

Sex Offender Registration Law Update #23
March 5, 2009

1. Ohio Sex Offender Registration Litigation

There has been a great deal of litigation in Ohio since it enhanced its sex offender registration requirements via Senate Bill 10 in 2007. The cases are too numerous to effectively track via this case law update. However, there is an excellent summary page of all the pending and concluded litigation in Ohio at:

www.opd.ohio.gov/AWA_Attorney_Forms/AWA_Attorney_Forms.htm

2. Hansen v. Marr, 2009 U.S. Dist. LEXIS 5239 (D. Neb. January 26, 2009)

- **Habeas Petition**
- **Does Sex Offender Registration = “in custody”?**

Petitioner filed a Habeas Petition, claiming that he was “in custody” for Habeas purposes because he was required to register as a sex offender. The court disagreed, stating that “where sex offender registration statutes are remedial, rather than punitive, the registration requirements...do not satisfy the ‘in custody’ requirements” for a Habeas Petition.

3. Ward v. Tennessee, 2009 Tenn. Crim. App. LEXIS 43 (Jan. 14, 2009)

- **Registration as a Collateral Consequence**

In this Habeas petition, the court found that the requirement to register as a sex offender is a collateral consequence of the underlying criminal conviction. The trial court did not commit plain error by failing to advise him of the requirement.

4. Colorado v. Rowland, 2009 Colo. App. LEXIS 2 (Jan. 8, 2009)

- ***Apprendi***
- **Community Notification**

Rowland was designated a Sexually Violent Predator by the trial court, and was not given a hearing in which to contest that designation. He argued that the community notification provisions which accompany such a designation were additional punishment and that he was therefore entitled to an evidentiary hearing per the decision in *Apprendi v. New Jersey*. The court found that the community notification provisions were not punitive (per the *Mendoza-Martinez* factors) and that *Apprendi* was inapplicable.

5. **McClain v. State, 898 N.E. 2d 409 (Ind. 2008)**

- **Admission of Sex Offender Registration Form**
- **Abuse of Discretion**

McClain was charged with failure to register as a sex offender, and the State sought to introduce the sex offender registration form which he had signed. That form also contained factual details about his offense beyond the text of the offense itself. It was admitted at trial without redaction. The court found that the “prejudicial impact of the details of his [conviction] is clear... [and] the trial court abused its discretion form into evidence” despite McClain’s offer to stipulate his sex offender status.

6. **People v. Mosley, 168 Cal. App. 4th 512 (Nov. 19, 2008)**

- *Apprendi*
- **Residency Restrictions**
- **Non-sex-offense conviction**

Mosley was convicted by a jury of assault, but acquitted at trial of committing a sex offense against a minor. The trial court, based on its own fact-finding, ordered him to register as a sex offender, and thus submitting him to the residency restrictions in place in California. The Court of Appeals held that the residency restriction is punitive (per *Mendoza-Martinez*) and, therefore, *Apprendi* requires a hearing where facts supporting the imposition of the residency requirement are proven beyond a reasonable doubt to a jury.