

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellant,

FOR PUBLICATION  
July 31, 2001  
9:05 a.m.

v

No. 227682  
LC No. 97-071504-FH

ADAM PETER RAHILLY,  
Defendant-Appellee.

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellant,

No. 239762  
LC No. 95-004608-FH

v

DANIEL HARNS,  
Defendant-Appellee.

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellant,

No. 229829  
LC No. 99-000304-FH

v

TIMOTHY MICHAEL STANLEY,  
Defendant-Appellee.

Updated Copy  
October 12, 2001

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Before: Holbrook, Jr., P.J., and Hood and Griffin, JJ.

HOLBROOK, JR., P.J. (*dissenting*).

I respectfully dissent. This case centers on how to read two related legislative enactments: the Sex Offenders Registration Act (SORA), MCL 28.721 *et seq.*, and the Youthful

Trainee Act (YTA), MCL 762.11 *et seq.* The majority concludes that "a sex offender's compliance with both the SORA and the YTA does not lead to absurd results." *Ante* at \_\_\_\_. I agree. However, I disagree with the manner in which the majority has reconciled the two. In particular, I believe that the majority's construction of the SORA is not in accord with the express language and the legislative policy of the YTA.

Although not specifically stated by the majority, I presume it found an ambiguity justifying the application of the rules of statutory construction, particularly the doctrine of *in pari materia*. *Tyler v Livonia Public Schools*, 459 Mich 382, 392; 590 NW2d 560 (1999)(observing that "the interpretive aid of the doctrine of *in pari materia* can only be utilized in a situation where the section of the statute under examination is itself ambiguous"). I agree that such an ambiguity exists. In my opinion, the ambiguity emanates from the SORA's definition of the term, "convicted." MCL 28.722(a)(ii) defines convicted to include "[b]eing assigned to youthful trainee status under sections 11 to 15 of chapter II of the code of criminal procedure . . . ." However, § 14 of YTA specifically states that the "assignment of an individual to the status of youthful trainee as provided in this chapter is not a conviction for a crime . . . ." MCL 762.14(2).

From the perspective of both the Legislature and the public, the two acts are in *in pari materia* with each other. 2B Singer, Sutherland Statutory Construction (6th ed, 2000), § 51.01, p 172. Accordingly, because we have been called on to construe the two, we should let our reading of the acts be informed by this understanding. The doctrine of *in pari materia* provides that statutes that seem to be in conflict should be "construed to be in harmony if reasonably possible." *Id.*, § 51.02, p 191. Accord *Klein v Franks*, 111 Mich App 316, 322; 314 NW2d 602 (1981). It is often stated that statutes must be read so as to prevent absurd results. See, e.g., *People v Stephan*, 241 Mich App 482, 497; 616 NW2d 188 (2000). It is also true that when two apparently conflicting statutes are being harmonized, each should be given effect "if such can be done without repugnancy, absurdity, or unreasonableness." *Natsch v Southfield*, 154 Mich App 317, 322; 397 NW2d 294 (1986). Further, a new statutory "provision is presumed in accord with the legislative policy embodied in" previous statutes related to the same subject matter. 2B, Sutherland, *supra*, § 51.02, pp 176-177.

The YTA is a remedial statutory scheme designed to give those who successfully complete the assigned punishment a second chance free from all taint associated with conviction. *People v Bobek*, 217 Mich App 524, 529; 553 NW2d 18 (1996). This wiping clean of the slate of youthful offenders "evidences a legislative desire that persons in [the specified] age group not be stigmatized with criminal records for unreflective and immature acts." *People v Perkins*, 107 Mich App 440, 444; 309 NW2d 634 (1981). In order to facilitate this goal, the YTA mandates that "all proceedings regarding the disposition of the criminal charge . . . shall be closed to public inspection . . . ." MCL 762.14(4). Conversely, and for laudable reasons, the SORA is designed to place on public display the identities of persons who have been convicted of certain criminal sexual offenses. Rather than hoping to avoid tainting an individual with their criminal history, the SORA pins the ignominious badge "sex offender" on those who are required to register under the terms of the act.

Unlike the majority, I believe that requiring a former youthful trainee to register as a sex offender for years following successful release from that status undermines the goals of the YTA. The fact that one who is successfully released from the status of youthful trainee need not list the offense as a conviction when applying for a job, *ante* at \_\_\_\_, seems like a hollow benefit if the person is at the same time required to be registered as a sex offender pursuant to the SORA. It would be easy enough for a prospective employer to access the established Internet Web site and discover the applicant's history. Knowing this, would not an applicant be wise to simply list the offense on an application and thus avoid the added problem of having the potential employer feel as if the applicant was being untruthful and attempting to hide a criminal past? Or, should the applicant wait for discovery and hope that the employer will be satisfied with an explanation on how the applicant is not considered to have been convicted on one hand, but is considered to have been convicted on the other?

For those to whom the YTA applies, the promise that a criminal record would be expunged and a slate wiped clean is a substantial incentive to plead guilty. Many such individuals have entered into such a plea bargain in order to "be excused from having a criminal record." *Bobek, supra* at 528-529. I believe the majority's opinion eviscerates the benefits of such a course of action for those charged with having committed those sexual offenses listed in § 2 of the SORA.

I believe the SORA and the YTA can be read in a manner that effectuates the goals of each. The definition of "convicted" in MCL 28.722(a)(ii) is written in the present tense. It does not indicate that the individual "had been" assigned to youthful trainee status. Rather, it states that convicted means "[b]eing assigned to youthful trainee status . . . ." (Emphasis added.) The use of the present tense indicates that once the individual is no longer assigned to youthful trainee status, then the individual would no longer be considered convicted for purposes of the SORA. Under this reading of the statutory language, such an individual would be required to register during the duration of their youthful trainee status, but that requirement would end once the individual was released from that status after successfully completing the assigned program.

This is in keeping with the language of MCL 762.14(2) and (3), which, also in the present tense, refer to a youthful trainee's obligations and rights vis-à-vis the SORA. MCL 762.14(2) states that "except as provided in subsection (3), the individual assigned to the status of youthful trainee shall not suffer a civil disability or loss of right or privilege following his or her release from that status because of his or her assignment as a youthful trainee." The last antecedent rule of statutory construction posits that "[r]eferential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent." 2A, Sutherland, *supra*, § 47.33, p 369. Applying this rule of construction to subsection 14(2), the phrase "civil disability" stands on its own, and the phrase "following his or her release from that status" modifies only the last antecedent, which in this case is the phrase "loss of right or privilege." There are no commas separating the qualifying phrase that would indicate it applies to all preceding antecedents. See *Spears v State*, 412 NE2d 81, 82-83 (Ind App, 1980) ("Where commas set off a modifying phrase it is evidence that the phrase was intended to apply to all principles instead of only the one adjacent to it."); 2A, Sutherland, *supra*, § 47.33, p 373 ("Evidence that a qualifying phrase is

supposed to apply to all antecedents instead of only to the immediately preceding one may be found in the fact that it is separated from the antecedent by a comma."

Thus, I read subsection 14(2) as indicating that the "civil disability" that the youthful trainee must suffer pursuant to the SORA is the requirement that the trainee "comply with the requirements of that act" while "assigned to youthful trainee status for a listed offense enumerated in section 2" of the SORA. MCL 762.14(3). The use of the present tense in the phrase "assigned to youthful trainee status" indicates that once released from that status, the former trainee is no longer required to suffer the civil disability, i.e., no longer being assigned to youthful trainee status, the requirement to comply with the SORA is lifted.

Harmonizing the two acts in this fashion does not lead to an absurd or unjust result. However, I agree with the courts below that to require these three defendants to comply with the SORA even though they have successfully completed their youthful trainee status would lead to an absurd result that is not in accord with the plain language and legislative goals of the TYA.

Further, I believe that when reading the SORA's definition of "convicted," we should be mindful of why a definition including YTA youthful trainees is needed in the first place. "A person who successfully completes youthful trainee status will not be considered to have been convicted of a crime . . . ." *People v Trinity*, 189 Mich App 19, 21; 471 NW2d 626 (1991). Indeed, the procedure outlined in the YTA precludes the entry of a judgment of conviction before assignment of an individual to youthful trainee status. MCL 762.11 (observing that the court has the discretion, "without entering a judgment of conviction," to assign an individual to the status of youthful trainee). Rather, the YTA sets up "rehabilitative procedures *prior to conviction* on the petition of the affected youth." *People v Bandy*, 35 Mich App 53, 58; 192 NW2d 115 (1971) (emphasis added). In other words, the YTA sets up "an administrative procedure within criminal procedure" that interrupts the course of criminal proceedings in an attempt to rehabilitate the youth involved. *Id.* "In the event that the attempt to rehabilitate . . . fails and [the trainee's] status . . . is revoked, § 12 . . . reinstates the criminal procedure at the point where it was interrupted . . . ." *Id.* at 59.

I also believe that the majority's position opens up the SORA to due process challenges. This is not a situation where a convicted sex offender is attempting "to limit widespread exposure of that information which is already public . . . ." *Akella v Michigan Dep't of State Police*, 67 F Supp 2d 716, 730 (ED Mich, 1999). For one thing, once the youthful trainee successfully completes the trainee's program, the trainee's "record is closed to public inspection." *Trinity*, *supra* at 21. More importantly, as noted above, a final adjudication of guilt is never entered in such situations.

For these reasons, I would affirm the action taken in each trial court.

/s/ Donald E. Holbrook, Jr.