

[Registration under the Sex Offenders Registration Act for a juvenile conviction is not punishment](#)

5-30-2011 by Sarah Lindsey

The Michigan Court of Appeals concluded that requiring a juvenile who was convicted of second-degree criminal sexual conduct to register as a sex offender under the Sex Offenders Registration Act (SORA) when he turned 18 years of age was not punishment. Accordingly, the Court reversed the trial court's conclusion that the respondent's registration under the SORA was unconstitutional because it constituted cruel and unusual punishment. Judge Meter authored the majority opinion in [In re TD, No. 294716](#), and Judge Krause [concurred](#) to urge the Legislature to consider giving trial courts the ability to exercise discretion to deregister people who can be shown to be non-dangerous.

The SORA provides that juveniles who have been adjudicated of "listed offenses" must register on the public sex-offender registry upon reaching the age of 18. Second-degree criminal sexual conduct (CSC II) is a listed offense, and the SORA also provides that a court shall not grant relief from registration requirements for juveniles convicted of CSC II. The respondent petitioned the trial court for relief from the SORA and also challenged the constitutionality of the registration requirements as they applied to him. The trial court concluded that the SORA, as applied to respondent, constituted cruel and unusual punishment.

The Court of Appeals analyzed whether the registration requirements constitute punishment under a four-part test. The Court concluded that registration does not constitute punishment because (1) the Legislature's intent was not punitive; (2) the design of the legislation is remedial and regulatory, not punitive; (3) historical treatment of analogous measures such as branding, shaming, and banishment supports a finding that SORA's registration requirements are not punishment; and (4) the effects of the legislation are not punitive. With respect to the final factor, the Court acknowledged the indirect consequences of public registration often involve harassment, assault, job loss, eviction, and dislocation, but concluded that such effects are "indirectly caused by public registration and flow instead from actions by the public. . . . Actions taken by members of the public, lawful or not, can hardly be deemed dispositive of whether legislation's purpose is punishment" Slip op. at 7. Because the SORA does not constitute punishment, the Court reversed the trial court's holding that the statute constitutes cruel and unusual punishment. The Court also rejected arguments that the mandatory prohibition against granting relief from registration requirements violates the doctrine of separation of powers, that the registration requirements do not bear a rational relationship to any legitimate governmental interest, and that the law is arbitrary and capricious.