b), (c), (d), or (e) or (A)(4) of this section, if the offense for which the sentence is being imposed is an offense other than aggravated murder, murder, or rape and other than an offense for which a term of life imprisonment may be imposed, it shall impose an indefinite prison term consisting of a minimum term fixed by the court from among the range of terms available as a definite term for the offense, but not less than two years, and a maximum term of life imprisonment.
(b) Except as otherwise provided in division (A)(4) of this section, if the offense for

which the sentence is being imposed is kidnapping that is a felony of the first degree, it shall impose an indefinite prison term as follows:

- (i) If the kidnapping is committed on or after January 1, 2008, and the victim of the offense is less than thirteen years of age, except as otherwise provided in this division, it shall impose an indefinite prison term consisting of a minimum term of fifteen years and a maximum term of life imprisonment. If the kidnapping is committed on or after January 1, 2008, the victim of the offense is less than thirteen years of age, and the offender released the victim in a safe place unharmed, it shall impose an indefinite prison term consisting of a minimum term of ten years and a maximum term of life imprisonment.
 - (ii) If the kidnapping is committed prior to January 1, 2008, or division (A)(3)(b)(i) of this section does not apply, it shall impose an indefinite term consisting of a minimum term fixed by the court that is not less than ten years and a maximum term of life imprisonment.
- (c) Except as otherwise provided in division (A)(4) of this section, if the offense for which the sentence is being imposed is kidnapping that is a felony of the second degree, it shall impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than eight years, and a maximum term of life imprisonment.
- (d) Except as otherwise provided in division (A)(4) of this section, if the offense for which the sentence is being imposed is rape for which a term of life imprisonment is not imposed under division (A)(2) of this section or division (B) of section 2907.02 of the Revised Code, it shall impose an indefinite prison term as follows:
- (i) If the rape is committed on or after January 2, 2007, in violation of division (A)(1)(b) of section 2907.02 of the Revised Code, it shall impose an indefinite prison term consisting of a minimum term of twenty-five years and a maximum term of life imprisonment.
 - (ii) If the rape is committed prior to January 2, 2007, or the rape is committed on or after January 2, 2007, other than in violation of division (A)(1)(b) of section 2907.02 of the Revised Code, it shall impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than ten years, and a maximum term of life imprisonment.
- (e) Except as otherwise provided in division (A)(4) of this section, if the offense for which sentence is being imposed is attempted rape, it shall impose an indefinite prison term as follows:
- (i) Except as otherwise provided in division (A)(3)(e)(ii), (iii), or (iv) of this section, it shall impose an indefinite prison term pursuant to division (A)(3)(a) of this section.
 - (ii) If the attempted rape for which sentence is being imposed was committed on or after January 2, 2007, and if the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1418 of the Revised Code,

it shall impose an indefinite prison term consisting of a minimum term of five years and a maximum term of twenty-five years.

(iii) If the attempted rape for which sentence is being imposed was committed on or after January 2, 2007, and if the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1419 of the Revised Code, it shall impose an indefinite prison term consisting of a minimum term of ten years and a maximum of life imprisonment.

(iv) If the attempted rape for which sentence is being imposed was committed on or after January 2, 2007, and if the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1420 of the Revised Code, it shall impose an indefinite prison term consisting of a minimum term of fifteen years and a maximum of life imprisonment.

(4) For any offense for which the sentence is being imposed, if the offender previously has been convicted of or pleaded guilty to a violent sex offense and also to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that offense, or previously has been convicted of or pleaded guilty to a designated homicide, assault, or kidnapping offense and also to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that offense, it shall impose upon the offender a term of life imprisonment without parole.

(B) (1) Notwithstanding section 2929.13, division (A) or (D) of section 2929.14, or another section of the Revised Code other than division (B) of section 2907.02 or divisions (B) and (C) of section 2929.14 of the Revised Code that authorizes or requires a specified prison term or a mandatory prison term for a person who is convicted of or pleads guilty to a felony or that specifies the manner and place of service of a prison term or term of imprisonment, if a person is convicted of or pleads guilty to a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after January 2, 2007, if division (A) of this section does not apply regarding the person, and if the court does not impose a sentence of life without parole when authorized pursuant to division (B) of section 2907.02 of the Revised Code, the court shall impose upon the person an indefinite prison term consisting of one of the following:

(a) Except as otherwise required in division (B)(1)(b) or (c) of this section, a minimum term of ten years and a maximum term of life imprisonment.

(b) If the victim was less than ten years of age, a minimum term of fifteen years and a maximum of life imprisonment.

(c) If the offender purposely compels the victim to submit by force or threat of force, or if the offender previously has been convicted of or pleaded guilty to violating division (A)(1)(b) of section 2907.02 of the Revised Code or to violating an existing or former law of this state, another state, or the United States that is substantially similar to division (A)(1)(b) of that section, or if the offender during or immediately after the commission of the offense caused serious physical harm to the victim, a minimum term of twenty-five years and a maximum of life imprisonment.

- (2) Notwithstanding section 2929.13, division (A) or (D) of section 2929.14, or another section of the Revised Code other than divisions (B) and (C) of section 2929.14 of the Revised Code that authorizes or requires a specified prison term or a mandatory prison term for a person who is convicted of or pleads guilty to a felony or that specifies the manner and place of service of a prison term or term of imprisonment and except as otherwise provided in division (B) of section 2907.02 of the Revised Code, if a person is convicted of or pleads guilty to attempted rape committed on or after January 2, 2007, and if division (A) of this section does not apply regarding the person, the court shall impose upon the person an indefinite prison term consisting of one of the following:
- (a) If the person also is convicted of or pleads guilty to a specification of the type described in section 2941.1418 of the Revised Code, the court shall impose upon the person an indefinite prison term consisting of a minimum term of five years and a maximum term of twenty-five years.
 - (b) If the person also is convicted of or pleads guilty to a specification of the type described in section 2941.1419 of the Revised Code, the court shall impose upon the person an indefinite prison term consisting of a minimum term of ten years and a maximum term of life imprisonment.
 - (c) If the person also is convicted of or pleads guilty to a specification of the type described in section 2941.1420 of the Revised Code, the court shall impose upon the person an indefinite prison term consisting of a minimum term of fifteen years and a maximum term of life imprisonment.
- (3) Notwithstanding section 2929.13, division (A) or (D) of section 2929.14, or another section of the Revised Code other than divisions (B) and (C) of section 2929.14 of the Revised Code that authorizes or requires a specified prison term or a mandatory prison term for a person who is convicted of or pleads guilty to a felony or that specifies the manner and place of service of a prison term or term of imprisonment, if a person is convicted of or pleads guilty to an offense described in division (B)(3)(a), (b), (c), or (d) of this section committed on or after January 1, 2008, if the person also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging that offense, and if division (A) of this section does not apply regarding the person, the court shall impose upon the person an indefinite prison term consisting of one of the following:
- (a) An indefinite prison term consisting of a minimum of ten years and a maximum term of life imprisonment if the offense for which the sentence is being imposed is kidnapping, the victim of the offense is less than thirteen years of age, and the offender released the victim in a safe place unharmed;
 - (b) An indefinite prison term consisting of a minimum of fifteen years and a maximum term of life imprisonment if the offense for which the sentence is being imposed is kidnapping when the victim of the offense is less than thirteen years of age and division (B)(3)(a) of this section does not apply;
 - (c) An indefinite term consisting of a minimum of thirty years and a maximum term

of life imprisonment if the offense for which the sentence is being imposed is aggravated murder, when the victim of the offense is less than thirteen years of age, a sentence of death or life imprisonment without parole is not imposed for the offense, and division (A)(2)(b)(ii) of section 2929.022, division (A)(1)(e), (C)(1)(a)(v), (C)(2)(a)(ii), (D)(2)(b), (D)(3)(a)(iv), or (E)(1)(d) of section 2929.03, or division (A) or (B) of section 2929.06 of the Revised Code requires that the sentence for the offense be imposed pursuant to this division;

- (d) An indefinite prison term consisting of a minimum of thirty years and a maximum term of life imprisonment if the offense for which the sentence is being imposed is murder when the victim of the offense is less than thirteen years of age.

(C)

- (1) If the offender is sentenced to a prison term pursuant to division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of this section, the parole board shall have control over the offender's service of the term during the entire term unless the parole board terminates its control in accordance with section 2971.04 of the Revised Code.
- (2) Except as provided in division (C)(3) of this section, an offender sentenced to a prison term or term of life imprisonment without parole pursuant to division (A) of this section shall serve the entire prison term or term of life imprisonment in a state correctional institution. The offender is not eligible for judicial release under section 2929.20 of the Revised Code.
- (3) For a prison term imposed pursuant to division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of this section, the court, in accordance with section 2971.05 of the Revised Code, may terminate the prison term or modify the requirement that the offender serve the entire term in a state correctional institution if all of the following apply:
 - (a) The offender has served at least the minimum term imposed as part of that prison term.
 - (b) The parole board, pursuant to section 2971.04 of the Revised Code, has terminated its control over the offender's service of that prison term.
 - (c) The court has held a hearing and found, by clear and convincing evidence, one of the following:
 - (i) In the case of termination of the prison term, that the offender is unlikely to commit a sexually violent offense in the future;
 - (ii) In the case of modification of the requirement, that the offender does not represent a substantial risk of physical harm to others.
- (4) An offender who has been sentenced to a term of life imprisonment without parole pursuant to division (A)(1), (2), or (4) of this section shall not be released from the term of life imprisonment or be permitted to serve a portion of it in a place other than a state correctional institution.

- (D) If a court sentences an offender to a prison term or term of life imprisonment without parole pursuant to division (A) of this section and the court also imposes on the offender one or more additional prison terms pursuant to division (B) of section 2929.14 of the Revised Code, all of the additional prison terms shall be served consecutively with, and prior to, the prison term or term of life imprisonment without parole imposed upon the offender pursuant to division (A) of this section.
- (E) If the offender is convicted of or pleads guilty to two or more offenses for which a prison term or term of life imprisonment without parole is required to be imposed pursuant to division (A) of this section, divisions (A) to (D) of this section shall be applied for each offense. All minimum terms imposed upon the offender pursuant to division (A)(3) or (B) of this section for those offenses shall be aggregated and served consecutively, as if they were a single minimum term imposed under that division.
- (F)
- (1) If an offender is convicted of or pleads guilty to a violent sex offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that offense, or is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that offense, the conviction of or plea of guilty to the offense and the sexually violent predator specification automatically classifies the offender as a tier III sex offender/child-victim offender for purposes of Chapter 2950. of the Revised Code.
- (2) If an offender is convicted of or pleads guilty to committing on or after January 2, 2007, a violation of division (A)(1)(b) of section 2907.02 of the Revised Code and either the offender is sentenced under section 2971.03 of the Revised Code or a sentence of life without parole is imposed under division (B) of section 2907.02 of the Revised Code, the conviction of or plea of guilty to the offense automatically classifies the offender as a tier III sex offender/child-victim offender for purposes of Chapter 2950. of the Revised Code.
- (3) If a person is convicted of or pleads guilty to committing on or after January 2, 2007, attempted rape and also is convicted of or pleads guilty to a specification of the type described in section 2941.1418, 2941.1419, or 2941.1420 of the Revised Code, the conviction of or plea of guilty to the offense and the specification automatically classify the offender as a tier III sex offender/child-victim offender for purposes of Chapter 2950. of the Revised Code.
- (4) If a person is convicted of or pleads guilty to one of the offenses described in division (B)(3)(a), (b), (c), or (d) of this section and a sexual motivation specification related to the offense and the victim of the offense is less than thirteen years of age, the conviction of or plea of guilty to the offense automatically classifies the offender as a tier III sex offender/child-victim offender for purposes of Chapter 2950. of the Revised Code.

History

146 v H 180. Eff 1-1-97; 150 v H 473, § 1, eff. 4-29-05; 151 v S 260, § 1, eff. 1-2-07; 152 v S 10, § 1, eff. 1-1-08; 2011 HB 86, § 1, eff. Sept. 30, 2011.

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ORC Ann. 2907.02

Current through Legislation passed by the 130th General Assembly and filed with the Secretary of State through File 140 (SB 143)

Page's Ohio Revised Code Annotated > TITLE 29. CRIMES -- PROCEDURE > CHAPTER 2907. SEX OFFENSES > SEXUAL ASSAULTS

§ 2907.02. Rape

- (A) (1) No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies:
- (a) For the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.
 - (b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person.
 - (c) The other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.
- (2) No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.
- (B) Whoever violates this section is guilty of rape, a felony of the first degree. If the offender under division (A)(1)(a) of this section substantially impairs the other person's judgment or control by administering any controlled substance described in section 3719.41 of the Revised Code to the other person surreptitiously or by force, threat of force, or deception, the prison term imposed upon the offender shall be one of the prison terms prescribed for a felony of the first degree in section 2929.14 of the Revised Code that is not less than five years. Except as otherwise provided in this division, notwithstanding sections 2929.11 to 2929.14 of the Revised Code, an offender under division (A)(1)(b) of this section shall be sentenced to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code. If an offender is convicted of or pleads guilty to a violation of division (A)(1)(b) of this section, if the offender was less than sixteen years of age at the time the offender committed the violation of that division, and if the offender during or immediately after the commission of the offense did not cause serious physical harm to the victim, the victim was ten years of age or older at the time of the commission of the violation, and the offender has not previously been convicted of or pleaded guilty to a violation of this section or a substantially similar existing or former law of this state, another state, or the United States, the court shall not sentence the offender to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code, and instead the court shall sentence the offender as otherwise provided in this division. If an offender under division (A)(1)(b) of this section previously has been convicted of or pleaded guilty to violating division (A)(1)(b) of this section or to violating an existing or former law of this state,

another state, or the United States that is substantially similar to division (A)(1)(b) of this section, if the offender during or immediately after the commission of the offense caused serious physical harm to the victim, or if the victim under division (A)(1)(b) of this section is less than ten years of age, in lieu of sentencing the offender to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code, the court may impose upon the offender a term of life without parole. If the court imposes a term of life without parole pursuant to this division, division (F) of section 2971.03 of the Revised Code applies, and the offender automatically is classified a tier III sex offender/child-victim offender, as described in that division.

- (C) A victim need not prove physical resistance to the offender in prosecutions under this section.
- (D) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under section 2945.59 of the Revised Code, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

- (E) Prior to taking testimony or receiving evidence of any sexual activity of the victim or the defendant in a proceeding under this section, the court shall resolve the admissibility of the proposed evidence in a hearing in chambers, which shall be held at or before preliminary hearing and not less than three days before trial, or for good cause shown during the trial.
- (F) Upon approval by the court, the victim may be represented by counsel in any hearing in chambers or other proceeding to resolve the admissibility of evidence. If the victim is indigent or otherwise is unable to obtain the services of counsel, the court, upon request, may appoint counsel to represent the victim without cost to the victim.
- (G) It is not a defense to a charge under division (A)(2) of this section that the offender and the victim were married or were cohabiting at the time of the commission of the offense.

History

134 v H 511 (Eff 1-1-74); 136 v S 144 (Eff 8-27-75); 139 v S 199 (Eff 7-1-83); 141 v H 475 (Eff 3-7-86); 145 v S 31 (Eff 9-27-93); 146 v S 2 (Eff 7-1-96); 147 v H 32 (Eff 3-10-98); 149 v H 485. Eff 6-13-2002; 151 v S 260, § 1, eff. 1-2-07; 152 v S 10, § 1, eff. 1-1-08.

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