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Developments in Ohio Juvenile Law
Session # 802

Chapter 1

We’re Here to Help!
David A. Colley

The Beginning of a Beautiful Relationship ................................................................. 1.1
Safety First—The “Safety Plan” .................................................................................... 1.3
Case Plan—What Do You Mean Case Plan? ............................................................... 1.5

Chapter 2

Case Law Update
Professor Katherine Hunt Federle

Introduction .......................................................................................................................... 2.1
The Ohio Supreme Court .................................................................................................... 2.1
The Courts of Appeals ........................................................................................................ 2.2

Chapter 3

Ohio’s Juvenile Sex Offender System Post State v. Bodyke: A Tale of Two Systems
(S.B. 3 versus S.B. 10)
Paul Skendelas

Senate Bill 10—Ohio’s Implementation of the Adam Walsh Act ........................................... 3.1
State v. Bodyke—Creating Two Systems for Juvenile Sex Offenders .................................. 3.17
Senate Bill 3: Ohio’s Prior Juvenile Sex Offender Law ......................................................... 3.18
Attachment .......................................................................................................................... 3.23

State v. Bodyke .................................................................................................................. 3.25
We’re Here to Help!

When the Public Child Welfare Agency Comes a Callin’

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We’re Here to Help!

When the Public Child Welfare Agency Comes a Callin’

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THE BEGINNING OF BEAUTIFUL RELATIONSHIP

A. The duties of the PCSA.
   1. Investigate child abuse and neglect.
      Ohio Rev. Code § 2151.421.
   2. Understanding abuse, neglect, and dependency.
      Ohio Rev. Code §§ 2151.03, 2151.031, and 2151.04.
   3. According to the schedule.
      Thirty-day/forty-five-day schedule.
   4. “Dispose” of the investigation.
      a. Substantiated.
      b. Unsubstantiated.
      c. Indicated.

B. The investigation by the PCSA.
   Ohio Rev. Code § 2151.421.

C. The role of law enforcement.
2. “No...peace officer shall remove a child without consultation with the public children services agency, unless, in the judgment of the officer, and, if the report was made by physician, the physician, immediate removal is considered essential to protect the child from further abuse or neglect.”


By a law enforcement officer or duly authorized officer of the court when any of the following conditions are present:

(a) There are reasonable grounds to believe that the child is suffering from illness or injury and is not receiving proper care, as described in section 2151.03 of the Revised Code, and the child's removal is necessary to prevent immediate or threatened physical or emotional harm;

(b) There are reasonable grounds to believe that the child is in immediate danger from the child's surroundings and that the child's removal is necessary to prevent immediate or threatened physical or emotional harm;

(c) There are reasonable grounds to believe that a parent, guardian, custodian, or other household member of the child's household has abused or neglected another child in the household and to believe that the child is in danger of immediate or threatened physical or emotional harm from that person.

(d) By a law enforcement officer or duly authorized officer of the court when any of the following apply:

   (a) There are reasonable grounds to believe that the conduct, conditions, or surroundings of the child are endangering the health, welfare, or safety of the child.

   (b) A complaint has been filed with respect to the child under section 2151.27 or 2152.021 of the Revised Code or the child has been indicted under division (A) of section 2152.13 of the Revised Code or charged by information as described in that section and there are reasonable grounds to believe that the child may abscond or be removed from the jurisdiction of the court.
D. The “visitor” at school.

*Camreta v. Greene*, No. 09-1454, argued Mar. 1, 2011.

1. Facts: child-protection investigator and a deputy sheriff removed a nine-year-old Oregon girl from her classroom and questioned her at length as to whether her father had sexually abused her. According to the girl, they wouldn’t take “no” for an answer, and she falsely incriminated her father.

2. Issue: did the two men violate the Fourth Amendment’s ban on “unreasonable search and seizure” when they questioned the girl in that manner without a warrant, without her mother’s consent, and in the absence of emergency circumstances?

**SAFETY FIRST—THE “SAFETY PLAN”**

A. The legal basis for safety plans.

1. Statutory authority.


3. Federal authority.

4. Case law.

5. Contract law.

B. Safety plans and CAPTA.

1. Notice at first contact.

2. Substance of complaint.

3. Investigation is voluntary.

4. Consent to search house and photograph.

5. No coercive actions, e.g., threats of removal.

6. Notice of rights to appeal decision.


B. Agency required to assess at a minimum the degree of intervention to “control safety threats” and to “protect the child:

1. Active safety threats.
2. Vulnerability of child.

3. Protective capacity of parent, guardian, custodian.

4. Family’s history of abuse/neglect resulting in “serious harm.”

C. Agency must get signatures of parents, etc (or verbal okay if signature is obtained within 24 hours).

D. Signature necessity can be extended for up to five working days if justified. (Only one extension allowed).

E. In home and out home safety plans require weekly face-to-face contact by agency social worker with each child and parent involved.

F. Agency cannot close case if safety plan exists.

G. If agency believes safety plan can be discontinued, agency must give written notice to parent within one working day of discontinuation.

C. For whom are safety plans safe?

1. The upside of safety plans.
   a. Can maintain the status quo.
   b. May avoid an ex parte order pulling the child.
   c. May avoid the filing of a complaint.

2. The downside of safety.
   a. Plans disparate bargaining.
   b. Power keeps you from a “detached” arbiter.
   c. Allows PCSA to move at a leisurely pace.
   d. May include inculpatory language.
   e. May be seen as an acceptance of the allegations.
   a. Parents usually agree to safety plan without legal counsel.
   b. Does agency have parent sign any waiver of rights when signing safety plan?
   c. Are parents warned that noncompliance with safety plan will be used against them?

4. How to deal with safety plans.
   a. Ignore them.
      i. May prompt an ex parte order.
      ii. May prompt a filing.
      iii. Will be viewed as “uncooperative”?
   b. Accept them.
      i. May “keep the peace” with PCSA.
      ii. May provide PCSA additional time to collect data and prepare a filing.
      iii. May prevent children from being shipped out in the middle of the night to a foster home in Perkins County.
      iv. Acceptance/signature may be seen as an adoption of the info contained therein.
   d. Negotiate them!

CASE PLAN—WHAT DO YOU MEAN CASE PLAN?

A. Case plan—the road map of the case.
   2. “Case plan” means a written document;
   3. That is developed by the PCSA or PCPA;
   4. Which identifies strengths of the family;
   5. Concerns to be resolved; and
   6. Supportive services.
B. Elements of a case plan.

1. Case management services.

2. Counseling services.
   a. General counseling services.
   b. Psychiatric or psychological therapeutic counseling.

3. Diagnostic services.
   “Diagnostic services” means medical, psychiatric, or psychological services performed by a licensed physician, psychiatrist, psychologist, licensed professional counselor with clinical endorsement, or a licensed independent social worker for the purpose of evaluating an individual's current physical, emotional, or mental condition.

4. “Help me grow” early intervention services.

5. Emergency shelter.

6. Home health aide services.

7. Homemaker services.

8. Protective day care services.


10. Therapeutic services.

C. Timing of the filing of a case plan.


1. Thirty days.
   a. From complaint; or
   b. Shelter care.

2. Before the adjudication.

D. “Agreement” in the case plan.

1. The development of case plans.
   Collaboratively made.
   a. “Shall attempt to obtain an agreement among all parties”;
   b. “If all parties agree...the court approves it.”
   c. “If the agency cannot obtain an agreement...or the court
does not approve it.”
   d. “Evidence on the contents of the case plan at the
dispositional hearing.”

E. Case plan priorities.

1. Health and safety shall be the paramount concern.

2. A child should remain in their legal custody even if an
order of protective supervision is required.

3. If both parents of the child have abandoned the child,
   have relinquished custody of the child, have become
   incapable of supporting or caring for the child even with
   reasonable assistance, or have a detrimental effect on
   the health, safety, and best interest of the child, the
   child should be placed in the legal custody of a suitable
   member of the child’s extended family;

4. If a child described in division (G)(2) of this section has
   no suitable member of the child’s extended family to
   accept legal custody, the child should be placed in the
   legal custody of a suitable nonrelative who shall be
   made a party to the proceedings after being given legal
   custody of the child;

5. If the child has no suitable member of the child’s
   extended family to accept legal custody of the child and
   no suitable nonrelative is available to accept legal
   custody of the child and, if the child temporarily cannot
   or should not be placed with the child's parents,
guardian, or custodian, the child should be placed in the
   temporary custody of a public children services agency
   or a private child placing agency;

6. Permanent custody of the public children services
   agency or private child placing agency.
Case Law Update

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INTRODUCTION

THE OHIO SUPREME COURT

A. In re S.B., 2009-Ohio-507.

B. In re LAB, 2009-Ohio-354.


D. In re Application of Zatik, 2010-Ohio-3828.

E. State v. Arnold, 2010-Ohio-2742.

F. State ex rel. N.A. v. Cross, 2010-Ohio-1471.

G. In re M.P., 2010-Ohio-599.
THE COURTS OF APPEALS

A.  *In re G.W.*, 2009-Ohio-4324 (2d Dist.).

B.  *In re Robert B.*, 2009-Ohio-3644 (2d Dist.).

C.  *In re S.R.*, 2009-Ohio-3156 (12th Dist.).

D.  *In re Predmore*, 2010-Ohio-1626 (3d Dist.).

E.  *In re M.H.*, 2010-Ohio-689 (6th Dist.).

F.  *In re T.L.*, 2010-Ohio-402 (9th Dist.).

G.  *In re D.W.*, 2009-Ohio-5406 (2d Dist.).

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Ohio’s Juvenile Sex Offender System

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SENATE BILL 10—OHIO’S IMPLEMENTATION OF THE ADAM WALSH ACT

A. Initial classification.

1. Child must be adjudicated a delinquent child.

2. Child must have committed any sexually oriented offense or any child-victim oriented offense.

R.C. 2950.01(A) “Sexually oriented offense” means any of the following violations or offenses committed by a person, regardless of the person’s age:

(1) A violation of section 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.08, 2907.21, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code;

(2) A violation of section 2907.04 of the Revised Code when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 of the Revised Code;

(3) A violation of section 2907.04 of the Revised Code when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct or when the offender is less than four years
older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 of the Revised Code;

(4) A violation of section 2903.01, 2903.02, or 2903.11 of the Revised Code when the violation was committed with a sexual motivation;

(5) A violation of division (A) of section 2903.04 of the Revised Code when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;

(6) A violation of division (A)(3) of section 2903.211 of the Revised Code;

(7) A violation of division (A)(1), (2), (3), or (5) of section 2905.01 of the Revised Code when the offense is committed with a sexual motivation;

(8) A violation of division (A)(4) of section 2905.01 of the Revised Code;

(9) A violation of division (B) of section 2905.01 of the Revised Code when the victim of the offense is under eighteen years of age and the offender is not a parent of the victim of the offense;

(10) A violation of division (B) of section 2905.02, of division (B) of section 2905.03, of division (B) of section 2905.05, or of division (B)(5) of section 2919.22 of the Revised Code;

(11) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), or (10) of this section;

(12) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11) of this section.
R.C. 2950.01(C) “Child-victim oriented offense” means any of the following violations or offenses committed by a person, regardless of the person’s age, when the victim is under eighteen years of age and is not a child of the person who commits the violation:

(1) A violation of division (A)(1), (2), (3), or (5) of section 2905.01 of the Revised Code when the violation is not included in division (A)(7) of this section;

(2) A violation of division (A) of section 2905.02, division (A) of section 2905.03, or division (A) of section 2905.05 of the Revised Code;

(3) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in division (C)(1) or (2) of this section;

(4) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (C)(1), (2), or (3) of this section.

1. Juvenile judge must determine that the child is a juvenile sex offender registrant.

a. Mandatory classification:

R.C. 2152.82(A) The court that adjudicates a child a delinquent child shall issue as part of the dispositional order an order that classifies the 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 if all of the following apply:

(1) 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.

(2) The child was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the offense.
(3) The court has determined that the child previously was adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense, regardless of when the prior offense was committed and regardless of the child's age at the time of committing the offense.

(4) The court is not required to classify the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under section 2152.86 of the Revised Code.

b. Mandatory classification:

R.C. 2152.83(A)(1) The court that adjudicates a child a delinquent child shall issue as part of the dispositional order or, if the court commits the child for the delinquent act to the custody of a secure facility, shall issue at the time of the child’s release from the secure facility an order that classifies the 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 if all of the following apply:

(a) The act for which the child is or was 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 sixteen or seventeen 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.

c. Discretionary classification:

R.C. 2152.83(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.

2. Juvenile judge must conduct a hearing to determine whether a child should be designated as a juvenile offender registrant pursuant to Ohio Rev. Code § 2152.83(B)(1).

R.C. 2152.83(B)(2) A judge shall conduct a hearing under division (B)(1) of this section to review the effectiveness of the disposition made of the child and of any treatment provided for the child placed in a secure setting and to determine whether the child should be classified a juvenile offender registrant. The judge may conduct the hearing on the judge’s own initiative or based upon a recommendation of an officer or employee of the department of youth services, a probation officer, an employee of the court, or a prosecutor or law enforcement officer. If the judge conducts the hearing, upon completion of the hearing, the judge, in the judge’s discretion and after consideration of the factors listed in division (E) of this section, shall do either of the following:

(a) Decline to issue an order that classifies the 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;

(b) Issue an order that classifies the 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 and that states the determination that the judge makes 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.
3. Factors to be considered:

**R.C. 2152.83(D)** In making a decision under division (B) of this section as to whether a delinquent child should be classified a juvenile offender registrant, a judge shall consider all relevant factors, including, but not limited to, all of the following:

1. The nature of the sexually oriented offense or the child-victim oriented offense committed by the child;

2. Whether the child has shown any genuine remorse or compunction for the offense;

3. The public interest and safety;

4. The factors set forth in division (K) of section 2950.11 of the Revised Code, provided that references in the factors as set forth in that division to “the offender” shall be construed for purposes of this division to be references to “the delinquent child;”

5. The factors set forth in divisions (B) and (C) of section 2929.12 of the Revised Code as those factors apply regarding the delinquent child, the offense, and the victim;

6. The results of any treatment provided to the child and of any follow-up professional assessment of the child.

4. Juvenile judge must conduct a hearing to determine Tier classification.

**R.C. 2152.83(C)(1)** Prior to issuing an order under division (B)(2)(b) of this section, the judge shall conduct a hearing under section 2152.831 of the Revised Code to determine 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. The judge may hold the hearing at the same time as the hearing under division (B) of this section.

2. If a judge issues an order under division (A) or (B) of this section and the court determines that the delinquent child to whom the order applies is a tier III sex offender/child-victim offender and the child is not a public registry-qualified juvenile offender registrant, the judge may impose a requirement subjecting the child to the victim and community notification provisions of sections 2950.10 and 2950.11 of the Revised Code. If the judge imposes a requirement subjecting the child to the victim and community notification provisions of sections 2950.10 and 2950.11 of the Revised Code, the judge shall include the requirement in the order.
(3) If a judge issues an order under division (A) or (B) of this section, the judge shall provide to the delinquent child and to the delinquent child’s parent, guardian, or custodian a copy of the order and a notice containing the information described in divisions (A) and (B) of section 2950.03 of the Revised Code. The judge shall provide the notice at the time of the issuance of the order and shall comply with divisions (B) and (C) of that section regarding that notice and the provision of it.

5. Juvenile judge must give written notice of mandatory review hearing.

**R.C. 2152.83(C)** The judge also shall include in the order a statement that, upon completion of the disposition of the delinquent child that was made for the sexually oriented offense or child-victim oriented offense upon which the order is based, a hearing will be conducted and the order is subject to modification or termination pursuant to section 2152.84 of the Revised Code. A similar notice must be provided to juvenile sex offender registrants with mandatory classifications. See also, R.C. 2152.82(B)(5).

6. The child’s attainment of 18 or 21 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. Ohio Rev. Code § 2152.83(E).

**B. Discretion as to tier classification.**

**R.C. 2950.01(E)** “Tier I sex offender/child-victim offender” means any of the following:

(1) *A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses*

* * *

(2) *A child-victim offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a child-victim oriented offense* and who is not within either category of child-victim offender described in division (F)(2) or (G)(2) of this section.

(3) *A sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies a tier I sex offender/child-victim offender relative to the offense.*
(4) A child-victim offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any child-victim oriented offense and who a juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies a tier I sex offender/child-victim offender relative to the offense.

(F) “Tier II sex offender/child-victim offender” means any of the following:

(1) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses:

**

(2) A child-victim offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any child-victim oriented offense when the child-victim oriented offense is committed after the child-victim offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier I sex offender/child-victim offender.

(3) A sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies a tier II sex offender/child-victim offender relative to the offense.

(4) A child-victim offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any child-victim oriented offense and whom a juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies a tier II sex offender/child-victim offender relative to the current offense.

(G) “Tier III sex offender/child-victim offender” means any of the following:

(1) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses:

**

(2) A child-victim offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any child-victim oriented offense when the child-victim oriented offense is committed after the child-victim offender previously has been

3.8 • Developments in Ohio Juvenile Law
convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier II sex offender/child-victim offender or a tier III sex offender/child-victim offender.

(3) A sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies a tier III sex offender/child-victim offender relative to the offense.

(4) A child-victim offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any child-victim oriented offense and whom a juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies a tier III sex offender/child-victim offender relative to the current offense.

1. Note: whether the judge has discretion to select the Tier level is currently before the Ohio Supreme Court.

2. Interpretive case law pending before the Supreme Court.
      Brief of Amicus Curiae, the Ohio Attorney General, in Support of Neither Party, at p. 8:
      “The Attorney General believes that a plain reading of S.B. 10’s text supports the majority view of appellate districts-that the assignment of tier classifications for juvenile offenders under R.C. 2152.82 and R.C. 2152.83 is discretionary.”

C. Reclassification hearings.
   1. Initial mandatory reclassification hearing.
      a. Review hearing after disposition completed.

R.C. 2152.84(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.

b. Options available to the court.

i. Continue the order.

R.C. 2152(A)(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;

ii. For discretionary juvenile offender registrants, may reduce or terminate.

R.C. 2152.84(A)(2)(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.

iii. For mandatory juvenile offender registrants, may reduce.

**R.C. 2152.84(A)(2)(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.
2. Reclassification/declassification petitions.

a. What the child may request.

i. Tier III can be reduced to Tier II or Tier I.

**R.C. 2152.85(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.

ii. Tier II can be reduced to Tier I.

**R.C. 2152.85(A)(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.[

iii. Tier I can be declassified.

R.C. 2152.85(A)(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.

b. When the petition can be filed.

i. Three years after the mandatory hearing.

R.C. 2152.85(B) A delinquent child who has been adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense or a child-victim oriented offense and who has been classified a juvenile offender registrant relative to that offense may file a petition under division (A) of this section requesting reclassification or declassification as described in that division after the expiration of one of the following periods of time:

(1) The delinquent child initially may file a petition not earlier than three years after the entry of the juvenile court judge’s order after the mandatory hearing conducted under section 2152.84 of the Revised Code.

ii. Three years following the decision on the first petition.

R.C. 2152.85(B)(2) After the delinquent child’s initial filing of a petition under division (B)(1) of this section, the child may file a second petition not earlier than three years after the judge has entered an order deciding the petition under division (B)(1) of this section.
iii. Five years on subsequent petitions.

**R.C. 2152.85(B)(3)** After the delinquent child's filing of a petition under division (B)(2) of this section, thereafter, the delinquent child may file a petition under this division upon the expiration of five years after the judge has entered an order deciding the petition under division (B)(2) of this section or the most recent petition the delinquent child has filed under this division.

c. What the court can do on Reclassification/declassification petitions.

i. Deny the petition.

**R.C. 2152.85(D)** If a judge issues an order under division (C)(1) of this section that denies a petition, the prior classification of the delinquent child as a juvenile offender registrant, and the prior determination 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, shall remain in effect.

ii. Reduce a Tier III classification to a Tier II or a Tier I classification.

**R.C. 2152.85(D)** A judge may issue an order under division (C)(2) of this section that contains a determination that reclassifies a child from a tier III sex offender/child-victim offender classification to a tier II sex offender/child-victim offender classification or to a tier I sex offender/child-victim offender classification.

iii. Reduce a Tier II classification to a Tier I classification.

**R.C. 2152.85(D)** A judge may issue an order under division (C)(2) of this section that contains a determination that reclassifies a child from a tier II sex offender/child-victim offender classification to a tier I sex offender/child-victim offender classification.
iv. **Declassify a tier classification.**

**R.C. 2152.85(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.

**R.C. 2152.85(D)** If a judge issues an order under division (C)(2) of this section that declassifies the delinquent child, the order 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. If a judge issues an order under division (C)(2) of this section that declassifies the delinquent child, the judge shall provide a copy of the order to the bureau of criminal identification and investigation, and the bureau, upon receipt of a copy of the order, promptly shall notify the sheriff with whom the child most recently registered under section 2950.04 or 2950.041 of the Revised Code of the declassification.

**D. Public Registry-Qualified Juvenile Offender Registrants (PRQJOR).**

1. **What is a PRQJOR?**
   
   a. Adjudicated delinquent.
   
   b. Court imposed SYO disposition on or after January 1, 2008.
   
   c. Child was 14, 15, 16, or 17 at the time of the offense.
d. The child was adjudicated a delinquent for committing the following offenses:

**R.C. 2152.86(D)(1)(a)** A violation of section 2907.02 of the Revised Code, division (B) of section 2907.05 of the Revised Code, or section 2907.03 of the Revised Code if the victim of the violation was less than twelve years of age;

(b) 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.

e. Registration continues until death.

2. Reclassification of PRQJORS.

Juveniles classified as PRQJORS for acts committed prior to January 1, 2008, can file a petition contesting the classification within 60 days of receipt.

**R.C. 2152.86(D)(1)** If an order is issued under division (A)(2) of this section regarding a delinquent child whose delinquent act described in division (A)(1)(a) or (b) of this section was committed prior to January 1, 2008, or if an order is issued under division (A)(3) of this section regarding a delinquent child, except as otherwise provided in this division, the child may request as a matter of right a court hearing to contest the court’s classification in the order of the child as a public registry-qualified juvenile offender registrant. To request the hearing, not later than the date that is sixty days after the delinquent child is provided with the copy of the order, the delinquent child shall file a petition with the juvenile court that issued the order.

If the delinquent child requests a hearing by timely filing a petition with the juvenile court, the delinquent child shall serve a copy of the petition on the prosecutor who handled the case in which the delinquent child was adjudicated a delinquent child for committing the sexually oriented offense or child-victim oriented offense that resulted in the delinquent child’s registration duty under section 2950.04 or 2950.041 of the Revised Code. The prosecutor shall represent the interest of the state in the hearing. In any hearing under this division, the Rules of Juvenile Procedure apply except to the extent that those Rules would be clearly inapplicable. The court shall schedule a hearing and shall provide notice to the delinquent child and the delinquent child’s parent, guardian, or custodian and to the prosecutor of the date, time, and place of the hearing.
If the delinquent child requests a hearing in accordance with this division, until the court issues its decision at or subsequent to the hearing, the delinquent child shall comply with Chapter 2950. of the Revised Code as it exists on and after January 1, 2008. If a delinquent child requests a hearing in accordance with this division, at the hearing, all parties are entitled to be heard, and the court shall consider all relevant information and testimony presented relative to the issue of whether the child should be classified a public registry-qualified juvenile offender registrant. Notwithstanding the court’s classification of the delinquent child as a public registry-qualified juvenile offender registrant, the court may terminate that classification if it determines by clear and convincing evidence that the classification is in error.

If the court decides to terminate the court’s classification of the delinquent child as a public registry-qualified juvenile offender registrant, the court shall issue an order that specifies that it has determined that the child is not a public registry-qualified juvenile offender registrant and that it has terminated the court’s classification of the delinquent child as a public registry-qualified juvenile offender registrant. The court promptly shall serve a copy of the order upon the sheriff with whom the delinquent child most recently registered under section 2950.04 or 2950.041 of the Revised Code and upon the bureau of criminal identification and investigation. The delinquent child and the prosecutor have the right to appeal the decision of the court issued under this division.

If the delinquent child fails to request a hearing in accordance with this division within the applicable sixty-day period specified in this division, the failure constitutes a waiver by the delinquent child of the delinquent child’s right to a hearing under this division, and the delinquent child is bound by the court’s classification of the delinquent child as a public registry-qualified juvenile offender registrant.

**STATE v. BODYKE—CREATING TWO SYSTEMS FOR JUVENILE SEX OFFENDERS**

On June 3, 2010, the Ohio Supreme Court held in *State v. Bodyke*, 126 Ohio St. 3d 266, 2010-Ohio-2424, that “R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders who have already been classified by court order under former law, impermissibly instruct the executive branch to review past decisions of the judicial branch and thereby violate the separation-of-powers doctrine.” *Bodyke*, in syl. Pursuant to *Bodyke* and the Supreme Court’s subsequent decision in *Chojnacki v. Cordray*, 126 Ohio St. 3d 321, 2010-Ohio-3212, the court struck Ohio Rev. Code § 2950.031 and 2950.032 in their entirety.
The Ohio Supreme Court in *Bodyke, Chojnacki, and In re Sexual Offender Reclassification Cases*, 126 Ohio St. 3d 322, 2010-Ohio-3753 expressly invalidated the reclassifications of individuals who had sex offender registration requirements prior to the enactment of S.B. 10. In short, the court held that because the Ohio Legislature and the Ohio Attorney General improperly reclassified these individuals, they must be returned to their prior status as sexually oriented offenders, habitual sex offenders, or sexual predators, under the prior law. The court stated accordingly in *Bodyke*, at ¶ 66:

¶ 66] Applying these standards, we conclude that severance of R.C. 2950.031 and 2950.032, the reclassification provisions in the AWA, is the proper remedy. By excising the unconstitutional component, we do not “detract from the overriding objectives of the General Assembly,” i.e., to better protect the public from the recidivism of sex offenders, and the remainder of the AWA, “which is capable of being read and of standing alone, is left in place.” Foster at ¶ 98. We therefore hold that R.C. 2950.031 and 2950.032 are severed and, that after severance, they may not be enforced. R.C. 2950.031 and 2950.032 may not be applied to offenders previously adjudicated by judges under Megan’s Law, and the classifications and community-notification and registration orders imposed previously by judges are reinstated.

In *Chojnacki*, the court unanimously (with the new Chief Justice not taking part in the decision) held that all offenders registering under the former law must be reinstated. The court indicated, at ¶ 5:

¶ 5] This court released its opinion in *State v. Bodyke*, ___ Ohio St. 3d ___, 2010-Ohio-2424, ___ N.E.2d ___, on June 3, 2010. In *Bodyke*, we severed R.C. 2950.031 and 2950.032, the reclassification provisions of the Adam Walsh Act, and held that after severance, those provisions could not be enforced. We further held that R.C. 2950.031 and 2950.032 may not be applied to offenders previously adjudicated by judges under “Megan’s Law.”

In *In re Sexual Offender Reclassification Cases*, the Supreme Court applied the remedy in *Bodyke* to over 100 juvenile and adult petitioners, by declassifying individuals and remanding most of the cases to the trial court for further actions consistent with its decision.

**SENATE BILL 3: OHIO’S PRIOR JUVENILE SEX OFFENDER LAW**

Senate Bill 3 was the first attempt by the Ohio Legislature to extend sexual offender registration and notification requirements to juvenile proceedings. The Act applied to juvenile offenders who were at least 14 years of age and who committed felony level sexually oriented offenses on or after January 1, 2002. The Act incorporated the adult provisions contained in Megan’s Law and introduced a procedure for reclassifying or declassifying youthful sexually oriented offenders. Although the legislation notified neighborhoods
of the presence of “sexual predators” for the protection of residents, it also made placement and treatment of youthful offenders much more difficult. Family members often suffered the stigma of having a labeled youth in their home, and it became increasingly difficult for these families to find places to stay as a family unit.

A. Application.

The bill applies prospectively to:

1. Juveniles who are adjudicated delinquent for committing on or after its effective date (of January 1, 2002).
   a. The offenses or attempts to commit the offenses of aggravated murder, murder, felonious assault, kidnapping, abduction, and involuntary manslaughter, which are committed for a purpose to gratify the sexual needs or desires of the child.
   b. Certain pandering offenses involving minors if the delinquent child is four or more years older than the minor who is the victim of the offense.
   c. Other sexually oriented offenses that are at least felonies of the fourth degree.

   *Note*: these three categories of offenses are referred to as “juvenile category sexually oriented offenses.”

2. Who are 14 years of age or older at the time of the offense.

3. Who are classified by the juvenile court as “juvenile sex offender registrants.”

B. Classification as a juvenile sex offender registrant.

The juvenile court *shall* adjudicate a child a “juvenile sex offender registrant” (with a duty to register) for committing a juvenile category sexually oriented offense:

1. If the child was 14, 15, 16, or 17 and was previously adjudicated a delinquent for committing a juvenile category sexually oriented offense; and

   *Note*: the prior offense can predate the effective date of the law.

2. If the child was 16 or 17, regardless if the child was previously adjudicated a delinquent for committing a juvenile category sexually oriented offense.
The juvenile court may adjudicate a child a “juvenile sex offender registrant” (with a duty to register) for committing a juvenile category sexually oriented offense, if the child was 14 or 15 at the time of the offense and was not previously adjudicated a delinquent for committing a juvenile category sexually oriented offense. The court must conduct a hearing and make this determination at the time of the child’s release from a DYS or other secure facility or at the time of adjudication if the child is not committed to a DYS or secure facility.

Note: At the time the court makes a juvenile sex offender registrant finding, the court must also determine whether the juvenile is a sexual predator or habitual sexual offender under the guidelines set forth for adults in Ohio Rev. Code Chapter 2950. These provisions include community notification requirements.

In deciding whether a child should be classified a juvenile sex offender registrant and, if so, whether the child also is a sexual predator or a habitual sex offender, the court shall consider all relevant factors, including, but not limited to, the following:

1. The nature of the sexually oriented offense committed by the child;
2. Whether the child has shown any genuine remorse or compunction for the offense;
3. The public interest and safety;
4. The factors set forth in division (B)(3) of Ohio Rev. Code § 2950.09;
5. The factors set forth in divisions (B) and (C) of Ohio Rev. Code § 2929.12 as those factors apply regarding the delinquent child, the offense, and the victim; and
6. The results of any treatment provided to the child and of any follow-up professional assessment of the child.

A court can find a juvenile to be either a sexual predator or a habitual sexual offender, as defined in Ohio Rev. Code Chapter 2950, only if there is clear and convincing evidence to establish the classifications.

C. Duration of court orders.

Pursuant to Ohio Rev. Code § 2950.07(B), sexual predators have a duty to register for life. Habitual sexual offenders have a duty to register for 20 years. Juvenile sex offender registrants have a duty to register for 10 years. The child’s attainment of 18 or 21 years of age does not affect the duty to register.
D. Reclassification hearings.

When a juvenile court classifies a delinquent child a juvenile sex offender registrant, upon completion of the delinquency disposition for the sexually oriented offense, the judge shall conduct a hearing to do all of the following:

1. Review the effectiveness of the disposition and of any treatment provided for the child;

2. If the order also contains a finding that the child is a sexual predator or habitual sex offender, determine whether the classification should be continued or modified; and

3. If the order does not contain a sexual predator finding, determine whether the classification of the child as a juvenile sex offender registrant should be continued, modified, or terminated.

Following the postsanction hearing, the juvenile court must:

1. Enter an order that continues the classification;

2. If the order was a mandatory order and the child was found to be a sexual predator, reduce the classification one level by terminating the sexual predator finding but maintaining either a habitual sex offender or a juvenile sex offender registrant finding;

3. If the order was a mandatory order and the child was not found to be a sexual predator but was found to be a habitual sex offender, terminate the habitual sex offender finding but maintain the juvenile sex offender registrant finding; or

4. If the order was a discretionary order, reduce or terminate the findings.

A judge may issue a postsanction order terminating a sexual predator finding only if the court determines at the hearing that there is clear and convincing evidence that the child is unlikely to commit a sexually oriented offense in the future.

The subject of the juvenile court order may petition the court to terminate a juvenile sex offender registrant finding or reclassify a sexual predator or habitual sex offender classification. As with the postsanction review hearings, the orders are reduced in steps.
A delinquent child who has been classified a juvenile sex offender registrant may file a petition requesting reclassification or declassification after the expiration of one of the following periods of time:

1. Not earlier than three years after the entry issued from the postsanction hearing;

2. After the initial petition, not earlier than three years after the entry on the initial petition; and

3. After the second petition, the subject must wait for five years after the last judgment entry for each subsequent petition.

E. Penalties for failure to comply with registration requirements.

If the subject of a juvenile court order fails to register as required under Ohio Rev. Code Chapter 2950, the subject is prosecuted in juvenile court if under the age of 18 and prosecuted in the general division of common pleas court if 18 or older. The failure to register is a felony of the fifth degree.

The Act expands the offense of “contributing to the unruliness or delinquency of a child” to include a parent, guardian, or custodian who violates a duty to ensure that a child complies with the duties under the law.
State v. Bodyke, 2010-Ohio-2424, 2008-2502 (OHSC)

2010-Ohio-2424
The State of Ohio, Appellee,
v.
Bodyke et al., Appellants.
No. 2008-2502
Supreme Court of Ohio
June 3, 2010

Submitted November 4, 2009


Russell V. Leffler, Huron County Prosecuting Attorney, for appellee.

Gamso, Helmick & Hoolahan and Jeffrey M. Gamso; and Hiltz, Wiedemann, Allton & Koch Co., L.P.A., and John D. Allton, for appellants.

Jones Day, Elizabeth C. Radigan, and Louis A. Chaiten, urging reversal for amici curiae Iowa Coalition Against Sexual Assault, Association for the Treatment of Sexual Abusers, Jacob Wetterling Resource Center, Detective Robert A. Shilling, California Coalition Against Sexual Assault, Texas Association Against Sexual Assault, and National Alliance to End Sexual Violence.

Robert L. Tobik, Cuyahoga County Public Defender, and John T. Martin and Cullen Sweeney, Assistant Public Defenders, urging reversal for amicus curiae Cuyahoga County Public Defender.

Ian N. Friedman & Assoc., L.L.C., and Ian N. Friedman, urging reversal for amicus curiae Ohio Association of Defense Lawyers.


William D. Mason, Cuyahoga County Prosecuting Attorney, and Mary H. McGrath, Assistant Prosecuting Attorney, urging affirmance for amicus curiae Cuyahoga County Prosecuting Attorney.

Ron O'Brien, Franklin County Prosecuting Attorney, and Steven L. Taylor, Assistant Prosecuting Attorney, urging affirmance for amicus curiae state of Ohio.

Ohio's Juvenile Sex Offender System • 3.25

SYLLABUS

1. The power to review and affirm, modify, or reverse other courts’ judgments is strictly limited to appellate courts. (Section 3(B)(2), Article IV, Ohio Constitution, applied.)

2. R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders who have already been classified by court order under former law, impermissibly instruct the executive branch to review past decisions of the judicial branch and thereby violate the separation-of-powers doctrine.

3. R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders whose classifications have already been adjudicated by a court and made the subject of a final order, violate the separation-of-powers doctrine by requiring the opening of final judgments.

O’Connor, J.

¶ 1 In this appeal, we decide the constitutionality of the current version of R.C. Chapter 2950, as amended by 2007 Am.Sub.S.B. No. 10 (“the Adam Walsh Act” or “the AWA”), as those provisions apply to sex offenders whose cases were adjudicated prior to its enactment.

¶ 2 Although we discharge our duty with great respect for the role of the legislature, Kennedy v. Mendoza-Martinez (1963), 372 U.S. 144, 159, 83 S.Ct. 554, 9 L.Ed.2d 644, for the reasons that follow we are compelled to find that R.C. 2950.031 and 2950.032, the reclassification provisions in the AWA, are unconstitutional because they violate the separation-of-powers doctrine. As a remedy, we strike R.C. 2950.031 and 2950.032, hold that the reclassifications of sex offenders by the attorney general are invalid, and reinstate the prior judicial classifications of sex offenders.

I. Relevant Background

A. R.C. Chapter 2950

¶ 3 R.C. Chapter 2950, Ohio’s law governing the registration and classification of sex offenders and the ensuing community-notification requirements, has evolved substantially since its inception in 1963. See former R.C. Chapter 2950, 130 Ohio Laws 669. The original version of the statute was seldom used, Sears v. State, Clermont App. No. CA2008-07-068, 2009-Ohio-3541, ¶ 23, and it existed without amendment for three decades.
¶ 4} In 1994, however, a convicted sex offender in New Jersey abducted, raped, and killed a neighbor’s young child, Megan Kanka. See State v. Williams (2000), 88 Ohio St.3d 513, 516, 728 N.E.2d 342; State v. Cook (1998), 83 Ohio St.3d 404, 405, 700 N.E.2d 570. In the wake of that notorious crime, New Jersey gained national recognition by enacting a law requiring registration of sex offenders and notification to the community of the offender’s presence. The law became known as “Megan’s Law.” Wallace v. State (Ind.2009), 905 N.E.2d 371, 374. The constitutionality of the New Jersey legislation was upheld by the New Jersey Supreme Court in Doe v. Poritz (1995), 142 N.J. 1, 662 A.2d 367.

¶ 5} Federal legislation followed later that year when Congress enacted the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Section 14071, Title 42, U.S.Code (“the Jacob Wetterling Act”). The Jacob Wetterling Act focused on requiring states to implement a registry of sex offenders and those who commit crimes against children. People v. Cintron (2006), 13 Misc.3d 833, 836, 827 N.Y.S.2d 445, fn. 6. Two years after its enactment, the Act was amended to require that states add community-notification provisions. Id. The Jacob Wetterling Act then became better known as the federal “Megan’s Law.” Id.


1. Ohio’s Megan’s Law

¶ 7} Megan’s Law repealed prior versions of R.C. Chapter 2950 and created Ohio’s first comprehensive registration and classification system for sex offenders. 146 Ohio Laws, Part II, 2560. In order to accomplish its goals, Ohio’s Megan’s Law provided for offender registration, classification, and community notification. Cook, 83 Ohio St.3d at 407, 700 N.E.2d 570.

¶ 8} In 1997, we unanimously upheld the application of Megan’s Law over retroactivity and ex post facto claims. State v. Cook, 83 Ohio St.3d 404, 700 N.E.2d 570.

¶ 9} After Cook, we addressed constitutional challenges to Megan’s Law based on theories other than ex post facto and retroactivity. We rejected, unanimously, the suggestions that Megan’s Law impermissibly intruded on the individual’s rights to maintain privacy, to acquire property, to pursue an occupation, and to maintain a favorable reputation. Williams, 88 Ohio St.3d at 524-527, 728 N.E.2d 342. We also rejected arguments based on double jeopardy, bill of attainder, equal protection, and vagueness. Id. at 528-534.

¶ 10} The following year, we were confronted with a separation-of-powers argument in State v. Thompson (2001), 92 Ohio St.3d 584, 752 N.E.2d 276. We rejected it unanimously.
Thompson addressed whether former R.C. 2950.09(B)(2) violated “the separation-of-powers doctrine because it encroaches upon the judiciary’s fact-finding authority.” Id. at 585. More specifically, we addressed the language in former R.C. 2950.09(B)(2) that required a judge to consider certain factors before determining whether an offender was a sexual predator.

Our conclusion that the separation-of-powers doctrine was not violated turned on our view that the statute did not divest the court of its fact-finding powers. Id., 88 Ohio St.3d at 587-588. We observed that the statutory factors provided an important framework that assisted judges in making the sexual-predator determination and that the factors, as guidelines, “provide consistency in the reasoning process.” Id. at 587. But more importantly, we recognized that the guidelines did not control the judge’s discretion or require a judge to assign a particular weight to certain factors. Thus, we found no improper interference with the judge’s fact-finding powers.

We further held that the factors themselves were nonexhaustive, because the statute directed the judge to “consider all relevant factors, including but not limited to” the statutory factors. Id. at 588. Thus, we concluded, the statute did not violate the separation-of-powers doctrine, because the judge retained discretion to consider any relevant evidence and to determine what weight, if any, to assign to that evidence. Id. at 588.

Ten years after our decision in Cook, we again addressed Megan’s Law in State v. Ferguson, 120 Ohio St.3d 7, 2008-Ohio-4824, 896 N.E.2d 110. In that case, a convicted rapist classified as a sexual predator challenged the constitutionality of the amendments enacted in Am.Sub.S.B. No. 5 (“S.B. 5”), 150 Ohio Laws, Part IV, 6558, 6687-6702 (eff July 31, 2003). The claims in Ferguson renewed the challenge against the retroactive application of the amended requirements.

Despite the significant changes wrought by S.B. 5, we upheld the S.B. 5 amendments. In so doing, we rejected Ferguson’s assertions that the amendments violated the Ex Post Facto Clause of the United States Constitution (Section 10, Article I) and the retroactivity provision in Section 28, Article II of the Ohio Constitution. We relied on our decision in Cook, the Supreme Court’s decision in Smith v. Doe (2003), 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed.2d 164, and other state courts’ decisions to find that Megan’s Law remained a remedial statute. Ferguson at ¶ 29-40. Ferguson, however, was not unanimous. See also State v. Wilson, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264 (holding that an appellate court must review a trial court’s determination in a sex-offender-classification hearing under the civil manifest-weight-of-the-evidence standard).

The dissent in Ferguson criticized the majority’s reliance on Cook: “R.C. Chapter 2950 has been amended [since Cook]. The simple registration process and notification procedures are now different from those considered in Cook and in [Williams, 88 Ohio St.3d 513, 728 N.E.2d 342]. R.C. Chapter 2950 has been

3.28 • Developments in Ohio Juvenile Law
transformed from remedial to punitive ***.” Ferguson, 120 Ohio St.3d 7, 2008-Ohio-4824, 896 N.E.2d 110, ¶ 45 (Lanzinger, J., dissenting). More specifically, the dissent explained that, since Cook, the “sexual predator” label became permanent, the registration requirements were made more demanding, the community-notification and residency-restriction provisions were made more extensive, and sheriffs’ authority was expanded to include the power to obtain landlord verification that the offender lived at a registered address. Ferguson at ¶ 46.

¶ 17 Even as debate over the S.B. 5 amendments was taking place here, however, the General Assembly was reviewing the law and enacting a new scheme, the “Adam Walsh Act,” R.C. Chapter 2950. That act, not Megan’s Law and its amendments, forms the basis of this appeal.

B. Ohio’s Adam Walsh Act


¶ 19 Section 16912(a) directs every jurisdiction to maintain a sex-offender registry conforming to the requirements of the Act. And to ensure compliance, Congress directed that states that did not adopt the Adam Walsh Act risked losing ten percent of certain federal crime-control funds that would otherwise be allocated to them. Section 16925(a).

¶ 20 The following year, the General Assembly enacted 2007 Am.Sub.S.B. No. 10. S.B. 10 repealed Megan’s Law and replaced it with a new, retroactive scheme that includes the tier system required by Congress. R.C. Chapter 2950.

¶ 21 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, .031, and .032.

¶ 22 Significantly for our purposes here, under the AWA judges no longer have discretion to determine which classification best fits the offender. Id. Instead, a few months before the AWA’s effective date, the General Assembly directed the attorney general to reclassify existing offenders. R.C. 2950.031(A) and 2950.032(A)(1). 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. \textit{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.

\{¶ 23\} After tier classification is completed, the offender is required to register according to the classification. R.C. 2950.04(A)(1). The registration requirements under the AWA vary depending on the tier in which the offender is classified. R.C. 2950.06(B) (frequency of duty to verify personal information differs depending on tier); R.C. 2950.07 (duration of duty to comply with registration/verification requirements depends on tier).

\{¶ 24\} Under Megan’s Law, if an offender was classified at the lowest risk level, i.e., as a sexually oriented offender, he was required to register annually for a period of ten years. Former R.C. 2950.07(B)(3) and 2950.06(B)(2), 146 Ohio Laws, Part II, 2617, 2613. No community notification followed. Under the AWA, although there is still no community notification for the lowest risk offenders, i.e., offenders classified into Tier I, those offenders must verify their personal information annually for 15 years rather than the ten years required under Megan’s Law. R.C. 2950.07(B)(3).

\{¶ 25\} Under Megan’s Law, an offender who posed an intermediate risk, i.e., less than a sexual predator but more than a sexually oriented offender, was labeled a habitual sexual offender. \textit{See} former R.C. 2950.01(B), 146 Ohio Laws, Part II, 2601. Habitual sexual offenders were required to verify their personal information annually for 20 years, former R.C. 2950.07(B)(2) and 2950.06(B)(2), 146 Ohio Laws, Part II, 2617, 2613, and community notification was required only if the judge deemed it appropriate. Former R.C. 2950.11(A) and (F), 146 Ohio Laws, Part II, 2627, 2630. In the AWA scheme, the intermediate risk offender is placed in Tier II. Tier II offenders must verify every 180 days for 25 years, R.C. 2950.07(B)(2) and 2950.06(B)(2), but community notification is not required. R.C. 2950.11(F) (community notification limited to Tier III offenders).

\{¶ 26\} The sexual-predator classification was the highest risk offender under Megan’s Law. Sexual predators were required to register every 90 days for life. Former R.C. 2950.06(B)(1) and 2950.07(B)(1), 146 Ohio Laws, Part II, 2613 and 2616. Community notification was required. Former R.C. 2950.11(A), 146 Ohio Laws, Part II, 2627. Under the AWA, Tier III offenders have the same obligation to verify their personal information as sexual predators, R.C. 2950.06(B)(3) (every 90 days); 2950.07(B)(1) (for life), and community notification is required. R.C. 2950.11(A). However, the scope of registration is expanded greatly.

\{¶ 27\} Megan’s Law required an offender to register with the sheriff in the county in which he resides. Former R.C. 2950.04(A), 146 Ohio Laws, Part II, 2609. Pursuant to the AWA, the offender must register with the sheriff in the county in which he lives, the county in which he attends school, the county in which he is employed, any county in which he is domiciled temporarily for more than three
days, and even a county in another state if he works or attends school there. R.C. 2950.04(A)(2(a) through (e). When he registers, he must provide his full name and any aliases as well as his date of birth, social security number, address, the name and address of his employer and school, the license plate of any motor vehicle he owns or operates as part of his employment, his driver’s license number, any professional or occupational registration or license, any e-mail address, and all internet identifiers or telephone numbers registered to him. R.C. 2950.04(C).

\{¶ 28\} Similarly, the AWA expands community-notification requirements. In the new scheme, the sheriff gives notice of a Tier III offender’s name, address, and conviction to all residents within 1,000 feet of the offender’s residence. R.C. 2950.11(A)(1)(a). If the offender lives in a multiple-unit building, all residents who share a common hallway with the offender must be notified. R.C. 2950.11(A)(1)(b). The AWA also forbids all sex offenders, including those who have not offended against children, from living within 1,000 feet of a school, preschool, or child day-care facility. R.C. 2950.034(A).

\section*{B. The Appeal before the Court}

\{¶ 29\} On October 18, 1999, appellant Bodyke entered an agreed plea of no contest to one count of breaking and entering in violation of R.C. 2911.13(A) and one count of sexual battery in violation of R.C. 2907.03(A)(3). Two months later, the trial judge sentenced him to concurrent sentences of six months’ imprisonment for breaking and entering and two years’ imprisonment for sexual battery. In addition, relying on the version of R.C. 2950.01 that was in effect at that time, he was classified as a sexually oriented offender, the lowest level of offender under Megan’s Law. As a sexually oriented offender, Bodyke was required to register with the county sheriff every year for ten years. He was not subject to the community-notification provisions, however.

\{¶ 30\} In November 2007, eight years after Bodyke’s no-contest plea and almost five years after being released from prison, the attorney general, acting pursuant to the reclassification provisions in the AWA, notified Bodyke that he would be reclassified. Bodyke was automatically labeled a Tier III offender, which requires him to personally register with the local sheriff every 90 days for the duration of his life. Further, Bodyke is now subject to community-notification provisions.

\{¶ 31\} He appealed to the Sixth District Court of Appeals, which affirmed unanimously. We accepted his discretionary appeal, 121 Ohio St.3d 1438, 2009-Ohio-1638, 903 N.E.2d 1222, and now reverse.

\section*{II. Analysis}

\subsection*{A. Stare Decisis}
¶ 32] The parties and amici curiae repeatedly urge that *Cook* and *Ferguson* compel a particular result here, and some suggest that the doctrine of stare decisis controls the outcome. As we have described here, this court has repeatedly upheld Megan’s Law as constitutional over an array of challenges. But those decisions compel no particular result in the cases before us.

¶ 33] Initially, we reiterate an important but often overlooked aspect of our law on stare decisis. We have held that “stare decisis applies to rulings rendered in regard to specific statutes, [but] it is limited to circumstances ‘where the facts of a subsequent case are substantially the same as a former case.’” *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, ¶ 23, quoting *Rocky River v. State Emp. Relations Bd.* (1989), 43 Ohio St.3d 1, 5, 539 N.E.2d 103. Thus, as a threshold question, we must determine whether the statute and facts presented today are the same as those presented in precedent. We are persuaded that the AWA is substantially different from Megan’s Law. *Cook* and *Ferguson*, the cases cited as dispositive of this appeal, did not present a separation-of-powers challenge. And *Thompson*, which did, involved a statutory provision not implicated in this appeal because *Thompson* was concerned *only* with former R.C. 2950.09(B)(2), the provision listing factors a judge was required to consider in determining whether an offender is a sexual predator. 92 Ohio St.3d at 584, 752 N.E.2d 276 (“The sole issue before this court is whether R.C. 2950.09 violates the separation-of-powers doctrine because it encroaches upon the judiciary’s fact-finding authority. We find that it does not”). Nothing like that provision can be found in the AWA.

¶ 34] On those bases alone, we would not be obliged to apply those decisions to this case. But more importantly for our purposes here, we believe that there is a more vital and compelling limitation on the doctrine as it has developed in Ohio: its inapplicability to constitutional claims.

¶ 35] Our decision in *Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256, established the test for departing from precedent. But *Galatis* arose in the context of insurance and contract law, not constitutional law. That difference is significant, as we made clear in our decision in *Rocky River*, 43 Ohio St.3d at 6-10, 539 N.E.2d 103. In that case, we acknowledged that stare decisis “does not apply with the same force and effect when constitutional interpretation is at issue.” (Emphasis added.) *Id.*

¶ 36] We concluded in *Rocky River* by noting that the reconsideration of past decisions in the constitutional realm “is not some forbidden aberration. It is, in fact, the fulfillment of our constitutional responsibilities ***.” *Id.* at 7. Nothing in our decision in *Galatis* suggests otherwise. *Rocky River* retains its vitality, at least insofar as this principle is concerned: “Stare decisis is not inflexibly applicable to constitutional interpretation.” (Emphasis sic.) *Id.* at 10. See also *Lawrence v. Texas* (2003), 539 U.S. 558, 577, 123 S.Ct. 2472, 156 L.Ed.2d 508 (“The doctrine of *stare decisis* is essential to the respect accorded to the judgments of the Court and the stability of the law. It is not, however, an inexorable command”).
Stare decisis remains a controlling doctrine in cases presenting questions on the law of contracts, property, and torts, but it is not controlling in cases presenting a constitutional question. Thus, in the instant appeals, stare decisis does not compel us to reach the same result we reached in past decisions, including Ferguson and Cook.

We now proceed with our analysis of the important constitutional questions before us.

**B. Separation-of-Powers Doctrine**

The first, and defining, principle of a free constitutional government is the separation of powers. *Evans v. State* (Del.2005), 872 A.2d 539, 543. *In Kilbourn v. Thompson* (1880), 103 U.S. 168, 190-191, 26 L.Ed. 377, the United States Supreme Court stated:

“It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to government, whether State or national, are divided into the three grand departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other.”

As this court has observed with regard to our own state system of government:

“While Ohio, unlike other jurisdictions, does not have a constitutional provision specifying the concept of separation of powers, this doctrine is implicitly embedded in the entire framework of those sections of the Ohio Constitution that define the substance and scope of powers granted to the three branches of state government.” *S. Euclid v. Jemison* (1986), 28 Ohio St.3d 157, 158-159, 28 OBR 250, 503 N.E.2d 136. The doctrine “represents the constitutional diffusion of power within our tripartite government. [I]t was a deliberate design to secure liberty by simultaneously fostering autonomy and comity, as well as interdependence and independence, among the three branches.” *Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, ¶ 114.

“[T]he people possessing all governmental power, adopted constitutions, completely distributing it to appropriate departments.” *Hale v. State* (1896), 55 Ohio St. 210, 214, 45 N.E. 199, 200. They vested the legislative power of the state in the General Assembly (Section 1, Article II, Ohio Constitution), the executive power in the Governor (Section 5, Article III, Ohio Constitution), and the judicial power in the courts (Section 1, Article IV, Ohio Constitution).” *Norwood at* ¶ 115.
¶44 “The essential principle underlying the policy of the division of powers of government into three departments is that powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments, and further that none of them ought to possess directly or indirectly an overruling influence over the others.” State ex rel. Bryant v. Akron Metro. Park Dist. of Summit Cty. (1929), 120 Ohio St. 464, 473, 166 N.E. 407. Thus, the people specified in our Constitution that “[t]he general assembly shall [not] *** exercise any judicial power, not herein expressly conferred.” Section 32, Article II, Ohio Constitution. Our decisions reflect these principles.

¶45 We have held that “[t]he administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers.” State ex rel. Johnston v. Taulbee (1981), 66 Ohio St.2d 417, 20 O.O.3d 361, 423 N.E.2d 80, ¶1 of the syllabus.

¶46 The judiciary has both the power and the solemn duty to determine the constitutionality and validity of acts by other branches of the government and to ensure that the boundaries between branches remain intact. State ex rel. Ohio Academy of Trial Lawyers v. Sheward (1999), 86 Ohio St.3d 451, 462, 715 N.E.2d 1062. “[J]urists have long understood that they must be wary of any usurpation of the powers conferred on the judiciary by constitutional mandate and any intrusion upon the courts’ inherent powers * * *. Norwood, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, at ¶115. We therefore must “jealously guard the judicial power against encroachment from the other two branches of government and * * * conscientiously perform our constitutional duties and continue our most precious legacy.” Sheward at 467, 715 N.E.2d 1062.

¶47 Our vigilance is not born of self-reverence. Rather, we protect the borders separating the three branches in order to ensure the security and harmony of the government, Weaver v. Lapsley (1869), 43 Ala. 224, 1869 WL 503, *5, and to avoid the evils that would flow from legislative encroachment on our independence. Lawson v. Jeffries (1873), 47 Miss. 686, 1873 WL 4108, *8. As Montesquieu warned, “[w]hen the legislative and executive powers are united in the same person, or in the same body of magistracy, there can be then no liberty ***. [And] there is no liberty, if the power of judging be not separated from the legislative and executive powers.” Evans v. State, 872 A.2d at 544, quoting Baron de Montesquieu, The Spirit of the Laws (Thomas Nugent trans., 1949), fn. 39. See also Clinton v. New York (1998), 524 U.S. 417, 450, 118 S.Ct. 2091, 141 L.Ed.2d 393 (the separation-of-powers doctrine guards against the threat to liberty posed by the concentration of power in a single branch of government).

¶48 But the doctrine also recognizes that our government is comprised of equal branches that must work collectively toward a common cause. And in doing so, the Constitution permits each branch to have some influence over the other branches in the development of the law. For example, the legislative branch plays an important and meaningful role in the criminal law by defining offenses and assigning punishment, while the judicial branch has its equally important role in interpreting those laws.

3.34 • Developments in Ohio Juvenile Law
¶ 49 As the Supreme Court has explained, the Madisonian vision of the separation of powers did not contemplate three branches operating in isolation, each without influence over the others. Rather, the doctrine was designed to protect against “the whole power of one department [being] exercised by the same hands which possess the whole power of another department,” in which case “the fundamental principles of a free constitution, are subverted.” (Emphases sic.) Mistretta v. United States (1989), 488 U.S. 361, 380-382, 109 S.Ct. 647, 102 L.Ed.2d 714, quoting The Federalist No. 47 (J. Cooke ed.1961) 325-326. The court reminds us of Madison’s belief that “our constitutional system imposes upon the Branches a degree of overlapping responsibility, a duty of interdependence as well as independence ***.” Mistretta, id.

¶ 50 Navigating the boundaries between interdependence and independence of the branches is not always easy. But we have guideposts to aid us.

¶ 51 Foremost in the analysis, we recognize that the Founders’ design of the tripartite model was intended to serve as “a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.” Mistretta at 382, quoting Buckley v. Valeo (1976), 424 U.S. 1, 122, 96 S.Ct. 612, 46 L.Ed.2d 659. The Supreme Court counsels that “this concern of encroachment and aggrandizement” animates judicial decisions on the separation of powers and arouses vigilance against the “hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power.” Mistretta, 488 U.S. at 382, quoting Immigration & Naturalization Serv. v. Chadha (1983), 462 U.S. 919, 951, 103 S.Ct. 2764, 77 L.Ed.2d 317. The court has “not hesitated to strike down provisions of law that either accrete to a single Branch powers more appropriately diffused among separate Branches or that undermine the authority and independence of one or another coordinate Branch.” Mistretta, id.

¶ 52 Thus, while we must respect the fact that the authority to legislate is for the General Assembly alone, we must also ensure that its legislative prerogative is not unbridled. The General Assembly cannot require the courts “to treat as valid laws those which are unconstitutional. If this could be permitted, the whole power of the government would at once become absorbed and taken into itself by the Legislature.” Bartlett v. State (1905), 73 Ohio St. 54, 58, 75 N.E. 939. We must be wary that the legislature, in discharging its own duties, does not accrete power and encroach on the province of the judiciary.

¶ 53 In cases specifically involving the judicial branch, the Supreme Court advises vigilance against two dangers: “that the Judicial Branch neither be assigned nor allowed ‘tasks that are more properly accomplished by [other] branches,’ Morrison v. Olsen [1988], 487 U.S. [654] 680-681, 108 S.Ct. [2597, 101 L.Ed.2d 569], and, second, that no provision of law ‘impermissibly threatens the institutional integrity of the Judicial Branch.’ Commodity Futures Trading Comm’n v. Schor [1986], 478 U.S. [833], at 851, 106 S.Ct. [3245, 92 L.Ed.2d 675].” Mistretta, 488 U.S. at 383, 109 S.Ct. 647, 102 L.Ed.2d 714. Courts also condemn legislative encroachments that violate the separation of powers by vesting officials in the executive branch with the power to review judicial decisions or by commanding that the courts reopen final judgments. Plaut v. Spendthrift Farm, Inc. (1995), 514 U.S. 211, 218-219, 115 S.Ct. 1447, 131 L.Ed.2d 328.

Ohio's Juvenile Sex Offender System • 3.35
¶ 54 With these principles in mind, we turn to a key aspect of the AWA—the reclassification scheme. That scheme requires the attorney general to reclassify offenders who previously were classified by Ohio judges according to the provisions in Megan’s Law and its precursor.

1. The reclassification provisions violate the separation-of-powers doctrine

¶ 55 The AWA’s provisions governing the reclassification of sex offenders already classified by judges under Megan’s Law violate the separation-of-powers doctrine for two related reasons: the reclassification scheme vests the executive branch with authority to review judicial decisions, and it interferes with the judicial power by requiring the reopening of final judgments. It is well settled that a legislature cannot enact laws that revisit a final judgment. We have held for over a century that “the Legislature cannot annul, reverse, or modify a judgment of a court already rendered ***.” Bartlett v. State, 73 Ohio St. at 58, 75 N.E. 939. See also United States v. O’Grady (1874), 89 U.S. (22 Wall.) 641, 647-648, 22 L.Ed. 772 (“Judicial jurisdiction implies the power to hear and determine a cause, and *** Congress cannot subject the judgments of the Supreme Court to the re-examination and revision of any other tribunal or any other department of the government”). As the Supreme Court of California recently explained, “judgments cannot be deprived of their ‘finality’ through statutory conditions not in effect when the judicial branch gave its ‘last word’ in the particular case,” regardless of the policy behind the legislation. People v. King (2002), 27 Cal.4th 29, 35, 115 Cal.Rptr.2d 214, 37 P.3d 398, citing Plaut, 514 U.S. at 227, 230, 115 S.Ct. 1447, 131 L.Ed.2d 328. “A judgment which is final by the laws existing when it is rendered cannot constitutionally be made subject to review by a statute subsequently enacted ***.” Gompf v. Wolfinger (1902), 67 Ohio St. 144, 65 N.E. 878, at paragraph three of the syllabus. See also Plaut, 514 U.S. at 222, quoting The Federalist No. 81 (J. Cooke ed.1961) 545 (“A legislature without exceeding its province cannot reverse a determination once made, in a particular case ***”). The reclassification provisions violate these bedrock principles.

¶ 56 The reclassification scheme in the AWA works to “legislatively vacate[] the settled and journalized final judgments of the judicial branch of government.” State v. Russell, Trumbull App No 2008-T-0074, 2009-Ohio-5213, ¶ 93 (Grendell, J, concur ring in judgment only). The legislative attempt to reopen journalized final judgments imposing registration and community-notification requirements on offenders so that new requirements may be imposed suffers the same constitutional infirmity. “It does not matter that the legislature has the authority to enact or amend laws requiring sex offenders to register or that the current Sex Offender Act does not order the courts to reopen final judgments. The fact remains that the General Assembly ‘cannot annul, reverse, or modify a judgment of a court already rendered.’ Bartlett, 73 Ohio St. at 58, 75 N.E. 939.
Reclassification], as a practical matter, nullifies that part of the court’s [initial classification] judgment [in this case], ordering [the offender] to register for a period of ten years as a sexually oriented offender. To assert that the General Assembly has authority to create a new system of classification does not solve the problem that [the] original classification constituted a final judgment. There is no exception to the rule that the final judgments may not be legislatively annulled in situations where the Legislature has enacted new legislation.” State v. Grate, Trumbull App. No. 2008-T-0058, 2009-Ohio-4452, 2009 WL 2710100, ¶ 16.

¶ 57] Just as “Congress cannot vest review of the decisions of Article III courts in officials of the Executive Branch” or interfere with the judiciary by “command[ing] the federal courts to open final judgments,” Plaut, 514 U.S. at 218, 219, 115 S.Ct. 1447, 131 L.Ed.2d 328, the General Assembly cannot vest authority in the attorney general to reopen and revise the final decision of a judge classifying a sex offender.

¶ 58] Our Constitution and case law make undeniably clear that the judicial power resides exclusively in the judicial branch. Ex parte Logan Branch of State Bank of Ohio (1853), 1 Ohio St. 432, 434. The judicial power of the state is vested exclusively in the courts. Section 1, Article IV, Ohio Constitution. The power to review and affirm, modify, or reverse other courts’ judgments is strictly limited to appellate courts. Section 3(B)(2), Article IV, Ohio Constitution. The AWA intrudes on that exclusive role and thus violates the separation-of-powers doctrine.

¶ 59] Moreover, once the final judgment has been opened, the AWA requires that the attorney general “shall determine” the new classifications of offenders and delinquent children who were classified by judges under the former statutes. R.C. 2950.031(A)(1); 2950.032(A)(1)(a) and (b). In doing so, it violates a second prohibition by assigning to the executive branch the authority to revisit a judicial determination.

¶ 60] Thus, we conclude that R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders who have already been classified by court order under former law, impermissibly instruct the executive branch to review past decisions of the judicial branch and thereby violate the separation-of-powers doctrine.

¶ 61] We further conclude that R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders whose classifications have already been adjudicated by a court and made the subject of a final order, violate the separation-of-powers doctrine by requiring the opening of final judgments.

¶ 62] In light of our conclusion that the reclassification provision is unconstitutional, we decline to address the remaining constitutional claims at this time. The sole remaining salient question is, Which remedy to apply? See State v. Foster, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, ¶ 84.

Ohio's Juvenile Sex Offender System • 3.37
2. Severance is the proper remedy

¶ 63 As we did in Foster, “[w]e presume that compliance with the United States and Ohio Constitutions is intended and that an entire statute is intended to be effective. R.C. 1.47(A) and (B). Furthermore, R.C. 1.50 states, ‘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.’” (Emphasis added.)

¶ 64 “When this court holds that a statute is unconstitutional, severance may be appropriate. *** Severance is suitable, however, only where it satisfies our well-established standard. ***

¶ 65 “*** Three questions are to be answered before severance is appropriate. “‘(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?’” Foster, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, ¶ 93-95, quoting Geiger v. Geiger (1927), 117 Ohio St. 451, 466, 160 N.E. 28, quoting State v. Bickford (1913), 28 N.D. 36, 147 N.W. 407, ¶ 19 of the syllabus.

¶ 66 Applying these standards, we conclude that severance of R.C. 2950.031 and 2950.032, the reclassification provisions in the AWA, is the proper remedy. By excising the unconstitutional component, we do not “detract from the overriding objectives of the General Assembly,” i.e., to better protect the public from the recidivism of sex offenders, and the remainder of the AWA, “which is capable of being read and of standing alone, is left in place.” Foster at ¶ 98. We therefore hold that R.C. 2950.031 and 2950.032 are severed and, that after severance, they may not be enforced. R.C. 2950.031 and 2950.032 may not be applied to offenders previously adjudicated by judges under Megan’s Law, and the classifications and community-notification and registration orders imposed previously by judges are reinstated.

III. Conclusion

¶ 67 For the foregoing reasons, we hold that R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders who have already been classified by court order under former law, impermissibly instruct the executive branch to review past decisions of the judicial branch and thereby violate the separation-of-powers doctrine. In addition, R.C. 2950.031 and 2950.032 violate the separation-of-powers doctrine by requiring the opening of final judgments.

Judgments reversed.

Lundberg Stratton and Lanzinger, JJ., concur.
Pfeifer, J., concurs in the syllabus and judgment.
Brown, C.J., not participating.
O’Donnell, J., concurring in part and dissenting in part.