

Sex Offender Registration Law Update #2
February 21, 2008

1. Hyle v. Porter, Slip Opinion No. 2008-Ohio-542 (Ohio Feb. 20, 2008)

• **Residency Restrictions**

Based on Ohio's rules of statutory construction, the residency restriction found in R.C. §2950.031 was "not made expressly retroactive [and therefore] it does not apply to an offender who bought his home and committed his offense before the effective date of the [residency restriction] statute."

2. R.L. v. State, SC-88644 (Missouri Supreme Court Feb. 19, 2008)

• **Retroactivity: Residency Restrictions**

Citing its decision in Doe v. Phillips, 194 S.W.3d 833 (Mo. 2006)—which held that “requiring registration as a sex offender for an offense that occurred prior to the registration law’s effective date was an invalid retrospective law in violation of...the Missouri Constitution”—the Missouri Supreme Court concluded that attaching residency restrictions to offenders who committed their offenses prior to the enactment of the residency restriction statute is unconstitutional, as well.

3. Fushek v. State, 2008 Ariz. LEXIS 23 (Feb. 14, 2008)

• **Right to Jury Trial: Sex Offender Determination**

Because of the seriousness of the consequences of being designated a sex offender, the Arizona Constitution requires that a defendant be afforded a trial by jury when the State files a special allegation of sexual motivation in misdemeanor cases. This decision is based on Arizona’s Constitution and statutory framework.

4. Smith v. State, 2008 Ark. App. LEXIS 108 (Ct. App. Ark. Feb. 13, 2008)

• **Temporary Residence: Long-Haul Trucker**

Where D was a long-haul trucker and claimed that he used his sister’s address “for registration purposes” (which she denied), he was still properly convicted of failure to register as a sex offender and to keep his registration current.

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SORNA Note: SORNA will require that individuals who do not have a fixed address provide a “more or less specific description” concerning the place where they habitually live, even if it is just a “part of the city or...spot on the street.”

5. State v. Nash, 2008 N.Y. A pp. Div. LEXIS 993 (Feb. 7, 2008)

• **Registration as a Collateral Consequence**

D challenged the voluntariness of his guilty plea. He lost his challenge, as “certification under the Sex Offender Registration Act is a collateral consequence of the plea, and the failure to inform a defendant that he or she will be subject to its requirements will not undermine the voluntariness of a guilty plea.”