

# Sex Offender Law Unconstitutional

## Ohio Supreme Court rejects retroactivity and fear

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The Ohio Supreme has struck down an Ohio law that increased the reporting requirements for thousands of Ohioans convicted of sex offenses.

The court's June 3 decision spawned a wave of fear-mongering.

"Court ruling means sex offenders could be checking in less often," blared 10TV News in Columbus, beside an image of a darkened silhouette in front of a "DO NOT CROSS" police line.

Christian Bodyke of Huron County, Ohio, is one of those sex offenders. In 1999, a judge assessed his social history and risk of recidivism and deemed Bodyke to be a low risk offender. He was required to register with the sheriff in his home county each year for 10 years. The sheriff was not required to notify Bodyke's neighbors.

Then on Jan. 1, 2008 the Ohio Adam Walsh Act took effect. It tossed out judges' assessments of risk. Instead, requirements for registration by sex offenders were set based solely on the name of the offense. Moreover, the Ohio Attorney General would determine registration requirements for all

sex offenders, even those who had been previously assessed by judges.

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**While the classifications and registration duties of 26,000 sex offenders will revert to what they were before that date, when the law took effect, those who were convicted on or after that date were unaffected by the ruling. Their classification will still be set according to the name of their offense, instead of by a judge who considers their risk of re-offending.**

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### 'It's common sense'

Bodyke had faithfully complied with his reporting requirements and had only a couple years to go when the attorney general reclassified him from the lowest-risk classification to the highest-risk classification.

He would have to register every 90 days for the rest of his life, not just in his county of residence, but any county where he worked or visited for longer than three days. His neighbors received postcards with his personal information, warning that a "sexual predator" lived nearby.

Bodyke was one of thousands of low-risk offenders re-classified as high-risk.

To comply with federal rules, the law also changed the three primary levels of risk from sexually oriented offender, habitual sexual offender and sexual predator to Tier 1, Tier 2 and Tier 3.

The law also extended the amount of time someone must remain on the registry. An offender at the lowest risk would have to register for 15 years instead of 10, and an offender at the intermediate risk would have to register for 25 years instead of 20. Those deemed highest-risk were already registering for life. Thus even those who were not reclassified faced longer terms on the registry.

"Many of our clients were on the verge of suicide when they realized that, as a result of the law, they would have to endure a lifetime of registration duties, which means a lifetime of being stigmatized," says Margie Slagle, an attorney with the Ohio Justice & Policy Center (OJPC).

Slagle and OJPC, based in Cincinnati, collaborated with the Ohio Public Defender and the Ohio Chapter of the American Civil Liberties Union to build the case, write the briefs and prepare for oral arguments in the case before the Supreme Court, *State v. Bodyke, et al.*

(Disclosure: This reporter works for OJPC.)

Some 26,000 people – approximately 85 percent of the 30,750 convicted sex offenders in Ohio – were reclassified as a result of the Ohio Adam Walsh Act. The question before the Supreme Court was whether the law could apply retroactively.

The court ruled 5 to 1 that it could not. The court determined that the legislature's action to reclassify sex offenders was unconstitutional because it overturned the final decisions of a trial court, thus violating the separation-of-powers doctrine.

"The reclassification scheme ... interferes with the judicial power by requiring the reopening of final judgments," wrote Justice Maureen O'Connor in the majority opinion. "It is well settled that a legislature cannot enact laws that revisit a final judgment."

"It's common sense," Slagle says. "If someone hits your car and the trial court awards you \$5,000, you don't want the legislature a year later altering that ruling."

Ohio Attorney General Richard Cordray released a statement calling the decision "narrowly tailored."

"The broad provisions of Ohio's Adam Walsh Act remain in place," he said. "(The decision) reinstated the classifications and community notification and registration orders imposed by judges under prior state



Ohio Supreme Court.

law for certain offenders who had been sentenced before Jan. 1, 2008."

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### Victims back ruling

"Justices Give 26,000 Ohio Sex Offenders a Break," announced the *Columbus Dispatch* in reporting the decision.

In fact, the ruling gives the whole community a break. The Ohio Adam Walsh Act authorized classifications without assessing an individual's risk of re-offense. The flood of "over-classified" individuals burdens county sheriffs, who are required to monitor these individuals.

The *Cincinnati Enquirer*, considered politically conservative, has advocated a more sensible approach. In a 2008 editorial, the *Enquirer* called reclassifying low-risk offenders "absurdly unfair" and wrote that the law was "bound to do far more harm than good and actually could be a step backward in protecting the public."

Instead of concentrating on high-risk individuals, it argued, county sheriffs would have to expend limited resources keeping tabs on low-risk offenders.

"Re-classifying [offenders] upward also requires sheriffs to issue more notifications about offenders' whereabouts, adding administrative burdens with little payoff in public safety," the editorial said.

"That's a huge amount of manpower for the sheriff," Slagle says. "Many sheriffs freely admitted that it's a waste. They want to concentrate on people who are higher risk, but those tiers are now swamped with low-risk former offenders."

Many believe sex-offender registries are a public-safety tool, one that "provide[s] families with the information they need to keep their children safe," as Attorney General Cordray stated.

But diluting sex-offender registries with the names of reclassified, low-risk offenders thwarts that public-safety purpose. To that end, the National Alliance to End Sexual Violence and victims' advocacy organizations in California, Iowa and Texas together submitted a brief urging the Ohio Supreme Court to find the law unconstitutional.

"(T)hese changes put law enforcement agencies, already in budgetary crises, in the position of spending precious dollars on monitoring low risk individuals with a limited impact on public safety," said the brief by victims' advocates. "More onerous sex-offender registration and community-notification laws threaten to harm the very people they are intended to protect and to undermine goals of community safety and treatment of offenders."

Ohio's Adam Walsh Act, they concluded, is "not based on empirical evidence or proven research, but on fear and misinformation."

While basing its ruling on the separation-of-powers doctrine, the Court also seemed to recognize that it makes little sense to classify sex offenders without performing an assessment first.

Because of Ohio's Adam Walsh Act, Justice O'Connor wrote, "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."

One might add: Sex offender registries are no longer as meaningful.