

## THE MUSTS, THE MIGHTS, THE WILL NOTS, AND THE WHENS OF CLASSIFICATION

Under Ohio's version of SORNA ("Senate Bill 10" or "SB 10"), not every youth who has committed a sexually oriented offense must register as a juvenile offender registrant. There are some youth who are required by law to register, some who might have to register, and others who will never have to register. Whether your client is eligible for classification depends on his age at the time of his offense and whether he has a prior adjudication for a sexually oriented offense. R.C. 2152.82 through 2152.85<sup>1</sup> govern the classification of registration-eligible juvenile offenders.

### Who **must** be classified? (Mandatory Registrants)

- All youth who were 16 or 17 at the time of their offense. R.C. 2152.82(A); 2152.83(A).
- Youth who were 14 or 15 at the time of their offense and who have had a prior adjudication for a sexually oriented offense. R.C. 2152.82(A).

### Who **might** be classified? (Discretionary Registrants)

- First-time offenders who were 14 or 15 at the time of their offense. R.C. 2152.83(B). The court must consider a list of factors before classifying these youth. R.C. 2152.83(D).

### Who **will not** be classified?

- Youth who were under 14 at the time of their offense. R.C. 2152.82 - 2152.83.

#### **OBJECTION ALERT!!!**

The mandatory classification of first-time 16 and 17 year old offenders is a violation of the Equal Protection Clause of the U.S. and Ohio Constitution, because it treats 16 and 17 year old first-time offenders differently than 14 and 15 year old first-time offenders without any rational basis for doing so. There is also a due process objection, given the language in *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E. 2d 729.

**When is the classification hearing?** Under the language of the registration statutes, the timing of your client's classification depends on whether your client has a prior sexually oriented offense and whether your client is committed to a secure facility at his disposition hearing.

- **Juvenile Sex Offender Registration as Part of Dispositional Order:** For youth who are 14, 15, 16, or 17, and have a prior adjudication for a sexually oriented offense, regardless of their age at the time of the prior offense, classification should occur at disposition. R.C. 2152.82.
- **Juvenile Sex Offender Registration at Time of Release from Secure Facility:** For first-time offenders who were 16 or 17 at the time of their offense, classification should occur at disposition, unless the court commits the youth to a secure facility, in which case classification occurs upon the youth's release from the secure facility. R.C. 2152.83(A). According to *In re I.A.* (Slip Opinion: 2014-Ohio-3155), for 14 and 15 year old first-time offenders, a court may conduct the youth's initial classification hearing at disposition or upon the child's release from a secure facility. R.C. 2152.83(B).

#### **OBJECTION ALERT!!!**

In *State v. Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, the Supreme Court of Ohio found that the only constitutionally valid time to hold a classification hearing is at initial sentencing. The justification for this is fairly straightforward: because SB 10 is punitive, bifurcating the classification process constitutes the imposition of multiple punishments for one offense, which is a violation of the Double Jeopardy Clause of the U.S. and Ohio Constitutions. Though *Raber* concerned an adult registration case, juveniles have the same right to be protected from double jeopardy. Thus, this challenge can be raised whenever a youth's classification hearing is held at any time other than at initial disposition. The Supreme Court is currently considering the application of *Raber* to juvenile cases. See *In re D.S.*, Case No. 2014-0607.

<sup>1</sup> Though the General Assembly drafted R.C. 2152.86 as part of S.B. 10, the Supreme Court found R.C. 2152.86 unconstitutional in *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E. 2d 729. As such, R.C. 2152.86 is not to be applied to any juvenile subject to registration. Youth with a serious youthful offender designation are now classified in the same manner as youth without that designation.

## THE CLASSIFICATION HEARING

**Classification hearing for discretionary registrants:** A juvenile court must undergo a two-step process in classifying a youth who is a 14 or 15 year old first-time offender. R.C. 2152.83(B) governs the classification of such youth. It requires that the juvenile court consider a number of factors before determining whether the child should be a juvenile offender registrant. Those factors, which are contained in R.C. 2152.83(D), are:

- The nature of the sexually oriented offense or the child-victim oriented offense;
- Whether the child has shown any genuine remorse or compunction for the offense;
- The public interest in safety;
- The factors set forth in R.C. 2950.11(K), provided that the references in the factors to “the offender” shall be construed for purposes of this division to be references to the delinquent child;
- The factors in R.C. 2929.12(B),(C) as applied regarding the delinquent child, the offense, the victim; and
- The results of any treatment provided to the child and of any follow-up professional assessment of the child.

Once the court makes a determination as to the youth’s registration status, the court moves on to the second step of determining tier level.

**Tier Determination for all Juvenile Offender Registrants:** R.C. 2152.831 governs the tier determination. The statute requires that juvenile courts conduct a hearing “to determine whether to classify the child a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender.” Unfortunately, the General Assembly provided no guidance as to which factors a court is to use to determine tier level. The Ohio Attorney General has suggested that the factors in R.C. 2152.83(D) should also be used to determine tier level.<sup>2</sup>

Though each tier level requires youth to provide the same information, the duration and frequency of registration varies for each:

Registration Level	Frequency of Registration	Duration of Registration
Tier I	Annually	Ten years, unless declassified pursuant to R.C. 2152.84 or 2152.85. R.C. 2950.07.
Tier II	Every 180 days	Twenty years, unless declassified or reclassified pursuant to R.C. 2152.84 or 2152.85. R.C. 2950.07.
Tier III	Every 90 days	Life, unless declassified or reclassified pursuant to R.C. 2152.84 or 2152.85. R.C. 2950.07.
PRQJOR ( <del>2152.86</del> )	NO LONGER A VALID CLASSIFICATION CATEGORY	NO LONGER A VALID CLASSIFICATION CATEGORY

## THE PUBLIC NATURE OF JUVENILE REGISTRATION

**How public is registration?** Juvenile offender registrant information should not appear on the Ohio Attorney General’s electronic database (eSORN). If your client appears on eSORN, for an offense that he committed as a juvenile, contact the Attorney General to have him removed. However, the registration information may be available through other means of publication. (See below).

**Tier III with Community Notification:** Youth who are classified as Tier III juvenile offender registrants may be subject to community notification pursuant to R.C. 2950.10(B)(1)(c) and 2950.11(F)(1)(c).<sup>34</sup> R.C. 2152.82; 2152.83. For those youth, postcards containing the youth’s name, residence address, offense, registrant status, and photograph, are sent to neighbors, schools, day cares, etc. each time the youth registers or changes his address.

<sup>2</sup> See Brief of Amicus Curiae Ohio Attorney General, filed in support of neither party in *In re Smith*, Supreme Court of Ohio Case No. 2008-1624, pp. 11-12.

<sup>3</sup> The language of the provisions governing community notification requires courts to apply repealed law in order to impose community notification. *State v. McConville*, 124 Ohio St.3d 556, 2010-Ohio-958.

<sup>4</sup> Recently, the Attorney General started directing Sheriffs to apply community notification to all Tier III juvenile offender registrants, regardless of whether their court found them to be subject to community notification. This is hugely problematic.

**Every Other Juvenile Offender Registrant:** Despite not being subject to community notification or publication on eSORN, any statements, information, photographs, fingerprints, or materials that are required to be provided to the county sheriff pursuant to R.C. 2950.04, 2950.041, 2950.05, or 2950.06 are public records open to inspection under R.C. 149.43. R.C. 2950.081. This means that any member of the community may make a public records request with the county sheriff where your client resides and receive information about your client's registrant status. This same section prohibits the Sheriff from including the youth's information on the internet in any way, but it does not preclude any person – related or unrelated to the facts of your clients case – from obtaining information concerning the youth's inclusion in the registry.

**OBJECTION ALERT!!!**

In *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E. 2d 729, the Supreme Court of Ohio provided very strong language against the publication of a juvenile offender registrant's information to the community. Using language directly from the Supreme Court's decision in *C.P.*, object to the constitutionality of community notification for any youth subject to classification as a tier III juvenile offender registrant.

**OBJECTION ALERT!!!**

In *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, the Supreme Court of Ohio found SB 10 to be punitive. The Supreme Court extended this determination to juvenile registration as well. *In re D.J.S.*, 130 Ohio St.3d 257, 2011-Ohio-5342, 957 N.E.2d 291; *see also In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E. 2d 729. Juvenile registration is the only instance where punishment is imposed on a juvenile, and that punishment extends beyond the jurisdiction of the juvenile court. Because punitive measures are only valid in the juvenile system to the extent that they aid in a child's rehabilitation, (*see In re Caldwell*, 76 Ohio St.3d 156, 157 1996-Ohio-410, 666 N.E.2d 1367) object to the continuation of a juvenile offender registrant's classification beyond the end of disposition.

**OPPORTUNITIES FOR RECLASSIFICATION AND DECLASSIFICATION**

**When can a youth be reclassified or declassified?** Unlike adult offender registrants, juveniles have multiple opportunities to have their classification level lowered or removed completely.

**End of Disposition Hearing:** R.C. 2152.84 requires a juvenile court to conduct a hearing at the end of the juvenile offender registrant's disposition (discharge from parole), to review the effectiveness of the youth's disposition and any treatment. This hearing is mandatory. If a court fails to hold one, the youth can request one by motion. The juvenile court must consider the factors in R.C. 2152.83(D) to determine whether to continue, modify, or terminate a youth's classification.

- If the youth was a discretionary registrant who was classified pursuant to R.C. 2152.83(B), the court may issue an order finding that the youth's classification must continue, or that the youth no longer is a juvenile offender registrant who no longer has a duty to comply with R.C. 2950.04, 2950.041, 2950.05, or 2950.06. The court could also continue the classification of a discretionary or mandatory registrant, but lower the youth's tier level.
- If the youth was a mandatory registrant, the court may only lower a youth's tier at this time. The court may not remove the youth from the registry or increase the youth's tier level.

**Petition for Reclassification/Declassification:** Three years after the juvenile offender registrant's end of disposition hearing, the youth may file a petition requesting reclassification or declassification under R.C. 2152.85. If unsuccessful, the youth may request the same again three years after the initial request, and every five years thereafter. No matter how old the juvenile offender registrant is, the petitions must always be filed in juvenile court.

**Note: Juvenile offender registrants will forever remain "juvenile" under SB 10. They will never be subject to residency restrictions; do not have to register in any county other than where they reside; and do not become adult offender registrants when they turn 18 or 21. R.C. 2950.034; 2950.03; 2152.84; 2152.85.**

## SENATE BILL 10 CASE LAW AND IMPLICATIONS FOR OBJECTIONS

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*State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-242, 933 N.E.2d 753. **Holding:** the retroactive application of SB 10 to persons who were classified by prior judicial order violates the Separation of Powers Clause of the Ohio Constitution. **Remedy:** The portions of the law which required the Attorney General to reclassify registrants were severed. **Implication:** If your client was classified by a juvenile court as a Megan's Law registrant (and that order is/was valid) prior to January 1, 2008, they should not be classified as a tier I, II, or III. SB 10 cannot apply to them.

*State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108. **Holding:** SB 10 is punitive and may not be retroactively applied to anyone whose offense predated its enactment. **Remedy:** Persons (this case concerned an adult appellant) whose offenses occurred prior to January 1, 2008 are to be given new classification hearings according to the registration law in effect at the time of their offense. By classifying registration under SB 10 as "punishment," the Supreme Court has opened the door to argue that registration should either: 1) not be applied to juveniles at all; or 2) should terminate automatically once the adjudicated child turns 21 or completes his disposition.

*In re D.J.S.*, 130 Ohio St.3d 257, 2011-Ohio-5342, 957 N.E.2d 291; *In re A.R.*, 130 Ohio St.3d 258, 2011-Ohio-5344, 957 N.E.2d 291; and *In re cases held for In re D.J.S.*, 130 Ohio St.3d 253, 2011-Ohio-5349, 957 N.E.2d 288. **Holding:** Remanded for application of *Williams*. **Remedy:** Same as that announced in *Williams*. **Implications:** If your client's offense occurred before January 1, 2008, and that client is still within the age jurisdiction of the juvenile court, or is still under the supervision of the juvenile court (probation/parole), they are to receive a Megan's Law hearing. If your client is off parole/probation or is over 21, the remedy in *Williams* cannot apply to him; and his unconstitutional classification must be vacated.

*State v. Gingell*, 128 Ohio St.3d 444, 2011-Ohio-1481, 946 N.E.2d 192. **Holding:** Because the retroactive application of SB 10 was unconstitutional, registrants may not be convicted of failing to comply with the reporting requirements of SB 10. Registrants remain accountable for violations of Megan's Law requirements. **Implications:** If you have a client who was charged with/convicted of failure to register while the constitutional challenges to SB 10 were pending in the Ohio Supreme Court, that conviction, if based solely on a violation of SB 10, is invalid and should be vacated.

*In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729. **Holding:** R.C. 2152.86 is unconstitutional as violating due process and the prohibition against cruel and unusual punishments. The Court also found that juvenile registration and community notification frustrate the rehabilitative purpose of the juvenile court. **Remedy:** R.C. 2152.86 is invalid in its entirety. **Implications:** The language in the case can also be used to challenge community notification in general for youth, as well as registration extending beyond the age jurisdiction of the juvenile court. The case can also be used to challenge the classification of mandatory registrants. In addition, there is great language for challenging any mandatory juvenile disposition, including: mandatory bindover and firearm specifications.

*In re J.V.*, 134 Ohio St.3d 1, 2012-Ohio-4961, 979 N.E.2d 1203. **Holding:** Juvenile courts do not have jurisdiction to impose a disposition once a youth turns 21. **Implications:** Youth who turned 21 before the Supreme Court announced the remedy in *Williams* cannot be classified as juvenile offender registrants at all, because the juvenile court lacks jurisdiction to hold a classification hearing and correct the unconstitutionality of the SB 10 classification.

*State v. Raber*, 2012-Ohio-5636, 982 N.E.2d 684, 2012 Ohio LEXIS 3072. **Holding:** A trial court lacks jurisdiction to reconsider a final judgment in a case; therefore, because classification under SB 10 is punishment, classifying an offender at any time after his original sentencing violates double jeopardy. **Implications:** The only proper time to issue a classification order is at sentencing, or in the case of juveniles, at initial disposition. Though the implications of this holding are at odds with the timing directives of R.C. 2152.83, that is a problem for the General Assembly to correct, not the defense bar!

*In re Bruce S.*, 2012-Ohio-5696, 2012 Ohio LEXIS 3104. **Holding:** SB 10 may not be applied to juveniles whose offenses occurred between the repeal of Ohio's Megan's Law (July 1, 2007) and the effective date of SB 10 (January 1, 2008). **Implication:** If your client's offense occurred during that 6-month window SB 10 cannot apply to them. If they have a SB 10 classification and they are now over 21, the remedy announced in *Williams* cannot be applied. *See In re J.V.*

*State ex rel PreSSION Jean-Baptiste v. Kirsch*, 2012-Ohio-5697. **Holding:** Juvenile courts lack statutory authority to classify a youth after he released from a secure facility and his juvenile disposition is fully satisfied, or after he is 21. **Implications:** If a child is released from DYS at the age of 21, juvenile courts are without jurisdiction to classify him as a juvenile offender registrant; if a child has completed his disposition and been discharged from parole, juvenile courts are without jurisdiction to classify him. *See also, In re J.B.*, 2012-Ohio-5675 (raised the issue of whether classifying after discharge from parole is constitutional – Supreme Court remanded for application of *Jean-Baptiste v. Kirsch*.)

*In re I.A.*, 2014-Ohio-3155. **Holding:** “Pursuant to R.C. 2152.83(B)(1), a court that commits a child to a secure facility may conduct at the time of disposition a hearing regarding the appropriateness of juvenile-offender-registrant classification for that child.” **Implications:** courts can choose whether to conduct a discretionary registrant’s classification hearing either at initial disposition, or upon release from a secure facility. This is in contrast to the timing of the classification hearing for first-time 16- and 17-year old juvenile offenders who are classified under R.C. 2152.83(A)(1).

Materials prepared by The Office of the Ohio Public Defender. Additional resources, such as sample motions and objections can be found at: [www.opd.ohio.gov](http://www.opd.ohio.gov) .

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