



Ohio Prosecuting Attorneys Association

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House Bill 35
Interested Party Testimony
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Chairman Manning, Vice-Chair Reynolds, Ranking Member Hicks-Hudson and members of the Senate Judiciary Committee I appreciate the opportunity to talk to you today about an amendment that was included in House Bill 35 at the request of our Association that addresses an issue involving very serious sex offenders and how those offenders are classified. The amendment creates a statutory mechanism that would enable trial courts to correct sex-offender classification errors that occurred after the enactment of the Adam Walsh Act and before an Supreme Court of Ohio decision in a case called *State v. Williams*, 129 Ohio St.3d 344 (2011).

Prior to Adam Walsh, Ohio had Megan's Law, a sex offender registration scheme where offenders were classified in one of three ways (1) a sexually oriented offender or child-victim oriented offender that carried a 10-year duty to register and annual verification, (2) a habitual offender (if there was a prior conviction) that carried a lifetime duty to register and verification every 180 days, and (3) the highest level was a predator (someone likely to reoffend) that carried a lifetime duty to register and quarterly verification. A special category of "aggravated sexually oriented offense" for child rapists and forcible rapists also required lifetime registration and quarterly verification.

In 2008 Ohio passed the Adam Walsh Act and instituted a classification scheme in which offenders were classified based on the offense. Tier I carried a 15-year duty to register with annual verification. Tier II carried a 25-year duty with verification every 180 days. Tier III carried a lifetime duty with quarterly verification. Anyone sentenced after January 1, 2008, was classified under the new AWA Tier system even if their offense predated the AWA effective date.

There are a group of offenders who committed crimes before the enactment of the AWA, who were convicted and sentenced after the AWA went into effect and were ordered to register under the AWA for crimes committed during the Megan's Law era. The Ohio Supreme Court held in *State v. Williams* in 2011 that this was unconstitutional because they found the AWA to be punitive and therefore unconstitutionally retroactive. Some of these errors were corrected on direct appeal. Other courts treated this as creating "void sentence" that could be corrected at any time by the trial court. This void sentence approach was subsequently brought into question by recent Supreme Court cases, *State v. Henderson*, 161 Ohio St.3d 285 (2020) and *State v. Harper*, 160 Ohio St.3d 480 (2020). which said a sentence is not void if the court had jurisdiction. All of this has left some sex offenders who were sentenced between 2008 and 2011 for crimes committed prior to 2008 in legal limbo.

These are sex offenders who have registration duties but who were wrongly classified under the AWA and there is now no mechanism for courts to classify them correctly.

The amendment to House Bill 35 resolves all of this ambiguity in two ways: (1) It gives the state or the offender a one-year window to request the court to impose a classification and gives the offender the ability to choose whether they want to be registered under the AWA. If no action is taken within one year, the AWA classification stands. (2) It provides clarity that courts sentencing offenders in the future must impose a Megan's Law classification if the offense was committed in the Megan's Law era.

This brings clarity to this issue for both the state and these offenders, and helps protect the public from sex offenders who were merely wrongly classified. It removes ambiguity for victims and the public, removes potential obstacles to prosecution for pre-2008 offenders who fail to register and verify, and most critically helps prevent future victimization by ensuring that these offenders are registered and verified.