

**IN THE
SUPREME COURT OF OHIO**

CASE NO. 2019-1325

In Re. R.B.

A Minor-Child-Appellee/Cross-Appellant

COURT OF APPEALS CASE NO.
C-170622 & 170623

ON APPEAL FROM HAMILTON
COUNTY COURT OF APPEALS, FIRST
APPELLATE DISTRICT

**FIRST MERIT BRIEF OF AMICUS CURIAE OHIO PROSECUTING ATTORNEYS
ASSOCIATION IN SUPPORT OF THE STATE OF OHIO**

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INTRODUCTION

The juvenile sex offender registration statutes should not be construed to provide procedural loopholes for a juvenile sex offender to avoid registration requirements. Registration requirements stemming from juvenile adjudications are unlike the requirements that attach to criminal convictions. The juvenile sex offender registration system is designed to allow periodic reviews of a juvenile sex offender's registration obligations. Such periodic reviews only benefit the delinquent child. If the juvenile sex offender is to avoid registration obligations, it should be because he or she has been effectively rehabilitated through the juvenile justice system. At issue in this case is the completion of disposition review under R.C. 2152.84 and whether such hearing could be held after the juvenile turns twenty-one years old. The answer is yes.

The First District's decision in *In re R.B.*, 1st Dist. Hamilton Nos. C-170622 & C-170623, 2019-Ohio-3298 implicates an important public policy concern for Ohio's citizens. The avowed goals of providing sex offender registration laws for certain delinquent children is to protect the safety and general welfare of the people of the state and that the exchange of certain relevant information among public agencies is a means of assuring public protection. See generally, R.C. 2950.02(B). Juvenile sex offender registration does not share the same process for those convicted as adults. As an overview, the juvenile sex offender registration process balances the avowed public purpose with a process that allows a juvenile court to periodically review a juvenile's classification and determine whether it should remain in place. Hearings will occur at disposition or release from secured confinement (See generally R.C. 2152.82 and R.C. 2152.83), at the completion of disposition (see generally R.C. 2152.84), and periodically thereafter (see generally R.C. 2152.85). Because the minimum length of registration is ten years for a juvenile that is adjudicated delinquent (R.C. 2950.07(B)(3)), it seems natural that registration will extend beyond

the juvenile's 21st birthday. A natural extension of this observation is that a juvenile court will retain jurisdiction beyond the juvenile's 21st birthday.

The First District; however, has interpreted certain provisions of R.C. 2152.82, et seq., to require certain hearings to occur before a juvenile's 21st birthday, in order for a delinquent child sex offender to be subjected to the registration scheme. It is the Ohio Prosecuting Attorneys Association's position that, if a juvenile sex offender is to avoid registration it is because the offender has demonstrated to the juvenile court that registration is no longer required. The juvenile sex offender should not avoid registration because of erroneous jurisdictional requirements. When reading provisions of R.C. 2152.82, et seq. in context with each other, the juvenile sex offender registration provisions should be construed to allow hearings to occur before and after the juvenile's 21st birthday.

The Ohio Prosecuting Attorneys Association shares the concern of the State of Ohio that if R.C. 2152.92, et. seq. is construed to require certain hearings to occur prior to a juvenile's twenty-first birthday, then it will not have an opportunity to conduct a meaningful review. For instance, if a juvenile is released from ODYS just prior to his 21st birthday, then the hearing under R.C. 2152.83 might be less than meaningful if the juvenile court has only days to complete said hearing. The same could be said of the "completion of disposition" hearing held pursuant to R.C. 2152.84 where the completion of disposition occurs only days prior to a juvenile's 21st birthday. A juvenile court should have the flexibility to conduct these types of hearings, with adequate time to gather necessary information to conduct a meaningful hearing.

STATEMENT OF INTEREST OF AMICI CURIAE

The Ohio Prosecuting Attorneys Association (OPAA) is a private non-profit membership organization that was founded for the benefit of the 88 county prosecutors. Each county prosecutor

is charged under R.C. 309.08(A) with inquiring into the commission of the crime and prosecuting on behalf of the state, all complaints, suits, and controversies in which the state is a party. The founding attorneys developed the original mission statement, which is still adhered to. It reads: “to increase the efficiency of its members in the pursuit of their interest; to broaden their interest in government; to provide cooperation and concerted actions on the polices which affect the office of the Prosecuting Attorney, and to aid in the furtherance of justice. Further, the association promotes the study of law, the diffusion of knowledge, and the continuing education of its members.”

And it is in furtherance of justice to guarantee that the laws of the State of Ohio are faithfully executed, and that the public’s safety is ensured. Prosecutors across Ohio have an interest in ensuring that the public is protected. The Ohio Prosecuting Attorneys Association has deemed the issues raised by the State of Ohio important due to its potential impact across Ohio. Sex offender registration and notification (SORN) laws and juvenile sex offender registration (JSORN) laws have an avowed goal of protecting the public that is separate from any potential penalty. OPAA supports the position of the State of Ohio because to adopt the contrary position would undermine the effectiveness of JSORN laws in Ohio.

STATEMENT OF THE CASE

The OPAA adopts the statement of the case, as set forth in the State of Ohio’s merit brief. As in its amicus memorandum in support of jurisdiction, the OPAA emphasizes the following facts as it is important to the analysis in this case:

- A complaint was filed on September 21, 2011, alleging that R.B. committed ODYS. He admitted to two counts of fourth-degree gross sexual imposition on October 14, 2011. *In re R.B.*, 1st Dist. Hamilton Nos. C-170622, C-170623, 2019-Ohio-3298, ¶2

- On November 17, 2011, the State and R.B. agreed to a Tier I classification. On December 2, 2011, R.B. was committed to ODYS until age twenty-one; however, the commitment was suspended at R.B. was placed on probation. *Id.*
- A classification order was entered on January 13, 2012. *Id.* at ¶3. The OPAA construes this as the initial classification order.
- Official Probation was terminated on July 29, 2013. R.B. was placed on nonmonitored probation. *Id.* at ¶4
- R.B. turned 18 on July 20, 2014. *Id.* at ¶6.
- The State filed its motion for end-of-disposition hearing on October 24, 2016. *Id.* at ¶5-6.
- On May 8, 2017, the magistrate conducted the requisite hearing pursuant to R.C. 2152.84. An order was issued July 13 and 14, 2017 continuing the prior registration order. *Id.* at ¶5. R.B. filed objections.
- R.B. turned twenty-one on July 20, 2017. *Id.* at ¶6.
- The judge held a hearing on the objections on September 19, 2017 and on October 30, 2017 adopted the magistrate's decision. *Id.* at ¶6.

The court of appeals held that the juvenile court was without jurisdiction to enter an order under R.C. 2152.84 because R.B. had turned twenty-one. *Id.* at ¶14. The court of appeals primarily relied upon *State v. Amos*, 2017-Ohio-8448, 87 N.E.3d 1305 (1st Dist.), *State v. Schulze*, 2016-Ohio-470, 59 N.E.3d 673 (1st Dist.), and *State ex rel. Jean-Baptiste v. Kirsch*, 134 Ohio St.3d 421, 2012-Ohio-5697, 983 N.E.2d 302.

In the view of the OPAA, the court of appeals decision does not fully consider the effect of R.C. 2152.84(D), which the OPAA construes as providing a juvenile court with continuing jurisdiction over a juvenile sex offender's registration obligation. Similar provisions exist for

every stage of the juvenile sex offender registration process. See also R.C. 2152.82(C), R.C. 2152.83(E), and R.C. 2152.85(F). The interplay of these statutes is central to the issue of jurisdiction in this case and plainly indicates that a juvenile court retains jurisdiction over a juvenile's sex offender registration obligations, even after the juvenile turns twenty-one.

LAW AND ARGUMENT

APPELLANT'S PROPOSITION OF LAW: ONCE A JUVENILE COURT MAKES AN APPROPRIATE CLASSIFICATION UNDER R.C. 2152.83, IT IS PERMANENTLY VESTED WITH JURISDICTION TO REVIEW THE CLASSIFICATION IN ACCORDANCE WITH R.C. 2152.84 AND 215[2].85.

Adoption of the Appellant's proposition of law necessarily leads to the conclusion that a juvenile court retains jurisdiction over a juvenile's sex offender registration obligations, even after the juvenile turns twenty-one years old. This rule of law is supported by the common language various sections of the Revised Code. R.C. 2152.82, R.C. 2152.83, R.C. 2152.84 and R.C. 2152.85 which all provide that the "child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and that the order remains in effect for the period of time described in this division." The age of twenty-one is significant under Ohio law as it represents the maximum age in which a juvenile might be committed to the Department of Youth Services. But the age of twenty-one does not represent the age in which a juvenile court loses jurisdiction over all matters involving an alleged delinquent child or delinquent child. A commonsense analysis of the Revised Code provisions governing JSORN laws can only lead to the conclusion that once a juvenile is classified, the juvenile court has continuing jurisdiction to continue, modify, or terminate those obligations.

A. THE STANDARD OF REVIEW IN INTERPRETING R.C. 2152.83 IS DE NOVO. ORDINARILY STATUTES ARE APPLIED AS WRITTEN; HOWEVER, COURTS LOOK TO INTERPRET AMBIGUOUS STATUTES.

Issues involving statutory interpretation are legal questions. Therefore, it follows that the standard of review for questions of statutory interpretation is de novo. *Wayt v. DHSC, L.L.C.*, 155 Ohio St.3d 401, 2018-Ohio-4822, 122 N.E.3d 92, ¶15 citing *Ceccarelli v. Levin*, 127 Ohio St.3d 231, 2010-Ohio-5681, 938 N.E. 2d 342, ¶15. Although an unambiguous statute is to be applied as written and not interpreted, a court may engage in statutory interpretation when the statute under review is ambiguous, where the object of such review is to ascertain and give effect to the intent of the legislature. *State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, ¶11-13 citing *Slingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902), paragraph one of the syllabus and *Sears v. Weimer*, 143 Ohio St. 312, 28 O.O. 270, 55 N.E.2d 413 (1944), paragraph five of the syllabus. Under either approach, this Court would derive at the same conclusion.

B. A DE NOVO REVIEW OF THE STATUTORY FRAMEWORK OF OHIO'S JUVENILE SEX OFFENDER REGISTRATION LAW LEADS TO THE CONCLUSION THAT A JUVENILE COURT IS PERMANENTLY VESTED WITH JURISDICTION TO REVIEW A JUVENILE'S SEX OFFENDER CLASSIFICATION.

The statutory framework of imposing, continuing, modifying and terminating a juvenile's obligations under JSORN is governed by R.C. 2152.82, R.C. 2152.83, R.C. 2152.84 and R.C. 2152.85. A juvenile required to register under JSORN is required to register in accordance with R.C. 2950.04, verify their address in accordance with R.C. 2950.06 and provide a notice of change of address as required under R.C. 2950.05.

The first question to asks is whether any provision of JSORN limit a juvenile court's ability to conduct the hearing after a child attains the age of twenty-one. The answer is no. No provision of R.C. 2152.83, R.C. 2152.84 or R.C. 2152.85 plainly prohibits a juvenile court from conducting

proceedings related to juvenile sex offender registration after the child attains the age of twenty-one. R.C. 2152.22, specifically provides the juvenile court with jurisdiction over a juvenile even if the juvenile is committed to the custody of the ODYS.

The first relevant statute is the one that applies to a juvenile who is committed to the custody of the Ohio Department of Youth Service. The relevant provisions of R.C. 2152.83 allows a juvenile court to impose a JSORN requirement and states:

(B)(1) The court that adjudicates a child a delinquent child, on the judge's own motion, may conduct at the time of disposition of the child or, if the court commits the child for the delinquent act to the custody of a secure facility, may conduct at the time of the child's release from the secure facility a hearing for the purposes described in division (B)(2) of this section if all of the following apply:

(a) The act for which the child is adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.

(b) The child was fourteen or fifteen years of age at the time of committing the offense.

(c) The court was not required to classify the child a juvenile offender registrant under section [2152.82](#) of the Revised Code or as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under section [2152.86](#) of the Revised Code.

[***]

(E) An order issued under division (A) or (B) of this section and any determinations included in the order shall remain in effect for the period of time specified in section [2950.07](#) of the Revised Code, subject to a modification or termination of the order under section [2152.84](#) of the Revised Code, and section [2152.851](#) of the Revised Code applies regarding the order and the determinations. The child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

[***]

R.C. 2152.83(B)&(E).

R.C. 2152.83(B) provides the procedure to classify a juvenile such as R.B. who was fourteen or fifteen years old at the time of committing the offense. R.C. 2152.83(E) provides that the registration order under this division remains in effect for the period of time specified under

section 2950.07 of the Revised Code. That order is subject to further modification or termination under section 2152.84. Most importantly, the statute specifies that the juvenile's attainment of age twenty-one does not affect or terminate the order and remains in effect for the period of time specified under R.C. 2950.07. Section 2950.07 of the Revised Code provides under JSORN a ten year length of registration for Tier I offenders, twenty years for Tier II offenders, and lifetime for Tier III offenders. See R.C. 2950.07(B). It should also be noted that R.C. 2152.83 does not require an order under R.C. 2152.84 for the initial classification order to remain in effect.

The second relevant statute, which is at issue in this case, is the one that allows the juvenile court to determine whether to continue the JSORN requirement. The relevant provision of R.C. 2152.84 states:

(A)(1) When a juvenile court judge issues an order under section 2152.82 or division (A) or (B) of section 2152.83 of the Revised Code that classifies a delinquent child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code, upon completion of the disposition of that child made for the sexually oriented offense or the child-victim oriented offense on which the juvenile offender registrant order was based, the judge or the judge's successor in office shall conduct a hearing to review the effectiveness of the disposition and of any treatment provided for the child, to determine the risks that the child might re-offend, to determine whether the prior classification of the child as a juvenile offender registrant should be continued or terminated as provided under division (A)(2) of this section, and to determine whether its prior determination made at the hearing held pursuant to section 2152.831 of the Revised Code as to whether the child is 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 should be continued or modified as provided under division (A)(2) of this section.

(2) Upon completion of a hearing under division (A)(1) of this section, the judge, in the judge's discretion and after consideration of all relevant factors, including but not limited to, the factors listed in division (D) of section 2152.83 of the Revised Code, shall do one of the following as applicable:

(a) Enter an order that continues the classification of the delinquent child as a juvenile offender registrant made in the prior order issued under section 2152.82 or division (A) or (B) of section 2152.83 of the Revised Code and the prior determination included in the order that the child is 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, whichever is applicable;

(b) If the prior order was issued under division (B) of section 2152.83 of the Revised Code, enter an order that contains a determination that the delinquent child no longer is a juvenile offender registrant and no longer has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code. An order issued under division (A)(2)(b) of this section also terminates all prior determinations that the child is 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, whichever is applicable. Division (A)(2)(b) of this section does not apply to a prior order issued under section 2152.82 or division (A) of section 2152.83 of the Revised Code.

(c) If the prior order was issued under section 2152.82 or division (A) or (B) of section 2152.83 of the Revised Code, enter an order that continues the classification of the delinquent child as a juvenile offender registrant made in the prior order issued under section 2152.82 or division (A) or (B) of section 2152.83 of the Revised Code, and that modifies the prior determination made at the hearing held pursuant to section 2152.831 of the Revised Code that the child is 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, whichever is applicable. An order issued under division (A)(2)(c) of this section shall not include a determination that increases to a higher tier the tier classification of the delinquent child. An order issued under division (A)(2)(c) of this section shall specify the new determination made by the court at a hearing held pursuant to division (A)(1) of this section as to whether the child is 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, whichever is applicable.

[***]

(D) An order issued under division (A)(2)(a) or (c) of this section and any determinations included in the order shall remain in effect for the period of time specified in section 2950.07 of the Revised Code, subject to a modification or termination of the order under section 2152.85 of the Revised Code, and section 2152.851 of the Revised Code applies regarding the order and the determinations. If an order is issued under division (A)(2)(a) or (c) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

[***]

R.C. 2152.84(A)&(D).

R.C. 2152.84 provides an opportunity, for the juvenile court, to review the classification order made under R.C. 2152.83. Section 2152.84(D) provides that a juvenile's attainment of age twenty-one does not affect or terminate the order made under section 1. This statute must be read in conjunction with R.C. 2152.83(E).

The third and final relevant statute, is one that allows the juvenile court to modify or terminate the JSORN requirement. The relevant provision of R.C. 2152.85 states:

(A) Regardless of when the delinquent child was classified a juvenile offender registrant, upon the expiration of the applicable period of time specified in division (B)(1), (2), or (3) of this section, a delinquent child who has been classified pursuant to this section or section 2152.82 or 2152.83 of the Revised Code a juvenile offender registrant may petition the judge who made the classification, or that judge's successor in office, to do one of the following:

(1) If the order containing the juvenile offender registrant classification also includes a determination by the juvenile court judge that the delinquent child is a tier III sex offender/child-victim offender, to enter, as applicable, an order that contains a determination that reclassifies the child as either a tier II sex offender/child-victim offender or a tier I sex offender/child-victim offender, the reason or reasons for that reclassification, and a determination that the child remains a juvenile offender registrant, or an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code;

(2) If the order containing the juvenile offender registrant classification also includes a determination by the juvenile court judge that the delinquent child is a tier II sex offender/child-victim offender, to enter, as applicable, an order that contains a determination that reclassifies the child as a tier I sex offender/child-victim offender, the reason or reasons for that reclassification, and a determination that the child remains a juvenile offender registrant, or an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code;

(3) If the order containing the juvenile offender registrant classification also includes a determination by the juvenile court judge that the delinquent child is a tier I sex offender/child-victim offender, to enter an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code.

[***]

(C) Upon the filing of a petition under division (A) of this section, the judge may review the prior classification or determination in question and, upon consideration of all relevant factors and information, including, but not limited to the factors listed in division (D) of section 2152.83 of the Revised Code, the judge, in the judge's discretion, shall do one of the following:

- (1) Enter an order denying the petition;
- (2) Issue an order that reclassifies or declassifies the delinquent child in the requested manner.

[***]

(F) An order issued under division (C) of this section shall remain in effect for the period of time specified in section 2950.07 of the Revised Code, subject to a further modification or future termination of the order under this section. If an order is issued under division (C) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

[***]

R.C. 2152.85 is an important statute that allows a juvenile to either have their classification modified or terminated. Important to this analysis is the fact that a hearing under R.C. 2152.85 is likely to occur after the juvenile turns twenty-one.

The interplay of R.C. 2152.02, R.C. 2152.83, R.C. 2152.84 and R.C. 2152.85. In addition to the provision of Revised Code Chapter 2950, Sections 2151.82 through 2151.85 of the Revised Code provide the framework for imposing, continuing, modifying and terminating juvenile sex offender registration. These provisions can be reconciled with the general definition of a child contained under R.C. 2152.02(C).

First, R.C. 2152.02(C)(6) provides a general rule that a juvenile court has jurisdiction over a child, adjudicated delinquent prior to attaining eighteen years of age, until the child turns twenty-one. This statute does not purport to suggest that all jurisdiction ends at age twenty-one, as the

division contains the language, “except as otherwise provided in this division,” and the statute’s final sentence contains language indicating that dispositions could be made after age twenty-one.

Second, several statutes govern juvenile sex offender registration:

- **R.C. 2152.82(A):** Juvenile sex offender registration can be made a part of the dispositional order if: (1) the offense was committed on or after January 1, 2002, (2) the child was at least fourteen when committing the offense, (3) and the juvenile was previously adjudicated delinquent for committing a sexually oriented offense.
- **R.C. 2152.83(A):** The juvenile court shall issue as part of the dispositional order or if the court commits the child to a secured facility a registration order if: (1) the offense was committed on or after January 1, 2002, (2) the child was at least sixteen or seventeen when committing the offense, (3) R.C. 2152.82(A) does not apply.
- **R.C. 2152.83(B)(2):** The juvenile court may conduct a hearing as part of the dispositional order or if the court commits the child to a secured facility a registration order if: (1) the offense was committed on or after January 1, 2002, (2) the child was at least fourteen or fifteen when committing the offense, (3) R.C. 2152.82(A) does not apply.
- **R.C. 2152.82(C) and R.C. 2152.83(E):** Registration orders issued under these sections remain in effect for the time specified in R.C. 2950.07 *subject to modification*. Both divisions have language indicating that, “if an order [issued under this section], the child’s attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.”

- **R.C. 2152.84(A):** Registration orders issued under either R.C. 2152.82 or R.C. 2152.83 are subject to a completion of the disposition hearing to review the effectiveness of the disposition and any treatment to determine whether the child might re-offend and whether registration should be continued.
- **R.C. 2152.84(D):** As with R.C. 2152.82(C) and R.C. 2152.85(F), indicates that an order issued under the section, “the child’s attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.”
- **R.C. 2152.85:** Petitions for reclassification or declassification can be filed three years after the mandatory hearing conducted under section 2152.84.
- **R.C. 2152.85(F):** Contains similar language indicating that, “an order issued under [this section] shall remain in effect for the time specified in section 2950.07, subject to a further modification or future termination of the order under this section. If an order is issued under division (C) of this section, the child’s attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period described...”

The commonality between R.C. 2152.82, R.C. 2152.83, R.C. 2152.84 and R.C. 2152.85 is that each section contains language indicating that if orders are issued under the respective sections then, “the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order.”

There is no absolute rule that a juvenile court loses jurisdiction over a juvenile over all matters, once that juvenile attains the age of twenty-one. First, a “child” includes any person who has committed a crime, that would be a felony act if committed by an adult, while under the age

of 18. *See* R.C. 2152.02(C)(2). Persons who were apprehended or taken into custody after attaining the age of twenty-one are not children. *See* R.C. 2152.02(C)(3). R.C. 2152.02(C)(6) provides the following limitation in delinquency cases:

(6) The juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, except as otherwise provided in this division, a person who is so adjudicated a delinquent child or juvenile traffic offender shall be deemed a "child" until the person attains twenty-one years of age. If a person is so adjudicated a delinquent child or juvenile traffic offender and the court makes a disposition of the person under this chapter, at any time after the person attains twenty-one years of age, the places at which the person may be held under that disposition are not limited to places authorized under this chapter solely for confinement of children, and the person may be confined under that disposition, in accordance with division (F)(2) of section 2152.26 of the Revised Code, in places other than those authorized under this chapter solely for confinement of children.

Applied as written, R.C. 2152.02(C)(6) indicates that a person who is adjudicated delinquent *before* eighteen years of age is considered a child until the person attains the age of twenty-one. However, R.C. 2152.02(C)(6) further contemplates that dispositions can be made after the juvenile attains twenty-one years of age. In other words, R.C. 2152.02(C)(6) is not an absolute rule that a juvenile court loses all jurisdiction over a juvenile once that juvenile attains the age of twenty-one.

C. R.C. 2152.82 THROUGH R.C. 2152.85 PROVIDES CONTINUING JURISDICTION FOR A JUVENILE COURT TO REVIEW WHETHER SEX OFFENDER REGISTRATION SHOULD BE CONTINUED OR DISCONTINUED, EVEN AFTER THE CHILD'S 21ST BIRTHDAY.

Unambiguous statutes must be applied as written. *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.*, 74 Ohio St.3d 543, 545, 1996-Ohio-291, 660 N.E.2d 463 (1996). Legislative intent, with respect to ambiguous statutes, might be determined based upon the factors listed under R.C. 1.49.

The State of Ohio's proposition of law is consistent with R.C. 2152.83(E). From a procedural standpoint it appears undisputed that the hearing under R.C. 2152.83 was completed and an order was issued prior to R.B.'s 21st birthday. What R.C. 2152.83(E) indicates is that R.B.'s registration classification order remains valid for ten years under R.C. 2950.07, subject to modification and termination under R.C. 2152.84 and that R.B.'s subsequent attainment of age twenty-one does not terminate the order, and that order remains in effect for the ten year time period. At this point R.B.'s registration requirements were vested subject to subsequent modification under R.C. 2152.84. The court of appeals conclusion that because the hearing under R.C. 2152.84 was not timely held somehow terminates R.B.'s registration duties ignores the validity of the original registration order under R.C. 2152.83.

The phrase, "the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order" contained within each juvenile registration statute plainly indicates that a juvenile court retains jurisdiction beyond the child's 21st birthday. One might argue that the continuing jurisdiction provisions of R.C. 2152.84(D) only apply if the hearing was timely conducted and completed prior to the child's 21st birthday; however, that construction must be rejected. The hearing under R.C. 2152.85 which allows subsequent modification to a child's sex offender registration requirements, will undoubtedly occur at times, after a child's 21st birthday, and the language under R.C. 2152.85(F) are similarly phrased as R.C. 2152.84(D). No other provision in R.C. 2152.85 speaks of a child's 21st birthday other than R.C. 2152.85(F). This must lead to a conclusion that R.C. 2152.85(F), the very statute that allows a juvenile to seek declassification, provides for a juvenile court to hold such a hearing after the juvenile's 21st birthday. As a consequence, so too should R.C. 2152.84(D) be construed to provide an extension of jurisdiction beyond a child's 21st birthday.

The statutory construction advocated by the OPAA might require the Court to revisit *State ex rel. Jean-Baptiste v. Kirsch*, 134 Ohio St.3d 421, 2012-Ohio-5697, 983 N.E.2d 302. In *Jean-Baptiste*, this Court held that a juvenile court was patently and unambiguously without jurisdiction to classify Jean-Baptiste as this Court appeared to have agreed that there is no statute extending jurisdiction beyond age twenty-one. *State ex rel. Jean-Baptiste v. Kirsch*, 134 Ohio St.3d 421, 2012-Ohio-5697, at ¶¶26-27. The language of R.C. 2152.83(E) is similarly phrased as R.C. 2152.84(D) and R.C. 2152.85(F). And it could be said that an order under R.C. 2152.83(A) remains in effect for the time period specified under R.C. 2950.07 and that the juvenile's attainment of the age of twenty-one does not affect or terminate the order, and the order remains in effect for the relevant time period. The OPAA submits that R.C. 2152.82(C), R.C. 2152.83(E), R.C. 2152.84(D), and R.C. 2152.85(F) all provide an extension of a juvenile court's jurisdiction over a child, beyond the child's 21st birthday as it relates to sex offender registration obligations that is unaffected by R.C. 2152.02(C)(6).

Even if the Court were to take the approach that that R.C. 2152.82(C), R.C. 2152.83(E), R.C. 2152.84(D), and R.C. 2152.85(F) were ambiguous, the object sought to be attained, the circumstances under which the statute was enacted, the legislative history also lead to a conclusion that R.C. 2152.82(C), R.C. 2152.83(E), R.C. 2152.84(D), and R.C. 2152.85(F) providing jurisdiction beyond a child's 21st birthday. Historically, sex offender registration has been viewed as remedial and civil in nature. See *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, 700 N.E.2d 570 and *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, 896 N.E.2d 110. That changed, at least for adult sex offenders, in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108 (holding that the Adam Walsh Act was punitive). The current Adam Walsh Act statutes for juvenile sex offenders share similar aspects as those under Megan's Law for juvenile

sex offenders. At the time of the enactment of the Adam Walsh Act, the statutes were still deemed civil-in-nature and supportive of the goals enumerated under R.C. 2950.02. The retroactivity concerns expressed by this Court in *Williams* are largely inapplicable to the JSORN laws. This Court in *Williams* explained:

Under the statutory scheme in effect at the time Williams committed the offense, he was entitled to a hearing at which a court would determine whether he should be classified as a sexual predator, a habitual sex offender or a habitual child-victim offender, or a sexually oriented offender. The court would have considered various statutory factors in making its determination. Former R.C. 2950.09(B)(3), Am.Sub.S.B. No. 5, 150 Ohio Laws, Part IV, 6558, 6689-6690. **HN8** Under S.B. 10, Williams is classified as a Tier II sex offender based solely on the [*349] offense he committed, without regard to the circumstances of the crime or his likelihood to reoffend. R.C. 2950.01(E), (F), and (G).

Under S.B. 5, Williams might not have been subject to registration requirements. The trial court twice informed Williams that he would not be required to [***1113] register as a sex offender. [****13] Under S.B. 10, based on his classification as a Tier II sex offender, Williams is automatically subject to registration requirements that obligate him to register in person in the county where he resides, in the county where he works, and in the county where he attends school. R.C. 2950.04(A)(2).

Under S.B. 5, Williams could have been required to register as a sex offender for a period of ten years. Former R.C. 2950.07(B)(3), 150 Ohio Laws, Part IV, at 6681-6683. Based upon comments made by the judge when Williams entered his plea, he likely would not have been required to register. Under S.B. 10, Williams is required to register as a sex offender for 25 years. R.C. 2950.07(B)(2).

Sex offenders are no longer allowed to challenge their classifications as sex offenders because classification is automatic depending on the offense. Judges no longer review the sex-offender classification. In general, sex offenders are required to register more often and for a longer period of time. They are required to register in person and in several different places. R.C. 2950.06(B) and 2950.07(B). Furthermore, all the registration requirements apply without regard to the future dangerousness of the [****14] sex offender. Instead, registration requirements and other requirements are based solely on the fact of a conviction. Based on these significant changes to the statutory scheme governing sex offenders, we are no longer convinced that R.C. Chapter 2950 is remedial, even though some elements of it remain remedial. We conclude that as to a sex offender whose crime was committed prior to the enactment of S.B. 10, the act "imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction," *Pratte*, 125 Ohio St.3d 473, 2010 Ohio 1860, 929 N.E.2d 415, at ¶ 37, and "create[s] new burdens,

new duties, new obligations, or new liabilities not existing at the time," *Miller*, 64 Ohio St. at 51, 59 N.E. 749.

No one change compels our conclusion that S.B. 10 is punitive. It is a matter of degree whether a statute is so punitive that its retroactive application is unconstitutional. *Cook*, 83 Ohio St.3d at 418, 700 N.E.2d 570. 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.

State v. Williams, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, ¶ 17-21

Unlike adult offenders, juvenile offenders under JSORN: (1) can be subject to registration for a period of ten years and the length of time is comparable to former law, see R.C. 2950.07(B); (2) registration tier is not automatically assigned, see R.C. 2152.831; (3) a juvenile court has discretion and might decline to classify a juvenile, see R.C. 2152.83(B)(2)(a). When considering the features of JSORN laws, juvenile court have wide discretion to classify the juvenile as the court deems appropriate to include consideration of the juvenile's treatment.

A conclusion can be reached that the primary thrust of JSORN laws is not punitive but laws that support the avowed goals of public safety. The legislative history of JSORN laws support a statutory construction in favor of extension of jurisdiction as opposed to a rigid procedural framework in which a hearing must be held, since the avowed goal is public safety as opposed to further punishment of the child.

CONCLUSION

The juvenile court's ability to have continuing jurisdiction over a child's registration obligation is an important feature of juvenile sex offender registration that distinguishes itself from those obligations imposed upon convicted sex offenders. R.C. 2152.82 through R.C. 2152.85 should be construed to encourage thorough review of each child's situation before determining whether to impose, continue, modify or terminate an adjudicated delinquent child's duty to register. Such a thorough review is accomplished through an interpretation of R.C. 2152.82 through R.C. 2152.85 that provides a juvenile court with continuing jurisdiction over an adjudicated delinquent child's registration obligations that extend beyond the juvenile's 21st birthday. Accordingly, the OPAA asks this Court to adopt the State of Ohio's proposition of law and to otherwise hold that a juvenile court retains jurisdiction over a juvenile's sex offender registration obligations, even after the juvenile turns twenty-one years old.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

A copy of the foregoing First Merit Brief of Amicus Curiae Ohio Prosecuting Attorneys Association in support of the State of Ohio has been sent via electronic mail on March 23, 2020 to: Paula Adams, Assistant Prosecuting Attorney at Paula.Adams@hcpros.org and Julie Kahs Nessler, Assistant Public Defender at JKNessler@cms.hamilton-co.org.

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