

No. 29563 -- *Michael M. Hensler v. David B. Cross, Sergeant T. R. Cox,  
Magistrate Michael Allman and Magistrate Michael Fuscardo*

**FILED**

December 13, 2001  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**RELEASED**

December 14, 2001  
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SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

Starcher, J., concurring:

I concur in the Court's judgment because as the majority opinion demonstrates, the law is fairly well settled that most sexual offender registration statutes, being essentially civil regulatory statutes, are not subject to an *ex post facto* analysis.

However, as civil statutes, these statutes *are* subject to other constitutional scrutiny, including substantive and due process scrutiny. A statute which fails to allow a person to make an individualized showing that their registration is no longer appropriate may be constitutionally infirm. Nothing in the majority opinion would preclude the presentation and consideration of such a case. Our law, even at its fiercest and most protective, must also serve the purpose of rehabilitation. I personally feel that "lifetime" registration without even the *possibility* of "unregistering" upon proof of full rehabilitation is wrong as a policy matter, and it may be constitutionally wrong as well.