

IN THE SUPREME COURT OF OHIO

IN RE AARON K. VON:	)	
	)	CASE NO. 2015-0619
	)	
	)	On Appeal from the
	)	Trumbull County Court
	)	of Appeals, Eleventh
	)	Appellate District No. 2013-T-0085
	)	
	)	Trumbull County Common Pleas
	)	Court Case No. 2012-CV-2284

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 MERIT BRIEF OF APPELLANT, THE STATE OF OHIO  
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TABLE OF CONTENTS

	PAGE(S)
TABLE OF AUTHORITIES.....	iii
STATEMENT OF FACTS.....	1
ARGUMENT.....	4
<b><u>STATE’S PROPOSITION OF LAW NO. I:</u></b> .....	4
<b>The registration termination procedure delineated in R.C. 2950.15 may not be retroactively applied to sex offenders who commit their crimes before January 1, 2008 and who were convicted and sentenced before that date.</b>	
<b><u>STATE’S PROPOSITION OF LAW NO. II:</u></b> .....	14
<b>A statute which has not been found unconstitutional is not subject to the judicial remedy of severance.</b>	
CONCLUSION.....	15
PROOF OF SERVICE.....	16
APPENDIX	
Notice of Appeal to the Ohio Supreme Court (April 17, 2015).....	App. 1
Opinion of the Eleventh District Court of Appeals (March 16, 2015).....	App. 4
Judgment Entry of the Eleventh District Court of Appeals (March 16, 2015).....	App. 22
Judgment Entry of the Trumbull County Court of Common Pleas(July 15, 2013)..	App. 23
Order of the Trumbull County Court of Common Pleas (Nov. 15, 2012).....	App. 25
<u>STATUTES</u>	
Colorado Revised Statute Sec. 16-22-113.....	App. 26
R.C. 1.50.....	App. 35
R.C. 2950.15.....	App. 30
R.C. 2950.09.....	App. 34

## TABLE OF AUTHORITIES

### CASES

### PAGES

<i>Geiger v. Geiger</i> , 117 Ohio St. 451 (1927).....	14
<i>In Re Von</i> , 11 <sup>th</sup> Dist. No. 2013-T-0085, 2015-Ohio-943, 2015 WL 1138343 .....	4, 5, 6, 9, 10, 12, 14
<i>Logue v. Leis</i> , 169 Ohio App.3d 356, 2006-Ohio-5597, 862 N.E.2d 900, (1 <sup>st</sup> Dist. 2006), jurisdiction declined 113 Ohio St. 3d 1441.....	12
<i>State ex rel. Lemmon v. Ohio Adult Parole Authority</i> , 78 Ohio St. 3d 186, 1997-Ohio-223, 677 N.E. 2d 347.....	6, 7, 8
<i>State v. Bodyke</i> , 126 Ohio St. 3d 266, 2010-Ohio-2424, 933 N.E. 2d 753.....	8, 9, 11, 13
<i>State v. Brunning</i> , 134 Ohio St.3d 438, 2012-Ohio-5752, 983 N.E.2d 316.....	9, 12
<i>State v. Consilio</i> , 114 Ohio St.3d 295, 2007-Ohio-4163, 871 N.E.2d 1167.....	7
<i>State v. Foster</i> , 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.....	14
<i>State v. Porterfield</i> , 106 Ohio St.3d 5, 2005-Ohio-3095, 829 N.E.2d 690.....	10
<i>State v. Williams</i> , 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E. 2d 1108.....	4, 5, 6, 9, 10, 13

### STATUTES

Colorado Revised Statute Sec. 16-22-113.....	12
R.C. 1.50.....	14
R.C. 2950.09(A).....	12
R.C. 2950.15.....	4, 5, 6, 7, 10, 15
R.C. 2950.15(A).....	4, 5, 10, 11
R.C. 2950.15 (C)(1).....	12

## STATEMENT OF FACTS

This case began in the Trumbull County Court of Common Pleas when Appellee Aaron Von (“Von”), a convicted sex offender from the State of Colorado, sought to terminate his obligation to register as a sex offender in the State of Ohio. According to documents submitted in the trial court, Von pled guilty January 29, 1997, to the offense of sexual assault of a child, a fourth degree felony in Colorado, and one count of sexual assault, a first-degree misdemeanor. He was sentenced to a jail term of one year, followed by nine years on probation (T.d. 1). Von moved to Trumbull County, Ohio, in August of 2011 from Taos, New Mexico. (T.d. 1, Attachment C). Von apparently lived briefly in Mahoning County, Ohio, because his Motion for Preliminary Injunction states that he registered with the Mahoning County Sheriff’s Department as a “Sexually Oriented Offender” with an obligation to register with the sheriff’s department “for a period of 10 years with verification on each anniversary of the initial registration.” (T.d. 4, Ex. 5).

This was apparently in error. At the time of Von’s conviction in Colorado anyone convicted of sexual assault on a child was subject to registration “for the remainder of their natural life.” C.R.S. Sec. 16-22-113. According to Von’s own documents, his pre-Adam Walsh Act, 1997 Colorado conviction designates him as a “sexually oriented offender” and not a Tier I offender as the trial court wrote in its entry granting the preliminary injunction and in the entry denying his motion to terminate his classification. (T.d. 6, 7). When he moved to Trumbull County in 2011, he registered with the Trumbull County Sheriff’s Department where he was again designated a “Sexually Oriented Offender” with a duty to register “for a period of 10 years with verification on each anniversary of the initial registration.” (T.d. 4, Ex. 2, 3, 4). However, on November 14, 2012, when Von registered, he signed notification that he was a Pre Adam

Walsh Act (AWA) “Sexual Predator ” with an obligation to register “for a period of a Lifetime with verification every 90 days.” (T.d. 4, Ex. 1). In response to this classification, Von filed the motion for preliminary injunction on Nov. 15, 2012. (T.d. 4). He specifically cited R.C. 2950.15 which is entitled “Motion Requesting Court to Terminate Duty to Comply with Registration.” On that same day, the trial court granted the preliminary injunction “until this Court issues a determination of the merits of Petitioner’s challenge under R.C. 2950.031(E) or until further order of the Court. Petitioner to remain tier I.” (T.d. 6) When Von initiated this action in Trumbull County, he appeared on the Trumbull County Sheriff’s Department’s website as a “(Pre AWA) Sexually Oriented Offender.”

On July 15, 2013, a successor judge to the judge who granted the preliminary injunction denied Von’s application to terminate. The trial court determined that Von, a Megan’s Law sex offender, was seeking an impermissible retroactive application of R.C. 2950.15, a provision of the AWA. “The Court finds at the time of Von’s conviction, there was no provision to terminate one’s status as a registered sex offender post-conviction. R.C. 2950, as amended is not retroactive. Therefore, the Court finds the application filed by Von is not well taken and the same is hereby denied in its entirety.” (T.d. 7).

Von followed with a timely notice of appeal in the Eleventh District Court of Appeals. On March 16, 2015, the court below released its opinion. In a two-to-one decision, the court held that the provisions of R.C. 2950.15 are not punitive, therefore this Court’s decision *State v. Williams*, 129 Ohio St. 3d 344, 2011-Ohio-3374, 952 N.E. 2d 1108, is not controlling as to the question of whether that statute applies retroactively to a sexual offender, such as Von, who committed his sexual offense prior to January 1, 2008. *In Re Von*, 11<sup>th</sup> Dist. No. 2013-T-0085, 2015-Ohio-943, 2015 WL 1138343. “[R]egardless of whether the new right created in the

statute is ‘substantive’ in nature, that right is clearly not accompanied by the reciprocal imposition of a new burden or obligation. Under such circumstances, the [*State v.*] *White* [132 Ohio St. 3d 344, 2012-Ohio-2538] analysis dictates that the retroactive application of R.C. 2950.15 is permissible under Section 28, Article II of the Ohio Constitution.” *Id.* at ¶25. The court ordered that Von’s case be remanded to the trial court for a full hearing on the re-classification issue, as raised in the motion for a preliminary injunction, followed by a final ruling on Von’s status as a sexual offender for purposes of deciding his eligibility for relief under R.C. 2950.15. *Id.* at ¶37.

The State takes no issue with the court’s order to remand the case to determine Von’s classification. It is clear from the opinion that confusion exists as to Von’s exact status as a sexual offender in the State of Ohio. However, the State appealed the decision of the Eleventh District to this Court because it throws open the door for Megan’s Law offenders to reap a retroactive benefit of R.C. 2950.15 when this Court has clearly stated in *Williams* that the AWA may not be applied retroactively to Megan’s Law offenders. This Court has accepted jurisdiction in this matter and stayed the opinion of the lower court. The State files this initial brief. Additional facts will be supplied as necessary in the Argument portion of the State’s brief.

## ARGUMENT

**STATE'S PROPOSITION OF LAW NO. I: The registration termination procedure delineated in R.C. 2950.15 may not be retroactively applied to sex offenders who commit their crimes before January 1, 2008 and who were convicted and sentenced before that date.**

The Eleventh District Court erred as a matter of law in holding that Megan's Law sex offender registrants are free to avail themselves of an AWA privilege to terminate their previously imposed duty to register their whereabouts.

Ohio's Eleventh Appellate District has held that Megan's Law sex offenders - those who committed their offenses *prior* to January 1, 2008 - may now avail themselves of a benefit afforded post-2008 sex offenders- and have their registration obligations terminated under R.C. 2950.15, which was enacted as part of the AWA and codified under R.C. 2950 et seq. It is the State's position that this decision is completely at odds with this Court's holding in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E. 2d 1108, which held that the AWA is only applicable to sexual offenders who are sentenced *after* January 1, 2008.

The two-judge majority of the Eleventh District concluded that the provisions of R.C. 2950.15 are not punitive, therefore *Williams* is not controlling as to the question of whether that statute applies retroactively to a sexual offender, such as Von, who committed his sexual offense prior to January 1, 2008. *Von*, at ¶ 15. The court below cites absolutely no authority for this interpretation. As a result, Megan's Law offenders in five Ohio counties are now free to apply under R.C. 2950.15 to have their registration obligation terminated. The State submits this decision is in error, contrary to the plain intent of the non-retroactivity holding in *Williams*, and constitutes a clear and present danger to public safety if allowed to stand.

The decision by the Eleventh District completely disregards the straightforward language of R.C. 2950.15(A) which defines the adult sex offender eligible for registration termination as

follows: “\*\*\* ‘[E]ligible offender’ means a person who is convicted of, pleads guilty to, was convicted of, or pleaded guilty to a sexually oriented offense or child-victim oriented offense, regardless of when the offense was committed, **and is a tier I sex offender**/child-victim offender or a child who is or was adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense, regardless of when the offense was committed, and is a public registry-qualified juvenile offender registrant.” (Emphasis added).

No Megan’s Law sex offender qualifies as a “tier I sex offender.” In order to avail oneself of the termination privilege articulated in R.C. 2950.15 one must be a “tier I sex offender, ” which Von was not, nor is any other Megan’s law offender. The Tier I, Tier II, and Tier III classifications are unique to the AWA and are a creation of the AWA. As Judge Grendell in her dissent writes, “[t]he trial court’s judgment is wholly consistent with the position of the Ohio Supreme Court, that ‘S.B. 10 [the Adam Walsh Act], 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.’” *Von*, at ¶43 citing *Williams*, at ¶ 20. R.C. 2950.15 as written does not “grandfather in” Megan’s Law offenders. Nevertheless, the Eleventh District majority now holds that this Court’s decision in *Williams* “is *not controlling* as to the question of whether that statute applies retroactively to a sexual offender, such as appellant, who committed his sexual offense prior to January 1, 2008.” (Emphasis added) *Von*, at ¶15.

The majority opinion quotes *Williams* saying that “R.C. 2950.03, for example, imposes registration requirements for offenders sentenced on or after January 1, 2008, *regardless of when the offense was committed.*” (Emphasis added). *Von*, at ¶20, quoting *Williams* at ¶8. The State submits this language appears because it is possible to have committed an offense under Megan’s

Law, but not be sentenced until after the January 1, 2008, effective date of Adam Walsh. This is particularly true with sex crimes against children who may have been abused prior to the effective date of the AWA, but do not disclose until sometime afterward. With due respect, the court below has erroneously opened the door for Megan's Law offenders to avail themselves of an Adam Walsh "perk" of registration termination. This misinterpretation then leads to the completely unsupportable conclusion that "[g]iven that the cited phrase infers that the date of the commission of the sexual crime is irrelevant to determining an offender's eligibility for termination relief, there is no dispute that the General Assembly intended for R.C. 2950.15 to be applied retroactively." *Von*, at ¶21.

The Ohio General Assembly never had any such intent. The "regardless-of-when-the-offense-was-committed" language was not intended to apply to all registered sex offenders but only to those sentenced *after* 2008 even if they committed their sex offenses before 2008. If the General Assembly had intended to afford the AWA termination option to Megan's Law offenders, the statute would have read "and is a tier I sex offender or sexually oriented offender," or just plain "sex offender." The inclusion of the "Tier I" language shows that the General Assembly sought to apply the termination option only to AWA offenders.

It is well-settled law that neither the Ohio, nor the federal constitution, forbids statutes from having a beginning and an end, even when the enactment of the new statute "discriminate[s] between the rights of an earlier and a later time." *State ex rel. Lemmon v. Ohio Adult Parole Authority*, 78 Ohio St. 3d 186, 188, 1997-Ohio-223, 677 N.E. 2d 347. R.C. 2950.15 has a "beginning," and that beginning was January 1, 2008, when Ohio's version of the AWA became law. Granted, the ability to terminate one's registration duties constitutes a benefit

not available to Megan's Law offenders; but such distinctions are by law both permissible and inevitable.

Moreover, there is a plethora of authority from this Court stating that if a new law is meant to be applied retroactively, said retroactivity must be apparent from the four corners of the statute: "A statute must clearly proclaim its own retroactivity to overcome the presumption of prospective application. Retroactivity is not to be inferred. *Kelley v. State* (1916), 94 Ohio St. 331, 338–339, 114 N.E. 255. If the retroactivity of a statute is not expressly stated in plain terms, the presumption in favor of prospective application controls. *Bernier v. Becker* (1881), 37 Ohio St. 72, 74. Moreover, the General Assembly is presumed to know that it must include expressly retroactive language to create that effect, and it has done so in the past." *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, 871 N.E.2d 1167, ¶ 15. No such proclamation was made in R.C. 2950.15, and the Eleventh District majority incorrectly inferred that it was.

The enactment of Am. Sub.S.B. No. 2 in 1996 provides a good analogy to the issue at bar. S.B. 2 completely revamped Ohio's sentencing guidelines. Perhaps the most striking difference between pre- and post- S.B. 2 sentencing statutes was the almost complete elimination of indefinite prison sentences. Pre-S.B. 2 offenders filed multiple mandamus actions against Ohio's Adult Parole Authority arguing for their release because certain prisoners would be incarcerated longer than post-S.B.2 offenders convicted of the same crimes. This Court found no error in this outcome:

"[T]he refusal of the General Assembly to retroactively apply the differing provisions of Am.Sub.S.B. No. 2 to persons convicted and sentenced before July 1, 1996 did not violate their rights to equal protection and due process under the Fourteenth Amendment to the United States Constitution. '[T]he 14th Amendment does not forbid statutes and statutory changes to have a

beginning, and thus to discriminate between the rights of an earlier and later time.’ *Sperry & Hutchinson Co. v. Rhodes* (1911), 220 U.S. 502, 505, 31 S.Ct. 490, 491, 55 L.Ed. 561, 563; *State v. Rush* (1991), 305 S.C. 113, 115, 406 S.E.2d 355, 356 (‘[E]qual protection is not offended by treating those who committed DUI offenses prior to the effective date of the amendment differently from those who committed offenses after that date.’). This holding comports with the conclusions of appellate courts that have addressed the constitutionality of this aspect of Am.Sub.S.B. No. 2. *State v. Fannin* (Feb. 11, 1997), Franklin App. No. 96APA07-935, unreported, 1997 WL 65529; *State v. Jefferson* (May 24, 1996), Richland App. No. 95-CA-7, unreported, 1996 WL 3636547.” *State ex rel. Lemmon v. Ohio Adult Parole Auth.*, *supra*, at 188.

It should be most troubling to this Court that the majority opinion references decisions in *Williams* and *State v. Bodyke*, 126 Ohio St. 3d 266, 2010-Ohio-2424, 933 N.E. 2d 753, but ignores the core holding in each: It is unconstitutional to retroactively apply the AWA to Megan’s Law offenders. This Court will recall that when the AWA became law and the Ohio Attorney General’s Office began notifying Megan’s Law offenders of their new duties to register pursuant to the AWA, sex offenders lined up in droves to challenge the constitutionality of the AWA. They wanted no part of the more onerous registration requirements which, in many cases, caused them to register more often and for longer periods of time.

This Court stated in *Bodyke*, “[w]e are persuaded that the AWA is substantially different from Megan’s Law.” *Id.* at ¶33. This Court described those differences as follows: “Offenders who had registered before December 1, 2007, were to be reclassified as Tier I, II, or III sex offenders according to the new statutes. *Id.* Tiers are assigned solely by reference to the offense. See R.C. 2950.01(E), (F), and (G). The entire reclassification process is administered by the attorney general, with no involvement by any court. There is no individualized assessment. No

consideration is given to any of the other factors employed previously in classification hearings held pursuant to Megan's Law. *Id.* As a result, the trial court is stripped of any power to engage in independent fact-finding to determine an offender's likelihood of recidivism. Expert testimony is no longer presented; the offender's criminal and social history are no longer relevant.” *Id.* at ¶22. This Court found that the AWA provision articulated in R.C. 2950.31 and R.C. 2950.32 violated the separation-of-powers doctrine because it permitted the Ohio Attorney General’s Office to reclassify judicially classified Megan’s Law offenders as Tier I, Tier II, or Tier III offenders and cause their registration requirements to change with the reclassifications. *Id.* at ¶¶60-62,67.

In yet another post-*Bodyke* case this Court explained: “The General Assembly replaced Megan's Law with a statutory scheme in the AWA that was in many ways more onerous than its predecessor, signaling its intent to increase public protection, not decrease it. It is unimaginable that the General Assembly would have intended offenders originally classified under Megan's Law to be free from any reporting requirements if the AWA were to be struck down. Thus, *the repeal of Megan's Law is invalid as it affects offenders originally classified under Megan's Law.* Offenders like [the appellant] had a continuing duty to comply with Megan's Law requirements.” (Emphasis added). *State v. Brunning*, 134 Ohio St.3d 438, 2012-Ohio-5752, 983 N.E.2d 316, 321-22, ¶ 22. Von does not reap any benefit from the repeal of Megan’s Law nor is he placed under any additional burdens.

In its opinion, the two-judge majority erroneously states, “[s]ince the provisions of 2950.15 are not punitive in nature, *Williams* is not controlling as to the question of whether the statute applies retroactively to a sexual offender, such as appellant, who committed his sexual offense prior to January 1, 2008.” *Von*, at ¶15. This Court did not jettison R.C. 2950.15 when it

held: “R.C. Chapter 2950 is punitive. The statutory scheme has changed dramatically since this court described the registration process imposed on sex offenders as an inconvenience ‘comparable to renewing a driver's license.’ *Cook*, 83 Ohio St.3d at 418, 700 N.E.2d 570. And it has changed markedly since this court concluded in *Ferguson* [120 Ohio St. 3d 7 (2008)] that R.C. Chapter 2950 was remedial.” *Williams*, at ¶ 16. A glaring distinction between Megan’s Law and AWA is that Megan’s Law is remedial, and the AWA is punitive. This distinction may very well explain why the General Assembly never crafted an escape hatch from Megan’s Law, but did provide this option to certain limited AWA offenders.

In terms of statutory interpretation, this Court has provided the following guidance: “The use of ‘title,’ ‘chapter,’ ‘section,’ ‘division, and ‘subdivision’ is uniform throughout the Revised Code. As used in the Ohio Revised Code, the word ‘section’ unambiguously refers to a decimal-numbered statute only.” *State v. Porterfield*, 106 Ohio St.3d 5, 2005-Ohio-3095, 829 N.E.2d 690, ¶ 16 (2005). By stating that “Chapter 2950” is punitive, this Court included R.C. 2950.15, a decimal-numbered statute contained therein. Therefore, though the section may appear beneficial to selected sex offenders, this Court still found the entire chapter punitive.

As a result, R.C. 2950.15 cannot be retroactively applied to pre-2008 sex offenders. “When we consider all 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. Accordingly, *we conclude that 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). *Williams* at ¶21. Hence, R.C. 2950.15 cannot be applied retroactively to any Megan’s Law offenders, including Von, as it was enacted as part of S.B. 10.

It is most troubling that the Eleventh District's opinion, as written, does not specify which Megan's Law offenders may benefit from this retroactive application. The statute, R.C. 2950.15(A), references only "tier I offender/child victims," and that leaves wide open the question as to whether this new privilege extends just to those previously labeled sexually oriented offenders, habitual sexual offenders or sexual predators, or some undesignated hybrid of offenders under Megan's Law, despite the fact that Megan's Law does not have a Tier I classification. As discussed earlier in this argument, the two-judge majority parsed out the phrase "regardless of when the offense was committed" and construed that as an open invitation to an unspecified category or categories of Megan's Law offenders to terminate their registration obligations. This was error and makes the new holding by the Eleventh District wholly unworkable because there is no AWA equivalent labeled sexually oriented offenders, habitual sexual offenders or sexual predators.

To apply AWA's termination proceedings to Megan's Law offenders, trial judges will now be forced to decide who qualifies as a "tier I offender" and re-label them accordingly. This is exactly what the AWA was designed to prohibit. "The former categories of sexually oriented offender, habitual sex offender, and sexual predator no longer exist, nor is the court required to hold classification hearings as before. Instead, offenders are classified as Tier I, Tier II, or Tier III sex offenders (or child-victim offenders) based solely on the offender's offense. R.C. 2950.01. Specified officials are required to notify existing offenders of their duties and new tier classification. R.C. 2950.03, 2950.031, and 2950.032. Significantly for our purposes here, under the AWA *judges no longer have discretion to determine which classification best fits the offender.*" *Bodyke*, at ¶¶ 21-22. Therefore, to comply with *Von*, trial judges in Eleventh District must violate *Bodyke*, a scenario which this Court should find untenable.

As the court below correctly notes, Von was ordered by the State of Colorado to register as a sexual offender for the “remainder of his natural life.” C.R.S. Sec. 16-22-113, *Von* at ¶31. Under R.C. 2950.09(A), an out-of-state sexual offender convicted of a nonexempt sex offense, and who is required to register for life as a sex offender in the state where he was convicted, “is automatically classified as a sexual predator in Ohio.” (Emphasis added). *Logue v. Leis*, 169 Ohio App.3d 356, 2006-Ohio-5597, 862 N.E.2d 900, ¶ 4 (1<sup>st</sup> Dist. 2006), jurisdiction declined 113 Ohio St. 3d 1441. The Mahoning County Sheriff’s Department erroneously notified Von he was a to register “for a period of 10 years,” erroneously giving a sexual predator the less stringent registration duties of a sexually oriented offender. (T.d. 4, Ex. 5). The Trumbull County Sheriff’s Department caught and corrected this error November 14, 2012 and notified Von of his status as a sexual predator subject to lifetime registration. (T.d. 4, Ex. 1). Again, there is no judicial discretion permitted here. The now-repealed R.C. 2950.09 permitted a court to determine that an out-of-state offender is not a sexual predator if he proves that the registration requirement of the foreign jurisdiction is not “substantially similar” to Ohio’s sexual-predator classification, *Id.* But that argument was not advanced by Von in the trial court nor in the court below.

A final point as to the unworkable nature of the Eleventh District’s majority opinion: R.C. 2950.15 (C)(1) provides that to trigger the registration termination, the tier I sex offender/child-victim offender must wait until “the expiration of ten years” before seeking removal from the registry. Since AWA did not become law until 2008, no sex offender would become eligible for registration termination until 2018. Even if Megan’s Law offenders were eligible for R.C. 2950.15 termination, and the State continues to argue they are not, it was the obvious legislative intent that no sex offender in this state should be applying for this privilege

before 2018. Von was premature in filing his complaint for removal, and the Eleventh District prematurely applied this “privilege” to him.

To conclude, the court below erred by extracting the “regardless-of-when-the-offense-was-committed” language from R.C. 2950.15, and improperly holding that Megan’s Law offenders were entitled to an AWA option to terminate registration requirements. Given that the plain language of the statute requires the registrants to be “tier I” offenders before application to terminate can be made, this decision runs contrary to legislative intent and this Court’s holdings in *Bodyke*, *Williams* and *Brunning*. The Eleventh District has crafted a loophole through which dangerous sex offenders may slip simply because this Court did not specifically address whether R.C. 2950.15 applied to all convicted sex offenders residing in Ohio, or just those who are convicted after 2008. The State calls upon this Court to close this loophole at this time.

**STATE'S PROPOSITION OF LAW NO. II: A statute which has not been found unconstitutional is not subject to the judicial remedy of severance.**

A rather bizarre component to the Eleventh District's opinion is that it "severed" R.C. 2950.15. *Von*, at ¶¶26-30. Though the court's analysis of this procedure as it relates to R.C. 2950.15 is extensive, said analysis is – as described by the dissent – "fundamentally flawed." *Von*, at ¶48.

"When this court holds that a statute is unconstitutional, severance may be appropriate. R.C. 1.50." *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, ¶ 94. Under R.C. 1.50, the statute in question must be held "invalid" before severance is required. The two-judge majority never held that R.C. 2950.15 is unconstitutional or invalid. To the contrary, the opinion broadens the scope of the statute to cover even *more* sex offenders than the General Assembly intended.

This Court set forth a tripartite test in 1927 –which is still good law – for determining whether a statute can be severed: "(1) Are the constitutional and the unconstitutional parts capable of separation so that each may be read and may stand by itself? (2) Is the unconstitutional part so connected with the general scope of the whole as to make it impossible to give effect to the apparent intention of the Legislature if the clause or part is stricken out? (3) Is the insertion of words or terms necessary in order to separate the constitutional part from the unconstitutional part, and to give effect to the former only?" *Geiger v. Geiger*, 117 Ohio St. 451, 466 (1927). The decision by the Eleventh District fails this test because in order to sever, it is necessary to expand the eligible offenders from "tier I" offenders to include Megan's Law offenders, the apparent intended beneficiaries of the severance crafted by the Eleventh District. The adding of such terms is impermissible under *Geiger*.

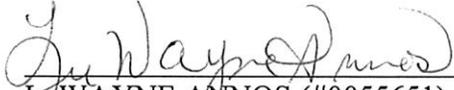
This Court should also be aware that in the briefing in the court below, neither party raised a “severance” argument; the Eleventh District crafted that theory sua sponte. With respect, it appears the lower court was fully aware that this Court would find that any application of the AWA to Megan’s Law offenders would be deemed, at minimum, beyond the intent of the Ohio General Assembly, and possibly unconstitutional. This is just another example as to why “severing” R.C. 2950.15 is indeed fundamentally flawed.

The Eleventh District majority committed constitutional error in severing R.C. 2950.15 without finding it unconstitutional or invalid. The application of the doctrine of severance is so flawed it must be corrected by this Court.

### **CONCLUSION**

The State submits that the Eleventh District’s holding that Megan’s Law offenders may avail themselves of R.C. 2950.15 is in error and should be corrected lest other Megan’s Law offenders seek removal from the sexual offender registry. As this Court has previously stated, Ohio’s General Assembly replaced Megan’s Law with a statutory scheme promulgated through the AWA which was in many ways more onerous than Megan’s Law, signaling a legislative intent to increase public protection, not decrease it. Removing additional sex offenders from the state’s sexual offender’s registry erodes public protection. This Court repeatedly has held that the AWA may not be applied retroactively to Megan’s Law offenders. The State urges this Court to reverse and remand the portions of the Eleventh District’s opinion which sever R.C. 2950.15 and offer Megan’s Law offenders an unintended benefit of registration termination.

Respectfully submitted,  
DENNIS WATKINS (#0009949)  
Trumbull County Prosecuting Attorney by:

  
LuWAYNE ANNOS (#0055651)

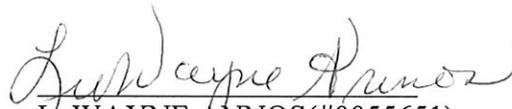
  
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**PROOF OF SERVICE**

I do hereby certified that a copy of the foregoing brief was sent by ordinary U.S. Mail to  
Atty. John P. Laczko (#0051918), 3685 Stutz Dr., Ste. 100, Canfield, Ohio, 44406, Counsel for  
Appellee Aaron Von, on this 24<sup>th</sup> Day of November 2015.

  
LuWAYNE ANNOS(#0055651)  
Assistant Prosecuting Attorney

# **APPENDIX**

ORIGINAL

IN THE SUPREME COURT OF OHIO

IN RE: AARON K. VON

CASE NO. 15-0619

On appeal from the Trumbull County  
Court of Appeals No. 2013-T-0085

Trumbull County Common Pleas  
Court Case No. 2012 CV 2284

NOTICE OF APPEAL  
STATE OF OHIO

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FILED  
APR 17 2015  
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SUPREME COURT OF OHIO

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SUPREME COURT OF OHIO

ORIGINAL

App. 1

Appellant, the State of Ohio, hereby gives Notice of Appeal to the Supreme Court of Ohio from the judgment of the Trumbull County Court of Appeals, Eleventh Judicial District, entered in 11<sup>th</sup> District Court of Appeals Case No. 2013-T-0085, on March 16, 2015.

This case is one of public or great general interest and involves a substantial constitutional question. Though the case is an appeal from a civil action filed in the Trumbull County Common Pleas Court, it arguably "involves a felony" due to the fact that the Appellee, Aaron K. Von, is a convicted sex offender who seeks to terminate his duty to register as a sex offender. Leave to appeal should be granted.

Respectfully submitted,  
DENNIS WATKINS (#0009949)  
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**PROOF OF SERVICE**

I do hereby certified that a copy of the foregoing Notice of Appeal was sent by ordinary U.S. Mail to Aaron K. Von,\* Appellee Pro Se, 7777 McDowell St., Masury, Ohio, 44438, and to Atty. Timothy Young, Director, Office of the Ohio Public Defender, 250 E. Broad St., Suite 1400, Columbus, Ohio, 43215-9308, on this 15<sup>th</sup> Day of April, 2015.

  
LuWAYNE ANNOS(#0055651)  
Assistant Prosecuting Attorney

\*Licensed trial and appellate counsel for Appellee, Timothy E. Bellew (Registration No. 67573), is currently subject to an interim default suspension by this Court. See, Ohio Supreme Court Case No. GEN2014-2175. No other attorney has filed a notice of appearance in this case.

COA. email  
T. Bellew  
L. Annos - hde1

IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
TRUMBULL COUNTY, OHIO

FILED  
COURT OF APPEALS

MAR 16 2015

TRUMBULL COUNTY, OH  
KAREN INFANTE ALLEN, CLERK

IN RE: AARON K. VON

:

OPINION

:

CASE NO. 2013-T-0085

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2012-CV-02284.

Judgment: Reversed and remanded.

*Timothy E. Bellew*, P.O. Box 427, Girard, OH 44420 (For Appellant).

*Dennis Watkins*, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Appellee).

THOMAS R. WRIGHT, J.

{¶1} This accelerated-calendar appeal is from a final judgment of the Trumbull County Court of Common Pleas, overruling appellant, Aaron K. Von's, application to terminate his registration requirements under Ohio's sexually-oriented offender law. Appellant claims that, as a "Tier I" offender, he is eligible for the requested relief as R.C. 2950.15 retroactively applies to him. For the following reasons, the trial court's conclusion that R.C. 2950.15 does not apply retroactively to appellant regardless of his "tier" classification is reversed.

{¶2} On January 29, 1997, appellant was convicted in Colorado of one count of sexual assault of a child, a fourth-degree felony, and one count of sexual assault, a first-degree misdemeanor. The Colorado trial court sentenced him to a prison term of one

*Mandate Issued: Common Pleas*

ORIGINAL

*App. 4*

year, and also placed him on probation for nine years. During the majority of the probation period, appellant continued to reside in Colorado and attended a sexual offender treatment program.

{¶3} In February 2005, appellant moved to Taos, New Mexico, where he lived and worked for approximately six years. In August 2011, he moved to his present home in Trumbull County, Ohio. At each place appellant resided, he continued to periodically register as a sexual offender with the county sheriff.

{¶4} After living in Trumbull County for 14 months, appellant filed an application to terminate his ongoing registration requirements. This application was submitted pursuant to R.C. 2950.15, which was enacted as part of the 2007 Adam Walsh Act and took effect on January 1, 2008. Prior to that date, Ohio's sexual offender statutory schemes did not contain provisions allowing a sexual offender to move for termination of registration requirements.

{¶5} Although not stated in his application to terminate, appellant maintained in subsequent submissions to the trial court that he qualifies as a Tier I sexual offender under the current Ohio statutory scheme. While his application was pending, he also moved the trial court for a preliminary injunction to stop the state from taking any steps to change his sexual offender classification from Tier I to Tier III. The trial court granted this motion, expressly holding that appellant would suffer irreparable harm if his classification were modified prior to the issuance of a final ruling on his application to terminate.

{¶6} In answering the application to terminate, the state asserted that R.C. 2950.15 does not apply because appellant's convictions for the sexual assaults predate the original enactment of the statute. The state further asserted that R.C. 2950.15 could

not be applied retroactively to appellant because, in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, the Supreme Court of Ohio expressly held that the Adam Walsh Act is only applicable to sexual offenses committed after January 1, 2008.

{¶7} After appellant submitted a reply brief on the "retroactivity" issue, the trial court issued its decision denying his application to terminate his registration obligations. As the basis for its judgment, the court held that, since no procedure for the termination of a registration order had existed prior to 2008, appellant was not eligible for any relief under R.C. 2950.15.

{¶8} Appellant raises a single assignment of error for review:

{¶9} "The trial court erred when it found that R.C. 2950.15 does not apply to convictions prior to the date of the underlying conviction, and dismissed Appellant's conviction [s/c], without considering the merits of the application."

{¶10} Pursuant to R.C. 2950.15(B), a sexual offender has been granted the right to move a common pleas court to terminate his obligation to comply with registration requirements. However, under division (A) of the statute, the offender is only eligible for this relief if, inter alia, he is a Tier I sexual offender. In this case, no final determination was ever made regarding whether appellant is a Tier I sexual offender for purposes of R.C. 2950.15. Instead, the trial court based its decision to deny appellant's motion solely upon the conclusion that the statute could not be applied retroactively. Therefore, the scope of this opinion will be limited to the specific ruling issued by the trial court.

{¶11} As noted above, in contending that R.C. 2950.15 could only be applied to sexual offenses committed subsequent to January 1, 2008, the state relied heavily upon the Ohio Supreme Court's holding in *Williams*, *supra*. Even though the trial court did not expressly cite *Williams* in its analysis, the judgment contained a categorical statement

that R.C. Chapter 2950, as amended in the Adam Walsh Act, "is not retroactive." Under his sole assignment, appellant argues that the state's reliance upon *Williams* is misplaced. According to appellant, the application of the Supreme Court's standard for retroactivity to R.C. 2950.15 actually supports the conclusion that all Tier I offenders can move to terminate registration requirements regardless of when the sexual offense was committed.

{¶12} In *Williams*, the primary question before the Ohio Supreme Court was the general effect of the Adam Walsh Act upon the application of sexual offender laws: i.e., did the new Act change the nature of the statutory scheme from purely remedial to punitive? In answering this query in the affirmative, the Supreme Court did not focus on any particular statute. Furthermore, the Court's ultimate decision was set forth in broad terms: "2007 Am.Sub.S.B. No 10 [the Adam Walsh Act], 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." *Williams*, 129 Ohio St.3d at the syllabus.

{¶13} Nevertheless, in reaching this conclusion, the Supreme Court specifically limited its analysis to four alterations in the statutory scheme: (1) the new classification system for sexual offenders, including Tier I, Tier II, and Tier III; (2) the new procedure for determining an offender's classification; (3) the additional reporting and registration requirements; and (4) the increased duration of those requirements. *Id.* at ¶7, 16-19. As to the latter two changes, the Supreme Court emphasized that retroactive application was impermissible because the Adam Walsh Act had the effect of placing new burdens or obligations upon defendants in regard to sexual offenses committed in the past. *Id.* at ¶19.

{¶14} The *Williams* opinion does not refer to R.C. 2950.15. Unlike the statutes governing a sexual offender's classification and the imposition of reporting/registration requirements, R.C. 2950.15 does not impose any new burdens or obligations upon an offender for his prior sexual crimes. Rather, the statute essentially provides a means for a sexual offender to rid himself of prior burdens or obligations; i.e., a Tier I offender can have his registration requirements terminated.

{¶15} Notwithstanding the broad language of the *Williams* syllabus, the "retroactivity" analysis in the *Williams* opinion only addressed those parts of the Adam Walsh Act that were punitive in nature. Since the provisions of R.C. 2950.15 are not punitive in nature, *Williams* is not controlling as to the question of whether that statute applies retroactively to a sexual offender, such as appellant, who committed his sexual offense prior to January 1, 2008.

{¶16} "It is well-settled that statutes are presumed to apply prospectively unless expressly declared to be retroactive. R.C. 1.48; *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St.3d 100, 105, \* \* \*. It is also settled that the General Assembly does not possess an absolute right to adopt retroactive statutes. Section 28, Article II of the Ohio Constitution prohibits the retroactive impairment of vested substantive rights. See *State v. LaSalle*, 96 Ohio St.3d 178, 2002 Ohio 4009, \* \* \*, ¶13. However, the General Assembly may make retroactive any legislation that is merely remedial in nature. See *State ex rel. Slaughter v. Indus. Comm.* (1937), 132 Ohio St. 537, 542, \* \* \*.

{¶17} "As noted in *Van Fossen* and *LaSalle*, we have distilled these principles into a two-part test for evaluating whether statutes may be applied retroactively. First, the reviewing court must determine as a threshold matter whether the statute is expressly made retroactive. *LaSalle*, 96 Ohio St.3d at 181, \* \* \*, citing *Van Fossen*, 36

Ohio St.3d 100, \* \* \*, at paragraphs one and two of the syllabus. The General Assembly's failure to clearly enunciate retroactivity ends the analysis, and the relevant statute may be applied only prospectively. *Id.* If a statute is clearly retroactive, though, the reviewing court must then determine whether it is substantive or remedial in nature. *LaSalle* at 181, \* \* \*." *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, ¶9-10.

{¶18} In determining the General Assembly's intent under the first prong of the retroactivity test, the Ohio Supreme Court has focused upon the precise language used in the disputed statute. *See Id.* at ¶11-13; *Bielat v. Bielat*, 87 Ohio St.3d 350, 353-354 (2000). In relation to R.C. 2950.15, division (A) of the statute contains the dispositive wording:

{¶19} "(A) As used in this section and 2950.16 of the Revised Code, 'eligible offender' means a person who is convicted of, pleads guilty to, was convicted of, or pleaded guilty to a sexually oriented offense or child-victim oriented offense, *regardless of when the offense was committed*, and is a Tier I sex offender/child-victim offender or a child who is or was adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense, *regardless of when the offense was committed*, and is a public registry-qualified juvenile offender registrant." (Emphasis added.)

{¶20} In *Williams*, 2011-Ohio-3374, at ¶8, the Supreme Court concluded that the General Assembly intended for the new registration requirements in the Adam Walsh Act to be applied retroactively. In support of the point, the opinion noted: "R.C. 2950.03, for example, imposes registration requirements for offenders sentenced on or after January 1, 2008, *regardless of when the offense was committed.*" (Emphasis added.) *Id.*

{¶21} In stating which Tier I offenders are eligible to move for the termination of

their registration requirements. R.C. 2950.15(A) employs the same language which the *Williams* court referenced from R.C. 2950.03: i.e., "regardless of when the offense was committed." Given that the cited phrase readily infers that the date of the commission of the sexual crime is irrelevant to determining an offender's eligibility for termination relief, there is no dispute that the General Assembly intended for R.C. 2950.15 to be applied retroactively. Therefore, since the statutory language is sufficient to satisfy the first part of the retroactivity test, we must now address the issue of whether the provisions of the statute are substantive or remedial.

{¶22} "In *Pratte v. Stewart*, 125 Ohio St.3d 473, 2010-Ohio-1860, \* \* \*, ¶37, we stated that '(i)t is well established that a statute is substantive if it impairs or takes away vested rights, affects an accrued substantive right, imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction, or creates a new right. *Van Fossen*, 36 Ohio St.3d at 107, \* \* \*. Remedial laws, however, are those affecting only the remedy provided, and include laws that merely substitute a new or more appropriate remedy for the enforcement of an existing right.' See [*Bielat*, 87 Ohio St.3d at 352-353], quoting *Miller v. Hixson* (1901), 64 Ohio St. 39, 51, \* \* \* ('The retroactivity clause nullifies those new laws that "reach back and create new burdens, new duties, new obligations, or new liabilities not existing at the time (the statute becomes effective)" \* \* \*')." *Williams*, at ¶9.

{¶23} As stated above, R.C. 2950.15 grants a Tier I sexual offender a remedy which never existed in the prior versions of this statutory scheme; i.e., the statute allows for the submission of a written request to terminate the offender's registration duties in light of his behavior over the preceding ten or more years. Although the trial court can ultimately deny the requested relief if it concludes that the offender has not carried his

burden of proof, the mere ability to file such a motion constitutes a new benefit. Based upon the general statement in *Williams* as to the distinction between substantive and remedial, the fact that R.C. 2950.15 bestows a new benefit could lead to a preliminary conclusion that the statute must be deemed substantive for purposes of the retroactivity analysis. However, in elaborating upon *Williams'* general statement, the Supreme Court has indicated that there can be instances in which the creation of a new statutory right will be considered remedial in nature:

{¶24} "But the creation of a new right – even a new substantive right – is not, by itself, enough to support a claim of unconstitutional retroactivity. We have held that a claim that a statute is substantive and hence unconstitutionally retroactive, 'cannot be based solely upon evidence that a statute retrospectively created a new right, but must also include a showing of some impairment, burden, deprivation, or new obligation accompanying that new right.' *Bielat*, 87 Ohio St.3d 350, \* \* \*, paragraph two of the syllabus. The court must inquire 'whether the creation of rights in one party reciprocally impaired a right of the party challenging the retroactive law. In other words, substantive, retroactive legislation that unconstitutionally creates a new right also impairs a vested right or creates some new obligation or burden as well.' *Id.* at 359." *State v. White*, 132 Ohio St.3d 344, 2012-Ohio-2583, ¶46.

{¶25} In this case, the state is the party contesting the retroactive application of R.C. 2950.15. Yet, in delineating the entire procedure for considering and disposing of a motion/application to terminate, the statute does not place a new burden or obligation upon the state. Although the state is permitted to respond to the motion, the offender has both the burden of going forward with the evidence and the final burden of proof. R.C. 2950.15(H)(3). Thus, regardless of whether the new right created in the statute is

"substantive" in nature, that right is clearly not accompanied by the reciprocal imposition of a new burden or obligation. Under such circumstances, the *White* analysis dictates that the retroactive application of R.C. 2950.15 is permissible under Section 28, Article II of the Ohio Constitution.

{¶26} Furthermore, even though many provisions of the Adam Walsh Act were declared unconstitutional as applied to offenders convicted of sex crimes that occurred prior to January 1, 2008, R.C. 2950.15 can be severed from those other provisions. As a general proposition, a three-prong test is employed to determine if a single statute in an otherwise unconstitutional statutory scheme can be severed and still enforced:

{¶27} "(1) Are the constitutional and the unconstitutional parts capable of separation so that each may be read and may stand by itself? (2) Is the unconstitutional part so connected with the general scope of the whole as to make it impossible to give effect to the apparent intention of the Legislature if the clause or part is stricken out? (3) Is the insertion of words or terms necessary in order to separate the constitutional part from the unconstitutional part, and to give effect to the former only?" *State ex rel. Whitehead v. Sandusky Cty. Bd. of Commissioners*, 133 Ohio St.3d 561, 2012-Ohio-4873, ¶28, quoting *Geiger v. Geiger*, 117 Ohio St. 451, 466 (1927).

{¶28} As to the first two prongs of the "severance" test, this court reiterates that R.C. 2950.15 grants a Tier I sexual offender the ability to seek affirmative relief from the registration requirements. In this respect, the statute is clearly distinct from those parts of the Adam Walsh statutory scheme that impose greater registration requirements over longer time periods. Therefore, not only can R.C. 2950.15 stand separately from the other Adam Walsh provisions, but it is readily possible to give full effect to the statute, as intended by the General Assembly, even if the other disputed provisions cannot be

applied retroactively to pre-January 1, 2008 offenders. Finally, there would be no need to insert any new words into the statute in order for it to be applied properly.

{¶29} In enacting R.C. 2950.15 as part of the Adam Walsh statutory scheme, the General Assembly determined that there can be instances in which, after ten years of legal behavior, the risk posed by a Tier I sexual offender is so slight that the benefit of continued monitoring through the registration requirements is significantly outweighed by the state's financial burden. Given that the termination of registration requirements does not result in any new duties or burdens for the state, but only creates a possible benefit for eligible offenders, the constitutional prohibition against retroactive laws does not bar the enforcement of the legislature's intent that all Tier I sex offenders be afforded an opportunity to move for such relief, regardless of when the underlying offense took place. Accordingly, the trial court erred in denying appellant's application to terminate on the grounds that R.C. 2950.15 could not be applied retroactively.

{¶30} In claiming that the foregoing conclusion has the effect of overturning the *Williams* decision, the dissenting opinion does not address the fact that R.C. 2950.15 only creates a new right and does not impose any new burden or duty. Rather, the dissenting opinion simply restates the basic *Williams* holding that the Adam Walsh Act cannot be applied retroactively to a defendant who committed his sex offense prior to the act's enactment. By taking this approach to the "retroactivity" issue, the dissenting opinion fails to acknowledge that the focus of the *Williams* analysis was the punitive nature of many aspects of the Adam Walsh statutory scheme. Given that R.C. 2950.15 has no punitive effect upon the sexual offender or the state, it is not *Williams*, but rather *White* that controls. Thus, while there may be other reasons why appellant is not eligible for relief under R.C. 2950.15, retroactivity is not among them.

{¶31} The dissenting opinion also fails to acknowledge that, although the state asserted a "retroactivity" argument in its response to appellant's application at the trial level, it has essentially abandoned that argument before this court. In its answer brief, the state now maintains that the trial court should have dismissed the "termination" application on the grounds that appellant cannot qualify for the requested relief as a Tier I sexual offender. In support of this point, the state raises two arguments for review. First, citing *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, the state submits that, since the Ohio Supreme Court has held that sexual offenders who were originally classified under the pre-2008 classification system cannot be re-classified under the Adam Walsh system, appellant will always be designated in the future as either a sexually oriented offender, a habitual sexual offender, or a sexual predator. Second, the state contends that, even if appellant could be re-classified under the new Tier I/Tier II/Tier III system, he could not be designated a Tier I offender because, under Colorado law, he is required to comply with the "registration" requirement for the remainder of his life.

{¶32} As previously noted, appellant initially raised the "re-classification" issue in his motion for a preliminary injunction, which was filed approximately forty days after the submission of his application to terminate. In the motion, appellant moved the trial court to enjoin the State of Ohio from re-classifying him from a Tier I offender to a Tier III offender. On the same date the motion was submitted, the trial court issued a judgment granting a preliminary injunction. Concerning appellant's status, the judgment ordered that he was to remain a "Tier I" offender until further order of the court. The bottom of the judgment also contained a notation that the state did not oppose appellant staying a "Tier I" offender while the case remained pending.

{¶33} No other proceedings regarding appellant's classification were held prior to the issuance of the trial court's dismissal judgment. In that judgment, the court referenced the fact that a preliminary injunction was granted; however, no final decision was made as to appellant's status under either the "old" classification system or the new Adam Walsh system. Instead, the trial court based its decision to dismiss entirely upon its conclusion that R.C. 2950.15 could not be applied retroactively regardless of appellant's classification.

{¶34} Notwithstanding the fact that the trial court has not rendered a final ruling concerning appellant's status, the dissenting opinion addresses the merits of the point and concludes that appellant cannot invoke R.C. 2950.15 because he is not a Tier I sexual offender. In reaching this conclusion, the dissenting opinion relies in part upon information from the Ohio Attorney General's website that was not before the trial court when it granted the preliminary injunction. Moreover, the dissent does not expressly address the issue of whether, even though appellant cannot be re-classified under the Adam Walsh system for purposes of increasing his registration obligation, he can be re-classified by the trial court for purposes of determining his eligibility for relief under R.C. 2950.15.

{¶35} In *Bodyke*, 2010-Ohio-2424, the Supreme Court concluded that if a sexual offender has previously been classified under the classification system that was in effect prior to January 1, 2008, he could not be re-classified under the new "three-tier" system of the Adam Walsh Act. In reaching this conclusion, the *Bodyke* court did not make any reference to the procedure for terminating a Tier I offender's registration requirements under R.C. 2950.15. Instead, the court primarily focused upon the fact that, in allowing for the re-classification of prior sexual offenders for purposes of imposing longer and

more stringent registration requirements, the General Assembly granted the authority to re-classify to the state attorney general. This grant of authority violated the separation-of-powers doctrine because: (1) it essentially permitted the executive branch of the state government to review previous "classification" orders of the judicial branch; and (2) it mandated the re-opening of final judgments. *Id.* at the second and third paragraphs of the syllabus.

{¶36} Neither of the foregoing two concerns exists if, as part of the procedure for deciding a motion/application to terminate under R.C. 2950.15, a trial court re-classifies a pre-January 1, 2008 sexual offender under the new "three-tier" system. In regard to the "re-opening" concern, this court would emphasize that the re-classification of the offender for purposes of R.C. 2950.15 would have no effect upon his classification for all other purposes under R.C. Chapter 2950. In other words, the duration and nature of the offender's registration requirements would not be altered as a result of the limited re-classification. Thus, re-classification under R.C. 2950.15 would not affect the finality of the original "classification" determination. To the extent, neither *Bodyke* nor *Williams* prohibits a trial court from re-classifying a pre-January 1, 2008 sexual offender under the new "three-tier" classification system solely for the purposes of deciding the merits of a motion to terminate registration requirements.

{¶37} In reviewing the materials accompanying appellant's motion for a preliminary injunction, the trial court found the materials sufficient to warrant an interim order that appellant would be considered a Tier I sexual offender. Furthermore, the trial court never overruled the interim order. Thus, in light of our holding on the retroactivity issue, this case must be remanded so that the trial court can conduct a full hearing on the re-classification issue, as raised in the motion for a preliminary injunction, and then

issue a final ruling on appellant's status as a sexual offender for purposes of deciding his eligibility for relief under R.C. 2950.15. As part of this proceeding, the trial court may consider the state's new argument concerning appellant's proper classification under the "three-tier" system. In turn, if the trial court finds that appellant is a Tier I sexual offender, it can proceed to the final merits of the motion to terminate.

{¶38} Pursuant to the foregoing, the judgment of the Trumbull County Court of Common Pleas is reversed, and the case is hereby remanded for further proceedings consistent with this opinion.

TIMOTHY P. CANNON, P.J., concurs in judgment only with a Concurring Opinion,  
DIANE V. GRENDALL, J., dissents with a Dissenting Opinion.

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TIMOTHY P. CANNON, P.J., concurring in judgment only.

{¶39} I concur this matter should be remanded to the trial court for clarification of appellant's classification status. Appellant, by virtue of his incarceration in 1997, is subject to the requirements of Ohio's Megan's Law. Pursuant to Megan's Law, his status as an offender, for which he was required to register for life due to his Colorado conviction, automatically classified him as a sexual predator. There is, however, significant confusion between the parties, as well as between the lead opinion and dissent, as to the status of this case at the trial court level. This confusion, in my view, may stem from the preliminary injunction issued by the trial court; it is probable the trial court only intended to adopt a Tier I classification for appellant until it issued a determination on the merits of appellant's application. In the preliminary injunction order

there is a handwritten sentence which stands alone, stating: "Petitioner to remain tier I." There is an additional handwritten notation at the bottom of the order, stating: "No opposition by state of Ohio to defendant remaining tier I until determination of merits."

{¶40} In the trial court entry that disposed of appellant's motion, it does not mention whether appellant's Tier I classification had been terminated. I agree with the dissent that appellant's Tier I classification should be terminated; appellant was subject to Megan's Law, as noted by the trial court, and R.C. 2950, as amended, does not retroactively apply to appellant. This would effectively defeat appellant's application because, as observed by the dissent, appellant should not be classified as a Tier I offender.

{¶41} To further complicate matters, there is some confusion regarding whether appellant has been classified as a "sexually oriented offender" or as a "sexual predator" under Megan's law. While the trial court resolved that appellant was subject to Megan's Law, it did not establish what the classification under that law should be.

{¶42} I concur with the decision to remand this case to allow the trial court to clarify the termination of appellant's Tier I status and, hopefully, to resolve what appellant's status is and should be under Megan's law.

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DIANE V. GRENDELL, J., dissents with a Dissenting Opinion.

{¶43} In the present case, Aaron K. Von filed an Application for Termination of Duty to Comply with Sex Registration Laws, pursuant to R.C. 2950.15, in the Trumbull County Court of Common Pleas. In January 1997, Von was convicted of Sexual Assault on a Child, a class 4 felony in violation of C.R.S. 18-3-405(1), and Sexual

Assault in the Third Degree, a class 1 misdemeanor in violation C.R.S. 18-3-404(1)(A), in the District Court of Arapahoe County, Colorado. Ohio Revised Code 2950.15 was enacted in 2007 as part of the Adam Walsh Child Protection and Safety Act. The trial court denied the Application on the grounds that "at the time of Von's conviction, there was no provision to terminate one's status as a registered sex offender post-conviction." The trial court's judgment is wholly consistent with the position of the Ohio Supreme Court, that "S.B. 10 [the Adam Walsh Act], 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." *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, ¶ 20. The majority reverses that judgment on the grounds that "the retroactive application of R.C. 2950.15 is permissible under Section 28, Article II of the Ohio Constitution." *Supra* at ¶ 25.

{¶44} Revised Code 2950.15 applies to offenders who have been classified as tier I sex offenders. Von has never been classified as a tier I sex offender. Under *Williams*, it would be unconstitutional to apply the Adam Walsh Act to him, as he committed his sex offenses prior to its enactment. As the State correctly points out, the statute is inapplicable to Von on its face. Accordingly, I respectfully dissent.

{¶45} Under the statute, "an eligible offender may make a motion to the court of common pleas \* \* \* of the county in which the eligible offender resides requesting that the court terminate the eligible offender's duty" to register as a sexual offender. R.C. 2950.15(B). An "eligible offender" means a person who is convicted of, pleads guilty to, was convicted of, or pleaded guilty to a sexually oriented offense or child-victim oriented offense, regardless of when the offense was committed, **and is a tier I sex offender/child-victim offender \* \* \***, regardless of when the offense was committed,

and is a public registry-qualified juvenile offender registrant.” (Emphasis added.) R.C. 2950.15(A).

{¶46} In order to be an eligible offender, Von must be classified a tier I sex offender/child-victim offender. The tier I classification was created in 2007 by the above-mentioned Adam Walsh Act. The passage of the Adam Walsh Act abolished “[t]he former categories of sexually oriented offender, habitual sex offender, and sexual predator.” *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶ 21. As noted above, the Ohio Supreme Court has held that the provisions of the Adam Walsh Act cannot be applied to offenders who committed their offenses prior to its enactment. *Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, at ¶ 20.

{¶47} In the present case, Von was convicted of sex offenses in 1997, long before the enactment of the Adam Walsh Act. Not only would it be unconstitutional to classify Von under the Adam Walsh Act, there is no evidence that Von has ever been classified as a tier I sex offender. The evidence before this court, consisting of Notices of Registration Duties of Sexually Oriented Offender Or Child-Victim Offender issued between August 2011 and November 2012, variously classifies Von as “(Pre AWA) Sexually Oriented Offender” or “(Pre AWA) Sexual Predator.”<sup>1</sup> Currently, Von is identified on the Ohio Attorney General's online registry of sex offenders as “(Pre AWA) Sexually Oriented Offender.”

<http://icrimewatch.net/offenderdetails.php?OfndrID=1550971&AgencyID=55149>

(accessed March 4, 2015).

{¶48} The majority's analysis as to whether R.C. 2950.15 is severable from the Adam Walsh Act and, so, may be applied retroactively despite the holding of *Williams* is

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1. The propriety of either classification is not properly before this court.

fundamentally flawed. An "eligible offender" for the purposes of R.C. 2950.15 must be a tier I offender, i.e., an offender classified under the Adam Walsh Act. Von has not been classified as a tier I offender and is constitutionally prohibited from being classified as such.

{¶49} The majority's position that Von could be reclassified as a tier I sex offender "solely for the purposes of deciding the merits of a motion to terminate registration requirements" is simply incredible. *Supra* at ¶ 36. The Ohio Supreme Court has stated unequivocally: "2007 Am.Sub.S.B. No. 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." *Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, at the syllabus. R.C. 2950.15 was enacted as part of 2007 Am.Sub.S.B. 10. Von committed a sex offense prior to its enactment. R.C. 2950.15 does not apply to Von.

{¶50} Alternatively, to be an "eligible offender" under R.C. 2950.15, one must be a "tier I sex offender." R.C. 2950.15(A). Von is not and has never been a tier I sex offender. The statutory provisions for the reclassification of sex offenders who committed their offenses prior to the enactment of 2007 Am.Sub.S.B. No. 10 have been declared unconstitutional. *Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, at paragraphs two and three of the syllabus. R.C. 2950.15 cannot apply to Von.

{¶51} Neither the *Williams* decision nor the *Bodyke* decision countenances the retroactive application of the Adam Walsh Act on an "as applied" basis. Nothing in the Adam Walsh Act provides for the reclassification of sex offenders by trial court judges. Accordingly, the trial court's judgment must be affirmed and I respectfully dissent.

STATE OF OHIO )  
 ) SS.  
COUNTY OF TRUMBULL )

IN THE COURT OF APPEALS  
ELEVENTH DISTRICT

IN RE: AARON K. VON

JUDGMENT ENTRY

CASE NO. 2013-T-0085

For the reasons stated in the opinion of this court, it is the judgment and order of this court that the judgment of the Trumbull County Court of Common Pleas is reversed, and this matter is remanded to the trial court for further proceedings consistent with the opinion.

Costs are taxed against appellee.

  
\_\_\_\_\_  
JUDGE THOMAS R. WRIGHT

TIMOTHY P. CANNON, P.J., concurs in judgment only with a Concurring Opinion,

DIANE V. GRENDALL, J., dissents with a Dissenting Opinion.

FILED  
COURT OF APPEALS

MAR 16 2015

TRUMBULL COUNTY, OH  
KAREN INFANTE ALLEN, CLERK

**IN THE COURT OF COMMON PLEAS  
- GENERAL DIVISION -  
TRUMBULL COUNTY, OHIO**

**CASE NUMBER: 2012 CV 02284**

**AARON K VON  
PLAINTIFF**

**VS.**

**JUDGE RONALD J RICE**

**TRUMBULL COUNTY PROSECUTOR  
DEFENDANT**

**JUDGMENT ENTRY**

Plaintiff, Aaron K. Von, filed an Application for Termination of Duty to Comply with Sex Registration Laws on October 5, 2012. A Preliminary Injunction was granted on November 15, 2012 and the Plaintiff was to remain a Tier I sex offender in the interim.

Von plead guilty to Sexual Assault of a Child (F4) and Sexual Assault in the Third Degree (M1) in the District Court of Arapahoe County, Colorado on January 29, 1997. At this time, Megan's Law was in effect in Ohio and codified in R.C. 2950 et seq. until its subsequent amendment as the Adam Walsh Act in 2008.

The Court finds at the time of Von's conviction, there was no provision to terminate one's status as a registered sex offender post-conviction. R.C. 2950, as amended, is not retroactive. Therefore, the Court finds the application filed by Von is not well taken and the same is hereby denied in its entirety.

**IT IS SO ORDERED.**

This is a final and appealable order and there is no just cause for delay.

  
\_\_\_\_\_  
JUDGE RONALD J RICE

Date: 7-15-13

Copies to:  
GABRIEL WILDMAN  
TIMOTHY E BELLEW



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**TO THE CLERK OF COURTS: You Are Ordered to Serve  
Copies of this Judgment on all Counsel of Record  
or Upon the Parties who are Unrepresented Forthwith  
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**JUDGE RONALD J RICE**

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CLERK OF COURTS

7/17/13  
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T. BELLEV

IN THE COURT OF COMMON PLEAS  
TRUMBULL COUNTY, OHIO

IN RE: AARON K. VON

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Case No. 12 CV 2284

**ORDER GRANTING  
PRELIMINARY INJUNCTION**

This Court finds that Petitioner will suffer irreparable injury unless the requested injunction is issued, that granting injunctive relief is necessary for the Petitioner to receive a just determination on the merits of his challenge to reclassification, and that the public interest favors the injunctive relief sought.

In view of these findings, Petitioner is entitled to a preliminary injunction until this Court issues a determination of the merits of Petitioner's challenge under R.C. 2950.031(E) or until further order of the Court. *Petitioner to remain tier 1,*

Accordingly, for good cause shown, Petitioner's motion is GRANTED. Further, the Court finds that no bond is necessary because the State of Ohio will suffer no monetary damages should it be decided that the injunction should not have been granted.

11/15/12  
Date

*Tom Stuard*  
Judge

*NO OPPOSITION BY STATE OF OHIO TO A REMAINING TIER I  
UNTIL DETERMINATION OF MERITS*

*(Signature)*

KAREN INFANTE ALLEN  
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§ 16-22-113. Petition for removal from registry

West's Colorado Revised Statutes Annotated Title 16. Criminal Proceedings Effective: July 1, 2013 (Approx. 4 pages)

West's Colorado Revised Statutes Annotated  
 Title 16. Criminal Proceedings  
 Offenders--Registration  
 Article 22. Colorado Sex Offender Registration Act (Refs & Amos)

Effective: July 1, 2013

C.R.S.A. § 16-22-113

§ 16-22-113. Petition for removal from registry

Currentness

(1) Except as otherwise provided in subsection (3) of this section, any person required to register pursuant to section 16-22-103 or whose information is required to be posted on the internet pursuant to section 16-22-111 may file a petition with the court that issued the order of judgment for the conviction that requires the person to register for an order to discontinue the requirement for such registration or internet posting, or both, as follows:

(a) Except as otherwise provided in paragraphs (d), (e), and (f) of this subsection (1), if the offense that required such person to register constituted or would constitute a class 1, 2, or 3 felony, after a period of twenty years from the date of such person's discharge from the department of corrections, if such person was sentenced to incarceration, or discharge from the department of human services, if such person was committed, or final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior;

(b) Except as otherwise provided in paragraphs (d), (e), and (f) of this subsection (1), if the offense that required such person to register constituted or would constitute a class 4, 5, or 6 felony or the class 1 misdemeanor of unlawful sexual contact, as described in section 18-3-404, C.R.S., or sexual assault in the third degree as described in section 18-3-404, C.R.S., as it existed prior to July 1, 2000, after a period of ten years from the date of such person's discharge from the department of corrections, if such person was sentenced to incarceration, or discharge from the department of human services, if such person was committed, or final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior;

(c) Except as otherwise provided in paragraphs (d), (e), and (f) of this subsection (1), if the offense that required such person to register constituted or would constitute a misdemeanor other than the class 1 misdemeanor of unlawful sexual contact, as described in section 18-3-404, C.R.S., or sexual assault in the third degree as described in section 18-3-404, C.R.S., as it existed prior to July 1, 2000, after a period of five years from the date of such person's final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior;

(d) If the person was required to register due to being placed on a deferred judgment and sentence or a deferred adjudication for an offense involving unlawful sexual behavior, after the successful completion of the deferred judgment and sentence or deferred adjudication and dismissal of the case, if the person prior to such time has not been subsequently convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior and the court did not issue an order either continuing the duty to register or discontinuing the duty to register pursuant to paragraph (a) of subsection (1.3) of this section;

(e) Except as otherwise provided in subparagraph (II) of paragraph (b) of subsection (1.3) of this section, if the person was younger than eighteen years of age at the time of commission of the offense, after the successful completion of and discharge from a juvenile sentence or disposition, and if the person prior to such time has not been subsequently convicted or has

NOTES OF DECISIONS (12)

In general  
 Conviction  
 Probation  
 Discretion of court  
 Construction and application  
 Construction with other laws  
 Habeas relief

App. 26

a pending prosecution for unlawful sexual behavior or for any other offense, the underlying factual basis of which involved unlawful sexual behavior and the court did not issue an order either continuing the duty to register or discontinuing the duty to register pursuant to paragraph (b) of subsection (1.3) of this section. Any person petitioning pursuant to this paragraph (e) may also petition for an order removing his or her name from the sex offender registry. In determining whether to grant the order, the court shall consider whether the person is likely to commit a subsequent offense of or involving unlawful sexual behavior. The court shall base its determination on recommendations from the person's probation or community parole officer, the person's treatment provider, and the prosecuting attorney for the jurisdiction in which the person was tried and on the recommendations included in the person's presentence investigation report. In addition, the court shall consider any written or oral testimony submitted by the victim of the offense for which the petitioner was required to register. Notwithstanding the provisions of this subsection (1), a juvenile who files a petition pursuant to this section may file the petition with the court to which venue is transferred pursuant to section 19-2-105, C.R.S., if any.

(f) If the information about the person was required to be posted on the internet pursuant to section 16-22-111(1)(d) only for failure to register, if the person has fully complied with all registration requirements for a period of not less than one year and if the person, prior to such time, has not been subsequently convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior, except that the provisions of this paragraph (f) shall apply only to a petition to discontinue the requirement for internet posting.

(1.3)(a) If a person is eligible to petition to discontinue his or her duty to register pursuant to paragraph (d) of subsection (1) of this section, the court, at least sixty-three days before dismissing the case, shall notify each of the parties described in paragraph (a) of subsection (2) of this section, the person, and the victim of the offense for which the person was required to register, if the victim has requested notice and has provided current contact information, that the court will consider whether to order that the person may discontinue his or her duty to register when the court dismisses the case as a result of the person's successful completion of the deferred judgment and sentence or deferred adjudication. The court shall set the matter for hearing if any of the parties described in paragraph (a) of subsection (2) of this section or the victim of the offense objects or if the person requests a hearing. If the court enters an order discontinuing the person's duty to register, the person shall send a copy of the order to each local law enforcement agency with which the person is registered and to the CBI. If the victim of the offense has requested notice, the court shall notify the victim of its decision either to continue or discontinue the person's duty to register.

(b)(I) If a juvenile is eligible to petition to discontinue his or her duty to register pursuant to paragraph (e) of subsection (1) of this section, the court, at least sixty-three days before discharging the juvenile's sentence, shall notify each of the parties described in paragraph (a) of subsection (2) of this section, the juvenile, and the victim of the offense for which the juvenile was required to register, if the victim has requested notice and has provided current contact information, that the court shall consider whether to order that the juvenile may discontinue his or her duty to register when the court discharges the juvenile's sentence. The court shall set the matter for hearing if any of the parties described in paragraph (a) of subsection (2) of this section or the victim of the offense objects, or if the juvenile requests a hearing, and shall consider the criteria in paragraph (e) of subsection (1) of this section in determining whether to continue or discontinue the duty to register. If the court enters an order discontinuing the juvenile's duty to register, the department of human services shall send a copy of the order to each local law enforcement agency with which the juvenile is registered, the juvenile parole board, and to the CBI. If the victim of the offense has requested notice, the court shall notify the victim of its decision either to continue or discontinue the juvenile's duty to register.

(II) If a juvenile is eligible to petition to discontinue his or her registration pursuant to paragraph (e) of subsection (1) of this section and is under the custody of the department of human services and yet to be released on parole by the juvenile parole board, the department of human services may petition the court to set a hearing pursuant to paragraph (e) of subsection (1) of this section at least sixty-three days before the juvenile is scheduled to appear before the juvenile parole board.

(III) If a juvenile is eligible to petition to discontinue his or her registration pursuant to paragraph (e) of subsection (1) of this section and is under the custody of the department of human services and yet to be released on parole by the juvenile parole board, the

*App. 27*

department of human services, prior to setting the matter for hearing, shall modify the juvenile's parole plan or parole hearing to acknowledge the court order or petition unless it is already incorporated in the parole plan.

(1.5) If the conviction that requires a person to register pursuant to the provisions of section 16-22-103 was not obtained from a Colorado court, the person seeking to discontinue registration or internet posting or both may file a civil case with the district court of the judicial district in which the person resides and seek a civil order to discontinue the requirement to register or internet posting or both under the circumstances specified in subsection (1) of this section.

(2)(a) Prior to filing a petition pursuant to this section, the petitioner shall notify each of the following parties by certified mail of the petitioner's intent to file a request pursuant to this section:

- (I) Each local law enforcement agency with which the petitioner is required to register;
- (II) The prosecuting attorney for the jurisdiction in which each such local law enforcement agency is located; and
- (III) The prosecuting attorney who obtained the conviction for which the petitioner is required to register.

(b) When filing the petition, the petitioner shall attach to the petition copies of the return receipts received from each party notified pursuant to paragraph (a) of this subsection (2).

(c) Upon the filing of the petition, the court shall set a date for a hearing and shall notify the victim of the offense for which the petitioner was required to register, if the victim of the offense has requested notice and has provided current contact information. If the court enters an order discontinuing the petitioner's duty to register, the petitioner shall send a copy of the order to each local law enforcement agency with which the petitioner is registered and the CBI. If the victim of the offense has requested notice, the court shall notify the victim of the offense of its decision either to continue or discontinue the petitioner's duty to register.

(d) On receipt of a copy of an order discontinuing a petitioner's duty to register:

- (I) The CBI shall remove the petitioner's sex offender registration information from the sex offender registry; and
- (II) If the local law enforcement agency maintains a local registry of sex offenders who are registered with the local law enforcement agency, the local law enforcement agency shall remove the petitioner's sex offender registration information from the local sex offender registry.

(3) The following persons shall not be eligible for relief pursuant to this section, but shall be subject for the remainder of their natural lives to the registration requirements specified in this article or to the comparable requirements of any other jurisdictions in which they may reside:

- (a) Any person who is a sexually violent predator;
- (b) Any person who is convicted as an adult of:
  - (I) Sexual assault, in violation of section 18-3-402, C.R.S., or sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000, or sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000; or
  - (II) Sexual assault on a child, in violation of section 18-3-405, C.R.S.; or
  - (III) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.; or
  - (IV) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.; or
  - (V) Incest, in violation of section 18-6-301, C.R.S.; or
  - (VI) Aggravated incest, in violation of section 18-6-302, C.R.S.;

*App. 28*

(c) Any adult who has more than one conviction or adjudication for unlawful sexual behavior in this state or any other jurisdiction.

**Credits**

Added by Laws 2002, Ch. 297, § 1, eff. July 1, 2002. Amended by Laws 2004, Ch. 297, §§ 15, 16 eff. May 27, 2004; Laws 2008, Ch. 187, § 2, eff. April 25, 2008; Laws 2008, Ch. 378, § 2, eff. July 1, 2008; Laws 2011, Ch. 224, § 7, eff. May 27, 2011; Laws 2012, Ch. 208, § 100, eff. July 1, 2012; Laws 2013, Ch. 272, § 5, eff. July 1, 2013.

**Notes of Decisions (12)**

C. R. S. A. § 16-22-113, CO ST § 16-22-113

Current through the First Regular Session of the 70th General Assembly (2015).

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*App. 29*

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**2950.15 Motion to terminate registration requirement; contents; notice to victim; evidence**  
Baldwin's Ohio Revised Code Annotated Title XXIX. Crimes--Procedure Effective: January 1, 2008 (Approx. 4 pages)

Baldwin's Ohio Revised Code Annotated  
Title XXIX. Crimes--Procedure (Refs & Annos)  
Chapter 2950. Sex Offenders (Refs & Annos)

**Unconstitutional or Preempted** | Unconstitutional as Applied by In re Bruce S. | Ohio | Dec. 06, 2012

Effective: January 1, 2008

R.C. § 2950.15

**2950.15 Motion to terminate registration requirement; contents; notice to victim; evidence**

Currentness

(A) As used in this section and section 2950.16 of the Revised Code, "eligible offender" means a person who is convicted of, pleads guilty to, was convicted of, or pleaded guilty to a sexually oriented offense or child-victim oriented offense, regardless of when the offense was committed, and is a tier I sex offender/child-victim offender or a child who is or was adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense, regardless of when the offense was committed, and is a public registry-qualified juvenile offender registrant.

(B) Pursuant to this section, an eligible offender may make a motion to the court of common pleas or, for a delinquent child, the juvenile court of the county in which the eligible offender resides requesting that the court terminate the eligible offender's duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code. If the eligible offender is not a resident of this state, the eligible offender may make a motion to the court of common pleas of the county in which the eligible offender has registered pursuant to section 2950.04 or 2950.041 of the Revised Code, but if the eligible offender has registered addresses of that nature in more than one county, the eligible offender may make such a motion in the court of only one of those counties. Notwithstanding any state or local rule assigning costs and fees for filing and processing civil and criminal cases, the fee for filing the motion shall be one hundred fifty dollars. This fee shall be applied to any further processing of the motion, including, but not limited to, the costs associated with investigating the motion, notifying relevant parties, scheduling hearings, and recording and reporting the court's determination.

(C)(1) Except as provided in division (C)(2) of this section, an eligible offender who is classified a tier I sex offender/child-victim offender may make a motion under division (B) of this section upon the expiration of ten years after the eligible offender's duty to comply with division (A)(2) or (4) of section 2950.04 or division (A)(2) or (4) of section 2950.041 and sections 2950.05 and 2950.06 of the Revised Code begins in relation to the offense for which the eligible offender is subject to those provisions.

(2) An eligible offender who is a delinquent child and is classified a public registry-qualified juvenile offender registrant may make a motion under division (B) of this section upon the expiration of twenty-five years after the eligible offender's duty to comply with division (A)(3) or (4) of section 2950.04 and sections 2950.05 and 2950.06 of the Revised Code begins in relation to the offense for which the eligible offender is subject to those provisions.

(D) An eligible offender who makes a motion under division (B) of this section shall include all of the following with the motion:

(1) A certified copy of the judgment entry and any other documentation of the sentence or disposition given for the offense or offenses for which the eligible offender was convicted, pleaded guilty, or was adjudicated a delinquent child;

(2) Documentation of the date of discharge from supervision or release, whichever is applicable;

*App. 30*

(3) Evidence that the eligible offender has completed a sex offender or child-victim offender treatment program certified by the department of rehabilitation and correction or the department of youth services pursuant to section 2950.16 of the Revised Code;

(4) Evidence that the eligible offender has not been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any subsequent sexually oriented offense, child-victim oriented offense, or other criminal offense, except for a minor misdemeanor traffic offense;

(5) Evidence that the eligible offender has paid any financial sanctions imposed upon the offender pursuant to section 2929.18 or 2929.28 of the Revised Code.

(E) Upon the filing of a motion pursuant to division (B) of this section, the offender or delinquent child shall serve a copy of the motion on the prosecutor who handled the case in which the eligible offender was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the sexually oriented offense or child-victim oriented offense. Upon the filing of the motion, the court shall set a tentative date for a hearing on the motion that is not later than one hundred eighty days from the date the motion is filed unless good cause exists to hold the hearing at a later date and shall notify the eligible offender and the prosecutor of the date, time, and place of the hearing. The court shall then forward a copy of the motion and its supporting documentation to the court's probation department or another appropriate agency to investigate the merits of the motion. The probation department or agency shall submit a written report detailing its investigation to the court within sixty days of receiving the motion and supporting documentation.

Upon receipt of the written report from the probation department or other appropriate agency, the court shall forward a copy of the motion, supporting documentation, and the written report to the prosecutor.

(F)(1) After the prosecutor is served with a copy of the motion as described in division (E) of this section, the prosecutor shall notify the victim of any offense for which the eligible offender is requesting a termination of duties under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code. The victim may submit a written statement to the prosecutor regarding any knowledge the victim has of the eligible offender's conduct while subject to the duties imposed by sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code.

(2) At least seven days before the hearing date, the prosecutor may file an objection to the motion with the court and serve a copy of the objection to the motion to the eligible offender or the eligible offender's attorney.

(G) In addition to the evidence that accompanies the motion described in division (D) of this section and the written report submitted pursuant to division (E) of this section, in determining whether to grant a motion made under division (B) of this section, the court may consider any other evidence the court considers relevant, including, but not limited to, evidence of the following while the eligible offender has been subject to the duties imposed under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code:

- (1) Whether the eligible offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege has ever been suspended;
- (2) Whether the eligible offender has maintained financial responsibility for a motor vehicle as required by section 4509.101 of the Revised Code;
- (3) Whether the eligible offender has satisfied any child or spousal support obligations, if applicable;
- (4) Whether the eligible offender has paid all local, state, and federal income taxes, and has timely filed all associated income tax returns, as required by local, state, or federal law;
- (5) Whether there is evidence that the eligible offender has adequately addressed sex offending or child-victim offending behaviors;
- (6) Whether the eligible offender has maintained a residence for a substantial period of time;
- (7) Whether the eligible offender has maintained employment or, if the eligible offender has not been employed while under a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code, whether the eligible offender has satisfied the offender's

*App. 31*

financial obligations through other manners of support such as disability payments, a pension, spousal or child support, or scholarships or grants;

(8) Whether the eligible offender has adequately addressed any drug or alcohol abuse or addiction;

(9) Letters of reference;

(10) Documentation of the eligible offender's service to the community or to specific individuals in need.

(H)(1) The court, without a hearing, may issue an order denying the eligible offender's motion to terminate the eligible offender's duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code if the court, based on the evidence submitted with the motion pursuant to division (D) of this section and the written report submitted pursuant to division (E) of this section and after considering the factors described in division (G) of this section, finds that those duties should not be terminated.

(2) If the prosecutor does not file an objection to the eligible offender's application as provided in division (F)(2) of this section, the court, without a hearing, may issue an order that terminates the eligible offender's duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code if the court, based on the evidence submitted with the motion pursuant to division (D) of this section and the written report submitted pursuant to division (E) of this section and after considering the factors described in division (G) of this section, finds that those duties should be terminated.

(3) If the court does not issue an order under division (H)(1) or (2) of this section, the court shall hold a hearing to determine whether to grant or deny the motion. At the hearing, the Rules of Civil Procedure or, if the hearing is in a juvenile court, the Rules of Juvenile Procedure apply, except to the extent that those Rules would by their nature be clearly inapplicable. At the hearing, the eligible offender has the burden of going forward with the evidence and the burden of proof by a preponderance of the evidence. If, after considering the evidence submitted with the motion pursuant to division (D) of this section, the written report submitted pursuant to division (E) of this section, and the factors described in division (G) of this section, the court finds that the eligible offender has satisfied the burden of proof, the court shall issue an order that terminates the eligible offender's duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code. If the court finds that the eligible offender has not satisfied the burden of proof, the court shall issue an order denying the motion.

(4)(a) The court shall provide prompt notice of its order issued pursuant to division (H)(1), (2), or (3) of this section to the eligible offender or the eligible offender's attorney.

(b) If the court issues an order terminating the eligible offender's duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code, the court shall promptly forward a copy of the order to the bureau of criminal identification and investigation. Upon receipt of the order, the bureau shall update all records pertaining to the eligible offender to reflect the termination order. The bureau also shall notify every sheriff with whom the eligible offender has most recently registered under section 2950.04, 2950.041, or 2950.05 of the Revised Code of the termination order.

(c) If the court issues an order terminating the eligible offender's duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code, the court shall promptly forward a copy of the order to any court that sentenced the offender or adjudicated the child a delinquent child for a sexually oriented offense or child-victim oriented offense that is the basis of the termination order. The court that receives this notice shall retain a copy of the order in the eligible offender's original case file.

**CREDIT(S)**

(2007 S 10, eff. 1-1-08)

R.C. § 2950.15, OH ST § 2950.15

Current through 2015 Files 1 to 31 of the 131st General Assembly (2015-2016) and 2015 State Issues 1 and 2.



*App. 33*

principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in Section 1 of this act.

The effective date is set by section 5 of HB 180.

See provisions, § 5 of HB 180 (146 v —) following RC § 2935.36.

**[§ 2950.08.1] § 2950.081 Disclosure of sex offender registration information in possession of sheriff.**

(A) Any statements, information, photographs, or fingerprints that are required to be provided, and that are provided, by an offender or delinquent child pursuant to section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code and that are in the possession of a county sheriff are public records open to public inspection under section 149.43 of the Revised Code and shall be included in the internet sex offender and child-victim offender database established and maintained under section 2950.13 of the Revised Code to the extent provided in that section.

(B) Except when the child is classified a juvenile offender registrant and the act that is the basis of the classification is a violation of, or an attempt to commit 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, a violation of section 2907.02 of the Revised Code, or an attempt to commit a violation of that section, the sheriff shall not cause to be publicly disseminated by means of the internet any statements, information, photographs, or fingerprints that are provided by a juvenile offender registrant who sends a notice of intent to reside, registers, provides notice of a change of residence address and registers the new residence address, or provides verification of a current residence address pursuant to this chapter and that are in the possession of a county sheriff.

**HISTORY:** 149 v S 3. Eff 1-1-2002; 150 v S 5, § 1, Eff 7-31-03.

**§ 2950.09 Classification as sexual predator; determination hearing; petition for removal from classification.**

(A) If a person is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually oriented offense that is not a registration-exempt sexually oriented offense, and if the sexually oriented offense is a violent sex offense or a designated homicide, assault, or kidnapping offense and the offender is adjudicated a sexually violent predator in relation to that offense, the conviction of or plea of guilty to the offense and the adjudication as a sexually violent predator automatically classifies the offender as a sexual predator for purposes of this chapter. If a person is convicted of or pleads guilty to committing on or after the effective date of this amendment a sexually oriented offense that is a violation of division (A)(1)(b) of section 2907.02 of the Revised Code and if either the person is sentenced under section 2971.03 of the Revised Code, or the court imposes upon the offender a sentence of life without parole 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 sexual predator for purposes of

this chapter. If a person is convicted of or pleads guilty to committing on or after the effective date of this amendment attempted rape and also is convicted of or pleads guilty to a specification of the type described in section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code, the conviction of or plea of guilty to the offense and the specification automatically classify the offender as a sexual predator for purposes of this chapter. If a person is convicted, pleads guilty, or is adjudicated a delinquent child, in a court in another state, in a federal court, military court, or Indian tribal court, or in a court of any nation other than the United States for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, and if, as a result of that conviction, plea of guilty, or adjudication, the person is required, under the law of the jurisdiction in which the person was convicted, pleaded guilty, or was adjudicated, to register as a sex offender until the person's death, that conviction, plea of guilty, or adjudication automatically classifies the person as a sexual predator for the purposes of this chapter, but the person may challenge that classification pursuant to division (F) of this section. In all other cases, a person who is convicted of or pleads guilty to, has been convicted of or pleaded guilty to, or is adjudicated a delinquent child for committing, a sexually oriented offense may be classified as a sexual predator for purposes of this chapter only in accordance with division (B) or (C) of this section or, regarding delinquent children, divisions (B) and (C) of section 2152.83 of the Revised Code.

(B)(1)(a) The judge who is to impose sentence on a person who is convicted of or pleads guilty to a sexually oriented offense that is not a registration-exempt sexually oriented offense shall conduct a hearing to determine whether the offender is a sexual predator if any of the following circumstances apply:

(i) Regardless of when the sexually oriented offense was committed, the offender is to be sentenced on or after January 1, 1997, for a sexually oriented offense that is not a registration-exempt sexually oriented offense and that is not a sexually violent offense.

(ii) Regardless of when the sexually oriented offense was committed, the offender is to be sentenced on or after January 1, 1997, for a sexually oriented offense that is not a registration-exempt sexually oriented offense, and that is not a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after the effective date of this amendment for which sentence is imposed under section 2971.03 of the Revised Code or for which a sentence of life without parole is imposed under division (B) of section 2907.02 of the Revised Code, and that is not attempted rape committed on or after the effective date of this amendment when the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code, and either of the following applies: the sexually oriented offense is a violent sex offense other than a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after the effective date of this amendment and other than attempted rape committed on or after that date when the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code, and a sexually violent predator specification was not included in the indictment, count in the indictment, or information charging the

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1.50 Severability of statutory provisions

Baldwin's Ohio Revised Code Annotated General Provisions (Approx. 2 pages)

Baldwin's Ohio Revised Code Annotated  
General Provisions  
Chapter 1. Definitions; Rules of Construction (Refs & Annos)  
Statutory Provisions

R.C. § 1.50

1.50 Severability of statutory provisions

Currentness

If any provision of a section of the Revised Code or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable.

CREDIT(S)

(1971 H 607, eff. 1-3-72)

Notes of Decisions (34)

R.C. § 1.50, OH ST § 1.50

Current through 2015 Files 1 to 31 of the 131st General Assembly (2015-2016) and 2015 State Issues 1 and 2.

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App. 35