

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

vs.

GEORGE WILLIAMS,

Defendant-Appellant.

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Case No. 2009-0088

On Appeal from the Warren
County Court of Appeals
Twelfth Appellate District

C.A. Case No. CA2008-02-029

MERIT BRIEF OF APPELLANT GEORGE WILLIAMS

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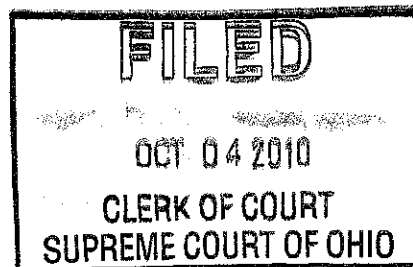


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STATEMENT OF THE CASE AND FACTS

On November 13, 2007, Mr. Williams was indicted for one count of unlawful sexual conduct with a minor, a violation of R.C. 2907.04(A), and a fourth-degree felony. (November 13, 2007 Indictment). During the month of May 2007, Mr. Williams allegedly engaged in sexual conduct with a 14-year-old girl. *Id.* Mr. Williams was 19-years old at the time of the alleged conduct. (December 14, 2007 Transcript, p. 9). On December 14, 2007, Mr. Williams pleaded guilty. *Id.* at p. 11. He subsequently moved to be sentenced under the provisions of former R.C. Chapter 2950, the sex-offender notification and registration statutes that were in effect on the date of the alleged offense. (George Williams's January 25, 2008 Motion for Sentencing Under Former R.C. 2950.01 et seq.; January 31, 2008 Sentencing Hearing Transcript, p. 3). The trial court denied the motion (January 31, 2008 Sentencing Transcript, p. 3), and on February 1, 2008, sentenced Mr. Williams to three years of community control, and classified him as a Tier II sex offender under Senate Bill 10. (February 1, 2008 Judgment Entry; January 31, 2008 Sentencing Hearing Transcript. pp. 5-10).

Mr. Williams filed a timely appeal and argued that the retroactive application of Senate Bill 10 violated the Ex Post Facto, Due Process, and Double Jeopardy Clauses of the United States Constitution, and the Retroactivity Clause of Section 28, Article II of the Ohio Constitution. The court of appeals affirmed Mr. Williams's classification, finding this Court's opinion in *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291 dispositive. *State v. Williams*, 12th Dist. No. CA2008-02-029, 2008-Ohio-6195. The court of appeals held that Senate Bill 10 was "remedial, and not punitive, and that the retroactive application of its classification, registration, and notification provisions d[id] not violate the Ex Post Facto Clause of the United States Constitution." *State v. Williams*, 2008-Ohio-6195, at ¶75. Additionally, as to Senate Bill 10's

residency restrictions, the court held that that provision did “not apply to an offender who bought his home or resided in a home and committed his offense before July 1, 2007, the effective date of Senate Bill 10’s residency provision.” *State v. Williams*, 2008-Ohio-6195, at ¶84.

Mr. Williams filed a timely notice of appeal and memorandum in support of jurisdiction in this Court. (George Williams’s January 12, 2009 Notice of Appeal; January 12, 2009 Memorandum in Support of Jurisdiction). The memorandum submitted the following proposition of law:

The retroactive application of Senate Bill 10 violates the Ex Post Facto and Due Process Clauses of the United States Constitution and the Retroactivity Clause of Section 28, Article II of the Ohio Constitution. Fourteenth Amendment to the United States Constitution; Section 10, Article I of the United States Constitution; and Sections 10 and 28, Articles I and II, respectively, of the Ohio Constitution.

(George Williams’s January 12, 2009 Memorandum in Support of Jurisdiction).

This Court accepted jurisdiction, but stayed the briefing schedule pending the outcome in the case captioned *State v. Bodyke*, Ohio Supreme Court Case No. 2008-2502. 04/22/2009 *Case Announcements*, 2009-Ohio-1820. On June 3, 2010, this Court issued its opinion in *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424. And subsequently, on July 22, 2010, this Court ordered that briefing proceed in Mr. Williams’s case. 07/22/2010 *Case Announcements*, 2010-Ohio-3396. The issue as to whether Senate Bill 10 violates the Ex Post Facto and Due Process Clauses of the United States Constitution, and the Retroactivity Clause of the Ohio Constitution, is now before this Court.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW

The retroactive application of Senate Bill 10 violates the Ex Post Facto and Due Process Clauses of the United States Constitution and the Retroactivity Clause of Section 28, Article II of the Ohio Constitution. Fourteenth Amendment to the United States Constitution; Section 10, Article I of the United States Constitution; and Sections 16 and 28, Articles I and II, respectively, of the Ohio Constitution.

I. Summary of Argument.

The primary intent and effect of Senate Bill 10 is punishment. This Court should hold that Senate Bill 10 violates the United States Constitution's prohibition against ex post facto laws and the Ohio Constitution's ban on retroactive punishment, and that it may not be applied to people like Mr. Williams, whose crime was committed before July 1, 2007. Furthermore, this Court should strike down Senate Bill 10's residency restrictions, as such limitations violate the Due Process Clause of the United States Constitution, and Section 16, Article I of the Ohio Constitution.

II. Introduction.

In 2007, Senate Bill 10 fundamentally changed Ohio's sex-offender classification and notification provisions. But Senate Bill 10 may not be constitutionally applied to crimes that occurred before the date of its enactment. Although different provisions of Senate Bill 10 came into effect at different times—some portions took effect on July 1, 2007, while other sections did not take effect until January 1, 2008—at the very least, the act may not be applied to a defendant whose alleged crime(s) occurred before July 1, 2007. Senate Bill 10, 127th General Assembly, Sections 2, 3, and 4 (2007).

Under Senate Bill 10, sex offenders are no longer classified based upon their risk to the public. Instead of judicial hearings focused on the risk that an offender might re-offend, Senate Bill 10 classification levels are based solely on the offense committed. Senate Bill 10 does not permit the sentencing judge to consider criteria that are relevant to the offender's risk of recidivism. Instead, the sentencing judge merely informs the offender which classification and duties attach to his or her conviction. R.C. 2950.03(A)(2).

The General Assembly's motivation in enacting Senate Bill 10 was largely financial. In 2006, Congress passed a bill known as the Adam Walsh Act. States were required to comply with this federal legislation by July 27, 2009, or risk losing 10% of a federal law-enforcement grant. Congress promised a funding bonus to states that enacted the statute by July 2007. As Ohio State Senator Steve Austria, Senate Bill 10's sponsor, explained during the May 16, 2007 Senate session: "Every state is required to implement the Adam Walsh Child Protection and Safety Act within three years, by July of 2009. However, if we are able to implement this Act by July of 2007..., we would be eligible to receive an additional ten percent to our state." Senate Session, Wednesday, May 16, 2007. Despite Senator Tom Sawyer's warning during the session that "[t]his bill is being moved as quickly as possible not because of what is best for children, but because there is money at stake from the Congress," the General Assembly passed the bill. *Id.*

It appears that the bonus money is purely illusory, as Congress has not appropriated any money for the bonus. See, generally, Fund Adam, <http://fundadam.org/news.html> (viewed, July 23, 2010) and the Adam Walsh Policy update of the National Conference of State Legislators, <http://www.ncsl.org/statefed/LAWANDJ.HTM#AdamWalsh> (updated, August 2009). In fact, the Ohio Senate passed a resolution urging full funding of the Adam Walsh Act:

All states are required to comply with the Adam Walsh Child Protection and Safety Act within three years, July 2009. However, those states that implement certain provisions of the federal law by July 2007 will be eligible to receive an additional 10% in federal funding. The Ohio Senate has introduced multiple bills in an effort to receive this additional funding. The sponsors of Ohio's Adam Walsh Act (AWA) implementing legislation (Senate Bills 9, 10, 22, and 97) have been working with the Criminal Justice Committee, the Adam Walsh Study Committee, the Ohio Attorney General and various stakeholders over the past months. The Ohio Senate intends to put forward legislation that will substantially enact the requirements of the AWA in a manner that is timely and consistent with Ohio's history of protecting children against sexual offenders. Ohio has an opportunity to earn the additional 10% bonus in Justice Assistance Grants if they enact their laws prior to July 2007. *Unfortunately, to date, the federal government has not allocated full funding or complete guidelines for those states, which are enacting part or all of the Adam Walsh Child Protection and Safety Act.*¹

(Emphasis added.) The federal government's unfunded mandate has caused budgetary problems with Ohio's local county sheriffs. See Radio Interview with Franklin County Sheriff's Office Chief Deputy Stephan Martin, WOSO Radio (June 10, 2010).² And even if federal funds become available, and this Court declares the legislation that the General Assembly devised in order to implement the Adam Walsh Act unconstitutional under the Ohio Constitution, Ohio could still receive the funds from the federal government. Sex Offender Registration and Notification Act, 42 U.S.C. 16925, Section 125(b) (2006).³

Moreover, recent studies demonstrate that sex-offender registries are ineffective tools for increasing public safety. See Amanda Y. Agan, *Sex Offender Registries: Fear Without Function?*, (December 2008), University of Chicago Economics Department⁴ (Using three

¹ http://fundadam.org/images/Press_Release_5-1-07_AWA_Resolution_Ohio.doc

² <http://www.wosu.org/allsides/?archive=1&date=06/10/2010>

³ http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ248.109.pdf

⁴ <http://ssrn.com/abstract=1437098>

different sets of data, Agan concluded that rates of sexual offenses do not decline after the introduction of a registry; and sex offenders do not recidivate less when released into states with registries); Editorial, *The Problem of Sex Offenders*, N.Y. Times, September 11, 2009⁵ (“California’s online sex-offender registry is full of information about Phillip Garrido of 1554 Walnut Ave. in Antioch—a 6-foot-4 white male, born April 5, 1951, with blue eyes, brown hair, a scar on his abdomen and a rape conviction. But in the 18 years that Mr. Garrido dutifully met his obligations as a registered offender—checking in with the state every year—authorities charge that he kidnapped and held Jaycee Dugard, fathering two children with her and imprisoning them all in his backyard.”); Monica Davey, *Case Shows Limits of Sex Offender Alert Programs*, N.Y. Times, September 1, 2009⁶ (“Sex offender lists have made far more information readily available to the public and the police than before, but experts say little research is available to suggest that the registries have actually discouraged offenders from committing new crimes.”). Not only are sex-offender registries ineffective tools for increasing public safety, but in Ohio, due to the residency restrictions, Senate Bill 10 has caused “sex-offender ghettos.” See Radio Interview with Franklin County Sheriff’s Office Chief Deputy Stephan Martin, WOSO Radio (June 10, 2010).⁷

III. Argument.

Prior to the enactment of Senate Bill 10, a person who committed a sexually oriented offense was entitled to a hearing at which the trial court would make the determination as to whether the defendant was a sexual predator; a habitual sex offender or a habitual child-victim offender; or a sexually oriented offender. Former Ohio Rev. Code Ann. § 2950.01, et seq.

⁵ http://www.nytimes.com/2009/09/12/opinion/12sat2.html?_r=2&th&emc=th

⁶ http://www.nytimes.com/2009/09/02/us/02offenders.html?_r=2&th&emc=th

⁷ <http://www.wosu.org/allsides/?archive=1&date=06/10/2010>

(amended January 1, 2008). Before adjudicating a defendant as a sexual predator, a trial court was required to take the following factors into account:

- (a) The offender's or delinquent child's age;
- (b) The offender's or delinquent child's prior criminal or delinquency record regarding all offenses, including, but not limited to, all sexual offenses;
- (c) The age of the victim of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made;
- (d) Whether the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made involved multiple victims;
- (e) Whether the offender or delinquent child used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting;
- (f) If the offender or delinquent child previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing an act that if committed by an adult would be, a criminal offense, whether the offender or delinquent child completed any sentence or dispositional order imposed for the prior offense or act and, if the prior offense or act was a sex offense or a sexually oriented offense, whether the offender or delinquent child participated in available programs for sexual offenders;
- (g) Any mental illness or mental disability of the offender or delinquent child;
- (h) The nature of the offender's or delinquent child's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;
- (i) Whether the offender or delinquent child, during the commission of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made, displayed cruelty or made one or more threats of cruelty; and

(j) Any additional behavioral characteristics that contribute to the offender's or delinquent child's conduct.

Former Ohio Rev. Code Ann. § 2950.09(B)(3) (amended January 1, 2008). If a defendant was determined to be a sexual predator, the defendant's registration duties "continued until the offender's death." Former Ohio Rev. Code Ann. § R.C. 2950.07(B)(1) (amended January 1, 2008).

However, if a trial court determined that the offender was not a sexual predator, but that "the offender previously ha[d] been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the hearing [was] being conducted or previously ha[d] been convicted of or pleaded guilty to a child-victim oriented offense," the defendant was to be adjudicated a child-victim predator or a habitual sex offender. Former Ohio Rev. Code Ann. § 2950.01(B)(1) (amended January 1, 2008). A defendant who was adjudicated a child-victim predator or a habitual sex offender was required to comply with the Revised Code's registration mandates for twenty years. Former Ohio Rev. Code Ann. § R.C. 2950.07(B)(2) (repealed January 1, 2008).

A defendant who was not adjudicated to be either a sexual predator or a habitual sex offender was classified as a sexually oriented offender and required to "comply [with his or her registration duties] for ten years." Former Ohio Rev. Code Ann. § R.C. 2950.07(B)(3) (repealed January 1, 2008).

Senate Bill 10 has eradicated former R.C. Chapter 2950's sex-offender classification system. Instead of focusing on an offender's risk to the public, a trial court must place an offender into a "tier" based solely on the offense that was committed. The following charts highlight the differences between former R.C. Chapter 2950 and Senate Bill 10:

Former R.C. Chapter 2950's Classification System

Classification	Registration Duties	Community Notification
Sexually Oriented Offender	Once Annually for 10 Years	None
Habitual Sexual Offender	Every 180 Days for 20 Years	May Occur Every 180 Days for 20 Years
Sexual Predator	Every 90 Days for Life	May Occur Every 90 Days for Life

Senate Bill 10's Classification System

Classification	Registration Duties	Community Notification
Tier I	Once Annually for 15 Years	None
Tier II	Every 180 Days for 25 Years	None
Tier III	Every 90 Days for Life	May Occur Every 90 Days for Life

In May 2007—the date on which the offense occurred in this case—Mr. Williams would have been classified as a sexually oriented offender and ordered to comply with various registration requirements for ten years. Former Ohio Rev. Code Ann. § 2950.01, et seq. (amended January 1, 2008). The trial court found Mr. Williams to be amenable to community control. (January 31, 2008 Sentencing Hearing Transcript, p. 8). The only other offense that Mr. Williams had committed was a petty theft as a juvenile. *Id.* Furthermore, the alleged victim to the crime in the case sub judice was pregnant at the time that Mr. Williams had been

sentenced. *Id.* at p. 7. And the alleged victim, along with her family, wanted the no-contact order lifted, and wanted Mr. Williams to be able to have contact with the child. *Id.* (See, also, p. 27, *infra*). But as mandated by Senate Bill 10's classification system, the trial court had to automatically place Mr. Williams into "Tier II," which requires Mr. Williams to comply with registration requirements every 180 days for the next 25 years. R.C. 2950.07(B)(2).

By tying sex-offender classification, registration, and notification requirements directly and solely to the crime of conviction, Senate Bill 10 has created a sex-offender registration scheme that is no longer remedial and civil in nature. Sex-offender registration, as it functions under Senate Bill 10, is purely punitive and is in fact part of the original sentence. As such, the retroactive application of Senate Bill 10 is violative of the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution. Section 10, Article I of the United States Constitution; Section 28, Article II of the Ohio Constitution. Furthermore, Senate Bill 10's residency restrictions violate the Due Process Clause of the United States Constitution and Section 16, Article I of the Ohio Constitution.

A. The retroactive application of Senate Bill 10 to crimes committed before July 1, 2007 violates the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution.

Section 28, Article II of the Ohio Constitution provides that "the general assembly shall have no power to pass retroactive laws." Additionally, Section 10, Article I of the United States Constitution prohibits any legislation that "changes the punishment, and inflicts greater punishment, than the law annexed to the crime, when committed." *Miller v. Florida* (1987), 482 U.S. 423, 429. Ex post facto laws are prohibited in order to ensure that legislative acts "give fair warning to their effect and permit individuals to rely on their meaning until explicitly changed." *Weaver v. Graham* (1981), 450 U.S. 24, 28-29.

1. Senate Bill 10 violates Section 10, Article I of the United States Constitution.

The Ex Post Facto Clause of the United States Constitution prevents the legislature from abusing its authority by enacting arbitrary or vindictive legislation aimed at disfavored groups. See *Miller v. Florida*, 482 U.S. at 429; *Carmell v. Texas* (2000) 529 U.S. 513, 536 (a bill of attainder can also be an example of an ex post facto law). However, the Ex Post Facto Clause applies only to criminal statutes. *California Dept. of Corrections v. Morales* (1995), 514 U.S. 499, 504; *Collins v. Youngblood* (1990), 497 U.S. 37, 43. Although the United States Supreme Court has declined to set out a specific test for determining whether a statute is criminal or civil for purposes of applying the Ex Post Facto Clause, see *Morales*, 514 U.S. at 508-509, the Court has used a set of definite factors when analyzing whether an Act of Congress is penal or regulatory in nature. See *Kennedy v. Mendoza-Martinez* (1963), 372 U.S. 144, 168-169; see, also, p. 18, *infra*. Additionally, the Court has recognized that determining whether a statute is civil or criminal is a matter of statutory interpretation. *Helvering v. Mitchell* (1938), 303 U.S. 391, 399; *Allen v. Illinois* (1985), 478 U.S. 364, 368.

Various courts have used the “intent-effects test” to delineate between civil and criminal statutes for the purposes of an ex post facto analysis of sex-offender registration and notification statutes. *State v. Cook*, 83 Ohio St.3d at 415-417 (the intent of the General Assembly in enacting former Revised Code Chapter 2950 was remedial, not punitive). See, also, *Roe v. Office of Adult Probation* (2nd Cir. 1997), 125 F.3d 47, 53-55; *Russell v. Gregoire* (9th Cir. 1997), 124 F.3d 1079; *Doe v. Pataki* (2nd Cir. 1997), 120 F.3d 1263, 1274-1276; *Kansas v. Hendricks* (1997), 521 U.S. 346 (The intent-effects test was utilized by the United States Supreme Court in its ex post facto analysis of a Kansas statute permitting the state to

institutionalize sexual predators with mental abnormalities or personality disorders that made it likely the defendant would reoffend.).

When applying the intent-effects test, a reviewing court must first determine whether the legislature, “in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other.” *United States v. Ward* (1980), 448 U.S. 242, 248-249. But even if the legislature indicated an intention to establish a civil penalty, a statute will be determined to be criminal if “the statutory scheme [is] punitive either in purpose or effect as to negate that intention.” *Id.*

The Intent of Senate Bill 10

In the intent-prong of the analysis, this Court must determine whether the General Assembly’s objective in promulgating Senate Bill 10 was penal or remedial. A court must look to the language and purpose of the statute in order to determine legislative intent. *State v. S.R.* (1992), 63 Ohio St.3d 590, 594-595; *Provident Bank v. Wood* (1973), 36 Ohio St.2d 101, 105.

The provisions of Senate Bill 10 demonstrate the General Assembly’s intent for the new statutory scheme to be punitive. Similar to the 1997 version of R.C. Chapter 2950, Senate Bill 10 contains language stating that the exchange or release of certain information is not intended to be punitive. See *State v. Cook*, 83 Ohio St.3d at 417 (“The purpose behind R.C. Chapter 2950 [was] to promote public safety and bolster the public’s confidence in Ohio’s criminal and mental health systems. The statute [was] absolutely devoid of any language indicating an intent to punish. In fact, the General Assembly specifically stated that ‘the exchange or release of [information required by this law] is not punitive.’”). However, also probative of legislative intent is the manner of the legislative enactment’s “codification or the enforcement procedures it establishes....” *Smith v. Doe* (2003), 538 U.S. 84, 94. See, also, *Mikaloff v. Walsh* (N.D. Ohio

2007), 2007 U.S. Dist. LEXIS 65076, at *15 (“[w]here a legislature chooses to codify a statute suggests its intent”).

Senate Bill 10 is placed within Title 29, Ohio’s Criminal Code. The specific classification and registration duties are directly related to the offense committed. Furthermore, the failure to comply with registration, verification, or notification requirements subjects an individual to criminal prosecution and penalties. R.C. 2950.99. See, also, *State v. Williams*, 114 Ohio St.3d 103, 2007-Ohio-3268, at ¶10 (This Court determined that although “the registration requirements of [former] R.C. Chapter 2950 may have been enacted generally as remedial measures, R.C. 2950.06 defined a crime: the offense of failure to verify current address.”); *State v. Strickland*, 11th Dist. No. 2008-L-034, 2009-Ohio-5424, at ¶19 (“pursuant to R.C. 2950.99, failure to comply with provisions of R.C. Chapter 2950 is a felony”).

The following mandates by the legislature are also indicative of its intent for the new classification to be a criminal punishment. First, R.C. 2929.19(B)(4)(a), which is codified within the Penalties and Sentencing Chapter, states: “[t]he court *shall include in the offender’s sentence* a statement that the offender is a tier III sex offender....” (Emphasis added.) Additionally, R.C. 2929.23(A), titled “Sentencing for sexually oriented offense or child-victim misdemeanor offense...,” codified under the penalties-for-misdemeanor provision, states that “the judge *shall include in the offender’s sentence* a statement that the offender is a tier III sex offender/child victim offender [and] shall comply with the requirements of section 2950.03 of the Revised Code....” (Emphasis added.) Revised Code Section 2929.23(B) states: “[i]f an offender is being sentenced for a sexually oriented offense or a child-victim oriented offense that is a misdemeanor..., the judge *shall include in the sentence* a summary of the offender’s

duties imposed under R.C. 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code and the duration of the duties.” (Emphasis added.)

As defined by the Ohio Revised Code, a “sentence” is “the sanction or combination of sanctions imposed by the sentencing court on an offender who is convicted of or pleads guilty to an offense.” R.C. 2929.01(E). “Sanction” is defined in R.C. 2929.01(D) as “any penalty imposed upon an offender who is convicted of or pleads guilty to an offense, *as punishment for the offense.*” (Emphasis added.) Indeed, the placement of Senate Bill 10 in the criminal code, along with the plain language of the bill, evidences the intent of the General Assembly to transform classification and registration into a punitive scheme.

In *State v. Cook*, 83 Ohio St.3d 404, this Court analyzed the 1997 version of R.C. Chapter 2950 and concluded that the provisions were not punitive, since the General Assembly’s purpose was “to promote public safety and bolster the public’s confidence in Ohio’s criminal and mental health systems.” *State v. Cook*, 83 Ohio St.3d at 417. In *Cook*, this Court emphasized the statutory scheme’s “narrowly tailored attack on th[e] problem[,]” stating that “the notification provisions apply automatically *only* to sexual predators or, *at the court’s discretion*, to habitual sex offenders.... Required dissemination of registered information to neighbors and selected community officials likewise is an objectively reasonable measure to warn those in the community who are most likely to be potential victims.” *Id.* (Emphasis added and internal citations omitted.) Accordingly, this Court noted that the dissemination of the required information was available for inspection only by law-enforcement officials and “those most likely to have contact with the offender, e.g., neighbors, the director of children’s services, school superintendents, and administrators of preschool and day care centers.” *Id.* at 422.

While the statute at issue in *Cook* restricted the access of an offender's information to "those persons necessary in order to protect the public[,]" Senate Bill 10 requires the offender's information to be open to public inspection and to be included in the internet sex-offender and child-victim offender database. R.C. 2950.081. Not only does the public have unfettered access to an offender's personal information but, under Senate Bill 10, an offender has a legal duty to provide more information than was required under former R.C. Chapter 2950. See current R.C. 2950.04(C); R.C. 2950.081.

As part of the general registration form, the offender must indicate: his or her full name and any aliases, his or her social security number and date of birth, the address of his or her residence, the name and address of his or her employer, the name and address of any type of school he or she is attending, the license plate number of any motor vehicle he or she owns, the license plate number of any vehicle he or she operates as part of his or her employment, a description of where his or her motor vehicles are typically parked, his or her driver's license number, a description of any professional or occupational license he or she may have, any e-mail addresses, all internet identifiers or telephone numbers that are registered to, or used by, the offender, and any other information that is required by the bureau of criminal identification and investigation. R.C. 2950.04(C). The offender's information is placed into an internet registry. R.C. 2950.081.

Additionally, in *Cook*, this Court determined that former R.C. Chapter 2950, on its face, "[wa]s not punitive because it s[ought] 'to protect the safety and general welfare of the people of this state....'" *State v. Cook*, 83 Ohio St.3d at 417, citing former R.C. 2950.02(B) and (A)(2). Recognizing this concept, in *State v. Eppinger*, 91 Ohio St.3d 158, 165, 2001-Ohio-247,

this Court stressed the importance of a sexual-offender classification hearing and the significance of classifying offenders appropriately:

[I]f we were to adjudicate all sexual offenders as sexual predators, we run the risk of “being flooded with a number of persons who may or may not deserve to be classified as high-risk individuals, with the consequence of diluting both the purpose behind and the credibility of the law. This could be tragic for many.” *State v. Thompson* (1999), Cuyahoga App. No. 73492, unreported, 140 Ohio App.3d 638, 1998 WL 1032183. Moreover, the legislature would never have provided for a hearing if it intended for one conviction to be sufficient for an offender to be labeled a “sexual predator.”

Also of significance, in *Eppinger*, this Court noted that “[o]ne sexually oriented offense is not a clear predictor of whether that person is likely to engage in the future in one or more sexually oriented offenses, particularly if the offender is not a pedophile. Thus, we recognize that one sexually oriented conviction, without more, may not predict future behavior.” *Id.* at 162.

As this Court recognized in *Eppinger*, Mr. Williams’s sole conviction for unlawful sexual conduct with a minor does not indicate that he will engage in future conduct constituting a sexually oriented offense. And the facts underlying Mr. Williams’s case demonstrate the point that Mr. Williams’s conduct was confined to this one instance. At the time of the offense, Mr. Williams was 19-years old, and the victim was 14-years old. (December 14, 2007 Transcript, p. 9, January 31, 2008 Sentencing Hearing Transcript, pp. 3-4). The 14-year-old victim e-mailed the trial court before Mr. Williams had been sentenced, and told the trial court that “Mr. Williams [was] the father [to her unborn child] and she want[ed] Mr. Williams involved in that child’s life.” (January 31, 2008 Sentencing Hearing Transcript, p. 7). The victim’s family was also “interested in having Mr. Williams being a part...of the family.” *Id.* Indeed, classifying Mr. Williams as anything but a sexually oriented offender dilutes “both the purpose behind and the credibility of the law.” *State v. Eppinger*, 91 Ohio St.3d at 165.

Unlike the statute at issue in *Cook* and *Eppinger*, an individual's registration and classification obligations under Senate Bill 10 depend solely upon his or her crime, not upon his or her ongoing threat to the community. The result is a ministerial rubber stamp on all offenders, regardless of any mitigating facts in the individual case. The legislative basis for this seems to be the theory that all sex offenders fit into one of two groups: those who have offended more than once; and those who have offended only once, but are likely to offend again at some point in the future. This process, as delineated in Senate Bill 10, has stripped the trial court of its ability to engage in an independent classification hearing to determine an offender's likelihood of recidivism. Expert testimony is no longer presented; and written reports, victim impact statements, and presentence reports are no longer taken into consideration, nor is the offender's criminal and social history. Cf. *State v. Eppinger*, 91 Ohio St.3d at 166-67. Gone are the notice, hearing, and judicial review tenants of due process. Thus, there is no longer an independent determination as to the likelihood that a given offender would commit another crime.

Furthermore, to date, the majority of the justices on this Court have objected to the characterization of Ohio's sex-offender classification system as a "civil" proceeding. In *State v. Wilson*, Justice Lanzinger, whose dissenting opinion was joined by Justice O'Connor, stated that the "restraints on liberty are the consequences of specific criminal convictions and should be recognized as part of the punishment that is imposed as a result of the offender's actions." *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, at ¶46 (Lanzinger, J., concurring in part and dissenting in part). More recently, Justice Lanzinger again voiced her concern in a dissenting opinion in *State v. Ferguson*, in which she stated that "R.C. 2950.09 has been transformed from remedial to punitive." *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824,

at ¶45 (Lanzinger, J., dissenting). Her dissenting opinion in *Ferguson* was joined by Justices Pfeifer and Lundberg Stratton. Thus, at one time or another, Justices Lanzinger, Lundberg Stratton, O'Connor, and Pfeifer have all expressed their belief that the former version of Ohio's sex-offender classification system was punitive, rather than remedial.

While the legislature may be entitled to adopt this punitive classification system to apply to offenders prospectively, the United States Constitution does not permit the retroactive application of Senate Bill 10 in its current form to individuals such as Mr. Williams.

The Effect of Senate Bill 10

Even if this Court were to determine that the General Assembly intended Senate Bill 10 to operate as a remedial statute, the statute has a "punitive effect so as to negate a declared remedial intention." *Allen v. Illinois* (1985), 478 U.S. 364, 369. When assessing the punitive effects of a particular statute, the United States Supreme Court has considered the following factors:

1. Whether the sanction involves an affirmative disability or restraint;
2. Whether it has historically been regarded as punishment;
3. Whether it comes into play only on a finding of scienter;
4. Whether its operation will promote the traditional aims of punishment—retribution and deterrence;
5. Whether the behavior to which it applies is already a crime;
6. Whether an alternative purpose to which it may rationally be connected is assignable for it; and
7. Whether it appears excessive in relation to the alternative purpose assigned.

Kennedy v. Mendoza-Martinez, 372 U.S. at 168-169.

Mr. Williams acknowledges that this Court has previously weighed the *Kennedy* factors and concluded that other sex-offender registration laws were remedial and civil. See, e.g., *State v. Cook*, 83 Ohio St.3d 404; *State v. Wilson*, 2007-Ohio-2202; see, also, *Smith v. Doe* (2003), 538 U.S. 84 (finding Alaska's sex-offender registration law to be civil and remedial). Cf. *Wallace v. Indiana* (2009), 905 N.E.2d 371 (finding Indiana's version of the Adam Walsh Act to be a criminal statute based upon the *Kennedy* factors). But the statutes at issue in *Cook* and *Wilson* were significantly less onerous than Senate Bill 10. And at least three current members of this Court have recognized that we cannot "continue to label these proceedings as civil in nature. These restraints on liberty are the consequence of specific criminal convictions and should be recognized as part of the punishment that is imposed as a result of the offender's actions." *Wilson*, 2007-Ohio-2202, at ¶46 (Lanzinger, J., concurring in part and dissenting).

Kennedy, itself, ties the analysis exclusively to the specific statute at issue. Moreover, the flexible nature of the *Kennedy* factors evidences the Supreme Court's recognition that there is a sliding scale between purely remedial and purely punitive statutes, which will require re-evaluation of prior pronouncements on similar statutes. Indeed, what arguably began as a legitimate regulatory scheme designed to give the community information necessary to protect itself from sex offenders has expanded significantly in both breadth and scope. Consideration of the *Kennedy* factors with respect to Senate Bill 10 demonstrates that Ohio's sex-offender registration law imposes a punitive sanction, and this Court's prior consideration of entirely different statutory schemes cannot alter that conclusion.

i. Senate Bill 10 imposes affirmative obligations, disabilities, and restraints.

Senate Bill 10 imposes significant affirmative obligations, in addition to a severe stigma, upon every individual to whom it applies. It imposes significant affirmative obligations, to

which few, if any, other citizens are subjected. And those obligations, including registration and disclosure of private information, are discharged under the threat of criminal prosecution. R.C. 2950.06(F) and 2950.06(G). Moreover, the time periods associated with the affirmative obligation to register are significant and intrusive. (See p. 9, *supra*). In addition, several counties have instituted a fee that must be paid each time an individual registers. See *Sheriffs to Start Charging Registered Sex Offenders*, Dayton Daily News, Apr. 23, 2009, at A3 (reporting that the Montgomery County Sheriff will charge \$25 per year for Tier I and II offenders, and \$100 per year for Tier III offenders). Such obligations cannot be construed as *de minimus*.

Also, Senate Bill 10's residency restrictions impose significant restraints with respect to where registrants may lawfully reside. In fact, in Franklin County alone, sex offenders are effectively barred from 60% of all residential property in the county and more than 80% of property in low-income areas. Beth Red Bird, *Assessing Housing Availability Under Ohio's Sex Offender Residency Restrictions*, (March 25, 2009), The Ohio State University, p. 5.⁸ This constitutes an additional and significant disability for convicted sex offenders.

Finally, the aggressive community notification provisions contained within Senate Bill 10 subjects offenders to profound levels of humiliation and community-wide ostracism. Not only does dissemination of such information subject offenders to serious risk of "vigilante justice" in the form of both threats and actual physical violence, it also directly contributes to lost employment opportunities, denials of housing, evictions, and other forms of discrimination. See 10 TV News, *Shelter to Turn Tier III Sex Offenders Away*, June 17, 2009⁹; NGA Center for

⁸http://www.redbird.net/ASSESSING_HOUSING_AVAILABILITY_UNDER_OHIOS_SEX_OFFENDER_RESIDENCY_RESTRICTIONS.pdf

⁹http://www.10tv.com/live/content/local/stories/2009/06/17/story_sex_offenders.html?sid=102

Best Practice, Issue Brief, *Managing Convicted Sex Offenders in the Community*, p. 13.¹⁰ Again, such far-reaching and significant consequences must be construed as substantial disabilities for reclassified offenders.

ii. *Senate Bill 10 imposes sanctions that have historically been considered punishment.*

Application of this factor is often challenging because sex-offender registration laws are of relatively recent origin and may lack a historical corollary. However, community notification cards, coupled with widespread dissemination of information on the internet, share a common thread with traditional shaming punishments. In large part, the public notification scheme is designed to mark the offender as one who is to be shunned, which is precisely the goal of shaming punishments in the historical sense. See *Smith v. Doe*, 538 U.S. at 115-116 (Ginsburg, J., dissenting).

Furthermore, because of Senate Bill 10's residency restrictions, many sex offenders are being "expelled" from communities. *Smith v. Doe*, 538 U.S. 98. And such expulsion is more than the registration requirements that were at issue in *State v. Cook*, 83 Ohio St.3d at 419 ("Dissemination of such [registered] information is obviously detrimental to the reputation of the defendant, who is presumed innocent until proven guilty. But, dissemination of such information in and of itself however, has never been regarded as punishment when done in furtherance of a legitimate governmental interest."). (Internal citation omitted.) See, also, *State v. Williams*, 88 Ohio St.3d 513, 526, 2000-Ohio-428 ("There is nothing in the community notification provisions in R.C. Chapter 2950 that hampers the right to seek out or acquire property. Notification is based upon the geographic area around the offender's residence. R.C. 2950.11(A)(1) through (9). Thus, before the community can be notified, the offender must have

¹⁰<http://www.nga.org/Files/pdf/0711SEXOFFENDERBRIEF.PDF>

obtained a temporary or permanent residence, *and the right to acquire property has not been implicated.*”). (Emphasis added.) The “banishment” of sex offenders is so widespread, that “sex-offender ghettos” are becoming commonplace within certain communities. See Radio Interview with Franklin County Sheriff’s Office Chief Deputy Stephan Martin, WOSO Radio (June 10, 2010).¹¹ See, also, Stephen P. Garvey, *Can Shaming Punishments Educate?*, 65 U. Chi. L. Rev. 733, 739 (1998) (“Punishments widely described as ‘shaming’ penalties thus come in two basic but very different forms: those that rely on public exposure and aim at shaming; and those that do not rely on public exposure and aim at educating.”); Henry M. Hart, Jr., *The Aims of the Criminal Law*, 23 Law & Contemp. Probs. 401, 404 (1958) (“What distinguishes a criminal from a civil sanction and all that distinguishes it, it is ventured, is the judgment of community condemnation which accompanies and justifies its imposition.”); Paul Robinson, *The Criminal-Civil Distinction and the Utility of Desert*, 76 B.U.L. Rev. 201, 202 (1996) (noting that “criminal sanctions signal condemnation”).

And even though Senate Bill 10’s residency restrictions currently may only be enforced prospectively, the General Assembly is attempting to pass a new bill in which the residency restrictions will be enforced retroactively. According to Senate Bill 42, any person convicted of a sexually oriented offense will have to vacate his or her residence if neither the defendant nor his or her spouse owns the property at which the offender resides. S.B. 42, 128th General Assembly, § 2950.034 (as passed by the Senate) (2009). This Court’s failure to draw a line as to the General Assembly’s implementation of retroactive sex-offender registration and classification laws will result in ongoing litigation as to every new piece of legislation that is

¹¹<http://www.wosu.org/allsides/?archive=1&date=06/10/2010>

passed. And Senate Bill 42 is just one example of the General Assembly's willingness to pass harsher laws increasing the punitive effects of Senate Bill 10 and its progenies.

Additionally, the registration and reporting scheme is virtually indistinguishable from probation, parole, and other forms of supervised release, which have traditionally been considered punishment for criminal acts. See *Wallace v. Indiana*, 905 N.E.2d at 380 (noting that sex-offender registration and notification bears substantial similarity to supervised probation or parole); see, also, Andrea E. Yang, Comment, *Historical Criminal Punishments, Punitive Aims and Un-"Civil" Post-Custody Sanctions on Sex-Offenders*, 75 U. Cin. L. Rev. 1299, 1328 (2007) (arguing that the supervision of sex offenders actually exceeds that of probationers and parolees).

iii. *Senate Bill 10 comes into play only upon a finding of scienter.*

Because Senate Bill 10 is tied solely to a criminal conviction, and nearly all of the triggering crimes include a mens rea element, this factor also weighs in favor of finding that the sanction imposed is punitive and part of the criminal sentence.

iv. *Senate Bill 10 serves the traditional aims of punishment.*

Given the substantial restraints on physical liberty and the ostracism associated with sex-offender registration and notification, it defies reason to suggest that Senate Bill 10 is not designed in large part to have both a retributive and deterrent effect. While other secondary objectives, including a desire to protect the community, may also be present, the intention to deter future offenders and condemn past offenders cannot be understated. And there is overwhelming empirical evidence which indicates that sex-offender registration and notification laws do little to protect the community. See, e.g., Lindsay A. Wagner, Note, *Sex Offender Residency Restrictions: How Common Sense Places Children at Risk*, 1 Drexel L. Rev. 175, 195

(2009) (addressing the extent to which residency restrictions actually increase recidivism); Bob Vasquez, *The Influence of Sex Offender Registration and Notification Laws in the United States*, 54 *Crime & Delinquency* 175, 179, 188 (2008) (noting that empirical research indicates that sex-offender legislation seems to have had no uniform and observable influence on the number of rapes reported); J.J. Prescott, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?*, NBER Working Paper No. 13803 (February 2008) (no evidence that sex-offender registries reduce recidivism or protect the public).¹² In light of this evidence demonstrating that sex-offender registration laws do not protect the public, and in many instances, increase the risk to the public, the only remaining explanation for the increasingly harsh sanctions imposed on sex-offenders is the General Assembly's desire to punish and deter crime.

v. *Senate Bill 10 applies only to behavior which is already a crime.*

The statute applies only to behavior that is already, and in fact, exclusively, criminal. Indeed, the entire category of persons subject to Senate Bill 10 are individuals previously convicted of certain enumerated criminal acts. Nothing in Senate Bill 10 contemplates application of its provisions to any form of behavior other than that proscribed as a sexual offense or a child-victim offense. Because the registration and notification obligations under Senate Bill 10 are triggered exclusively by the existence of a criminal conviction, it cannot be disputed that this factor weighs in favor of finding the statute to be punitive.

¹²<http://www.law.umich.edu/centersandprograms/olin/papers.htm>;
<http://www.psc.isr.umich.edu/pscinfoserv/?p=426>.

vi. *Senate Bill 10 is excessive in relation to any non-punitive interest.*

The final two *Kennedy* factors—whether the statute advances a non-punitive interest and whether the sanction imposed is excessive in relation to the purported non-punitive purpose—must be considered in tandem. Senate Bill 10 purports to advance a legitimate, regulatory purpose: the protection of the public from dangerous sexual offenders. And while Senate Bill 10 does little to promote public safety, it must be recognized as advocating a non-punitive goal.

Additionally, the sanction is excessive in relation to the stated goal of protecting the public. First, a Senate Bill 10 classification is tied solely to the fact of conviction as opposed to any finding of future dangerousness. Thus, for a potentially large number of convicted offenders, there is absolutely no threat to public safety, and imposition of registration duties and community notification cannot reasonably advance the stated goal of protecting the public. Moreover, in light of empirical evidence that demonstrates the inefficacy of sex-offender registration laws in actually protecting the public from harm, the sanctions imposed are excessive in relation to any public safety goal. Setting aside its rhetoric, Senate Bill 10 actually does very little to advance public safety. Rather, its primary function is to continue to punish sex offenders in perpetuity for their past criminal conduct.

Having weighed the seven *Kennedy* factors, only one—purporting to advance a non-punitive purpose—weighs in favor of finding the statute to impose a remedial sanction. On balance, the remaining six factors weigh in favor of finding that the statute imposes criminal punishment. As such, because Senate Bill 10 is criminal in nature and has a punitive effect, a reviewing court may determine whether Senate Bill 10's retroactive application is constitutional under federal law. Section 10, Article I of the United States Constitution.

A law falls within the ex post facto prohibition if it meets two critical elements: first, the law must be retrospective, applying to events occurring before its enactment; and second, the law must disadvantage the offender affected by it. *Miller v. Florida*, 482 U.S. at 430. A law is retrospective if it “changes the legal consequences of acts completed before its effective date.” *Id.* at 431, citing *Weaver v. Graham* (1981), 450 U.S. 24, 31. As to the second element, the United States Supreme Court explained that it is “axiomatic that for a law to be ex post facto it must be more onerous than the prior law.” *Id.* (Internal citation omitted.) This Court described the requirements and consequences of former R.C. Chapter 2950 as “onerous” in *State v. Brewer*, 86 Ohio St.3d 160, 164, 1999-Ohio-146. And Senate Bill 10 imposes even more demanding registration obligations than former R.C. Chapter 2950.

Senate Bill 10 is Retrospective.

The General Assembly has mandated that Senate Bill 10 be applied retroactively:

If, prior to January 1, 2008, an offender had a duty to comply with the sections specified in division (A) of this section as a result of a conviction of or plea of guilty to a sexually oriented offense or child-victim oriented offense as those terms were defined in section 2950.01 of the Revised Code prior to January 1, 2008, or a delinquent child had a duty to comply with those sections as a result of an adjudication as a delinquent child for committing one of those offenses as they were defined prior to January 1, 2008, the period of time specified in division (B)(1), (2), or (3) of this section on and after January 1, 2008, for which a person must comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code applies to the person, automatically replaces the period of time for which the person had to comply with those sections prior to January 1, 2008, and is a continuation of the person's duty to comply with the sections that was in effect prior to the reclassification. If, prior to January 1, 2008, an offender or a delinquent child had a duty to comply with the sections specified in division (A) of this section, the offender's or delinquent child's classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender for purposes of that period of time shall be determined as specified in section 2950.031

[2950.03.1] or 2950.032 [2950.03.2] of the Revised Code, as applicable.

R.C. 2950.07(C)(2). See, also, S.B. 10, 127th General Assembly, § 2, 3, 4, and 5 (Amended Substitute Senate Bill Number 10) (2007-2008).

Senate Bill 10 Disadvantages Mr. Williams.

According to former R.C. Chapter 2950, Mr. Williams would have been classified as a sexually oriented offender and ordered to comply with various registration requirements for ten years. Former Ohio Rev. Code Ann. § 2950.01, et seq. (amended January 1, 2008). Nothing in the record indicated that Mr. Williams had previously committed a sexually oriented offense. Former Ohio Rev. Code Ann. § 2950.09(B)(3) (amended January 2, 2007; repealed January 1, 2008). Furthermore, the record did not evidence that Mr. Williams used any alcohol or drugs before allegedly committing the offense. *Id.* And the record did not indicate that the alleged victim was mentally disabled. *Id.* In fact, the victim gave birth to Mr. Williams's child before the sentencing hearing occurred, and the victim wanted Mr. Williams involved in that child's life. (January 31, 2008 Sentencing Hearing Transcript, p. 7). However, under Senate Bill 10's classification system, Mr. Williams is automatically placed into "Tier II," and must comply with registration requirements every 180 days for the next 25 years of his life. R.C. 2950.07(B)(2). (February 1, 2008 Judgment Entry; January 31, 2008 Sentencing Hearing Transcript. pp. 5-10). Indeed, Senate Bill 10 cannot be considered anything other than punitive, and may not be retroactively applied to individuals like Mr. Williams.

2. Senate Bill 10 violates Section 28, Article II of the Ohio Constitution.

Section 28, Article II of the Ohio Constitution forbids the enactment of retroactive laws. *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St.3d 100, 106. Ohio's Constitution

affords its citizens greater protection against retroactive laws than does the Ex Post Facto Clause of the United States Constitution. *Van Fossen*, 36 Ohio St.3d at 105, fn. 5 (“[Ohio’s Constitution of 1851 provides a] much stronger prohibition than the more narrowly constructed provision in Ohio’s Constitution of 1802. Section 16, Article VIII of th[e 1802] Constitution stated: “No ex post facto law, nor any law impairing the validity of contracts, shall ever be made,” merely reflecting the terms used in Section 10, Article I of the United States Constitution.”). “The retroactivity clause nullifies those new laws that reach back and create new burdens, new duties, new obligations, or new liabilities not existing at the time the statute becomes effective.” *Smith v. Smith*, 109 Ohio St.3d 285, 2006-Ohio-2419, at ¶6.

A two-step standard is followed to decide if the retroactive application of a statute will be deemed to violate the constitutional clause. *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, at ¶9-10. In accordance with the first prong of the “retroactive” test, the language of the statute is reviewed to determine whether the legislature expressly stated that retroactive application was intended. *Id.* (Internal citation omitted.) If the wording of the General Assembly is sufficiently explicit to demonstrate a retroactive intent, the statute is then reviewed to determine if it affects a substantive or remedial matter. *Id.* (Internal citation omitted.)

A substantive statute is one that “impairs vested rights, affects an accrued substantive right, or imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction.” *Smith v. Smith*, 2006-Ohio-2419, at ¶6. (Internal citation omitted.) A statute that applies retroactively and that is substantive violates Section 28, Article II of the Ohio Constitution. *Id.* (Internal citation omitted.)

A review of various provisions in the present version of R.C. Chapter 2950 confirms that the General Assembly has indicated that offenders who were classified under the prior version

of the scheme are obligated to comply with the new requirements. (See pp. 26-27, *supra*). See, also, R.C. 2950.03 and 2950.033(A). Therefore, since the first prong of the test for the retroactive application of a statute has been met, the analysis must focus on whether the provisions should be characterized as substantive or remedial. And because Senate Bill 10 has an adverse affect upon Mr. Williams's substantive rights, the retroactive application of Senate Bill 10 is a violation of Ohio's Retroactivity Clause. The General Assembly has transformed Ohio's prior, remedial, sex-offender classification and notification system into a form of punishment, thereby affecting Mr. Williams's substantive right to due process and the prohibition against double jeopardy. Fifth and Fourteenth Amendments to the United States Constitution; Sections 10 and 16, Article I of the Ohio Constitution. Sex-offender registration, as it functions under Senate Bill 10, is purely punitive and is in fact part of the original sentence. (See Argument III(A)(1), pp. 10-27). See, also, *State v. Wilson*, 2007-Ohio-2202 at ¶45 (Lanzinger, J., concurring in part and dissenting in part) ("R.C. Chapter 2950 has been amended since *Cook* and *Williams*...and the simple registration process and notification procedures considered in those two cases are now different.").

However, while the prohibition of ex post facto laws applies only to criminal cases, the retroactivity provisions of the Ohio Constitution apply in criminal and civil cases. See, generally, *State ex rel. Crotty v. Zangerle* (1938), 133 Ohio St. 532. As a result, regardless of whether Senate Bill 10 is determined to be criminal or civil, this Court may still prohibit its retroactive application to individuals like Mr. Williams because not only does Senate Bill 10 affect Mr. Williams's substantive rights, but it imposes new or additional burdens as to a past transaction.

This Court most recently analyzed Ohio's Retroactivity Clause in relation to the retroactive application of House Bill 180, and the subsequent amendments that occurred from Senate Bill 5, in *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, at ¶27-40. The three most significant changes that Senate Bill 5 imposed, and were challenged by Mr. Ferguson, included:

First, Ferguson challenges former R.C. 2950.07(B)(1), 150 Ohio Laws, Part IV, 6558, 6657, which provides that the designation "predator" remains for life, as does the concomitant duty to register. An earlier version of this section allowed for review of the predator classification by a judge and the possible removal of that classification. See former R.C. 2950.09(D), Am.Sub.H.B. No. 180, 146 Ohio Laws, Part II, 2560, 2621-2623.

Second, Ferguson challenges former R.C. 2950.04(A), 150 Ohio Laws, Part IV, 6558, 6657-6658, which provides that sex offenders are required to personally register with the sheriff in their county of residence, the county in which they attend school, and the county in which they work, and that they must do so every 90 days. R.C. 2950.06(B)(1)(a). Previously, offenders had been required to register only in their county of residence. See former R.C. 2950.06(B)(1), 146 Ohio Laws, Part II, 2560, 2613.

Third, Ferguson challenges amended R.C. 2950.081, 150 Ohio Laws, Part IV, Part IV, at 6686-6687, which expands the community-notification requirements. After S.B. 5, any statements, information, photographs, and fingerprints required to be provided by the offender are public records and are included in the Internet database of sex offenders maintained by the Attorney General's office. Former R.C. 2950.081 and 2950.13, 150 Ohio Laws, Part IV, at 6726-6730.

State v. Ferguson, 2008-Ohio-4824, at ¶8-10. Mr. Ferguson argued that the changes that had been implemented by Senate Bill 5 unfairly burdened him because he had previously enjoyed the right to be able to have a trial court revisit his status as a sexual predator; and Senate Bill 5 eliminated that right. *State v. Ferguson*, 2008-Ohio-4824, at ¶31. Furthermore, previously, Mr. Ferguson knew that his neighbors would know of his predator status. *Id.* And under Senate Bill

5, he was subjected to the increased burdens and publicity attendant to having to register wherever he lived, worked or studied, and with mandated state-wide internet dissemination. *Id.*

In *Ferguson*, this Court relied upon *State v. Cook*, 83 Ohio St.3d 404, *State v. Williams*, 2007-Ohio-3268, and *State v. Wilson*, 2007-Ohio-2202, in determining that the amended provisions of R.C. Chapter 2950, under Senate Bill 5, were not in violation of the Retroactivity Clause of the Ohio Constitution. Justice O'Connor, writing for the majority, noted that she had joined Justice Lanzinger's dissent in *Wilson*, "but it did not garner sufficient votes to form the majority and thus had no precedential value." *State v. Ferguson*, 2008-Ohio-4824, at ¶30, fn.4. But *Ferguson* is distinguishable from *Wilson*. In writing for the majority, Justice O'Connor made a very important distinction, as Mr. Ferguson had been previously classified a sexual predator with a potential of lifetime reporting. *Id.* at ¶4. The opinion stated:

[W]e observe that an offender's classification as a sexual predator is a collateral consequence of the offender's criminal acts rather than a form of punishment per se. Ferguson has not established that he had any reasonable expectation of finality in a collateral consequence that *might* be removed. Indeed, the record before us is entirely devoid of such an argument and of any evidence that would support a reasonable conclusion that Ferguson was likely to have his classification removed. Absent such an expectation, there is no violation of the Ohio Constitution's retroactivity clause.

Id. at ¶34. (Emphasis sic.)

Indeed, this Court has held that a "later enactment will not burden or attach a new disability to a past transaction or consideration in the constitutional sense, unless the past transaction or consideration created at least a reasonable expectation of finality." *State v. Cook*, 83 Ohio St.3d at 412. For instance, when a litigant's case comes to a conclusion, he or she may have a right to a reasonable expectation of finality. This reasonable "expectation of finality" is

applicable to all offenders except those who would have been, or may be, labeled sexual predators, as noted by Justice O'Connor in *Ferguson*.

In the instant case, in May 2007, Mr. Williams had a reasonable expectation that his classification and attendant requirements would have lasted a finite period of ten years. (See p. 27, *supra*). In May 2007, the law stated that someone whose crime occurred with the set of facts such as Mr. Williams's, he or she would have been labeled a sexually oriented offender. Former Ohio Rev. Code Ann. § 2950.09(B)(3) (amended January 1, 2008); Former Ohio Rev. Code Ann. § 2950.09(B)(4) (The State had to prove by clear and convincing evidence that the defendant was a sexual predator.). Yet, through the enactment of Senate Bill 10, Mr. Williams is subject to 25 years of reporting requirements—increasing his additional time to register as a sex offender by over 100%. Accordingly, the only conclusion is that the retroactive application of Senate Bill 10 conflicts with Section 28, Article II of the Ohio Constitution.

B. Senate Bill 10's residency restrictions violate the Due Process Clause of the United States Constitution and Section 16, Article I of the Ohio Constitution.

In addition to procedural protections, the Due Process Clause contains a substantive component “which forbids the government to infringe certain ‘fundamental’ liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling State interest.” *Reno v. Flores* (1993), 507 U.S. 292, 301-302. (Emphasis sic.) Even when a fundamental liberty is not implicated, the Due Process Clause requires State legislation to “rationally advance some legitimate purpose.” *Reno v. Flores*, 507 U.S. at 306. See, also, *Fabrey v. McDonald Village Police Dept.* (1994), 70 Ohio St.3d 351, 354.

According to Senate Bill 10's residency restrictions, Mr. Williams is categorically barred from residing within 1000 feet of a school, preschool, or child day-care center. R.C.

2950.034. Moreover, “the possibility of being repeatedly uprooted and forced to abandon his home” exists if a school, preschool, or day-care center opens near a residence that Mr. Williams may choose in the future. See *Mann v. Georgia Dept. of Corr.* (2007), 282 Ga. 754, 653 S.E.2d 740. As such, Senate Bill 10’s restrictions not only operate as a direct restraint on Mr. Williams’s liberty, but they infringe upon Mr. Williams’s fundamental right to live where he wishes, as well as his right to privacy.

Senate Bill 10 restrains Mr. Williams’s liberty.

Freedom from physical restraint has always been recognized “as the core of the liberty protected by the Due Process Clause.” *Kansas v. Hendricks*, 521 U.S. at 356, citing *Foucha v. Louisiana* (1992), 504 U.S. 71, 80. And the residency restrictions may not constitute a civil commitment, as the limitations are not “restraints...shared by the public generally.” See *Jones v. Cunningham* (1963), 371 U.S. 236, 240 (explaining that parole constitutes a restraint); *Hensley v. Municipal Court, San Jose Milpitas Judicial Dist.* (1973), 411 U.S. 345, 351 (holding that an individual released on “his own recognizance” is subject to search restraints). Like a parolee or a convicted offender released on his or her own recognizance, a sex offender who is subject to Ohio’s residency restrictions labors under a significant and tangible restraint on his or her liberty.

Senate Bill 10 infringes upon Mr. Williams’s fundamental right to live where he chooses.

Moreover, upon Mr. Williams’s release from prison, Senate Bill 10’s residency restrictions unconstitutionally limit his right to “live and work where he [chooses].” *Meyer v. Nebraska* (1923), 262 U.S. 390, 399; *Kramer v. United States* (6th Cir. 1945), 147 F.2d 756, 759; *Valentyne v. Ceccacci*, 8th Dist. No. 83725, 2004-Ohio-4240, at ¶47. By restricting offenders to residences that are not located within 1000 feet of any school, preschool, or day-

care facility, R.C. 2950.034 infringes upon an individual's constitutional right to establish a residence of his or her own choosing. *Washington v. Glucksberg* (1997), 521 U.S. 702, 720-721.

Senate Bill 10 does not rationally advance a legitimate State purpose.

Assuming that Senate Bill 10's residency restrictions for sex offenders were designed to promote the safety of children, and that purpose constitutes a compelling State interest, the State cannot meet the burden of demonstrating that Senate Bill 10 is narrowly tailored or rationally related to protecting school children from sex offenders. By imposing the restrictions on all sex offenders—even those whose crime involved an adult—the statute fails to discriminate between offenders who present an ongoing risk to children and those who do not. Additionally, empirical research not only indicates that the residency restrictions are ineffective as a mechanism for protecting children, but that such restrictions may actually be counterproductive because they destabilize the lives of alleged offenders and undermine the public-safety aims of statutes. See Minn. Dept. of Corrections, *Level Three Sex Offenders Residential Placement Issues*, 2003 Report to the Legislature, 9 (2003) (“Enhanced safety due to proximity restrictions may be a comfort factor for the general public, but it does not have any basis in fact.”; “[N]o evidence points to any effect on offense rates of school proximity residential restrictions.”; “[B]lanket proximity restrictions on residential locations of [sex offenders] do not enhance community safety.”). As such, R.C. 2950.034 must be struck down as unconstitutional.

CONCLUSION

The application of Senate Bill 10 to those whose crimes were committed before the law's effective date is unconstitutional. Accordingly, this Court should adopt the proposition of

law put forth by Mr. Williams, and should reverse the judgment of the Twelfth District Court of Appeals.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

BY: 

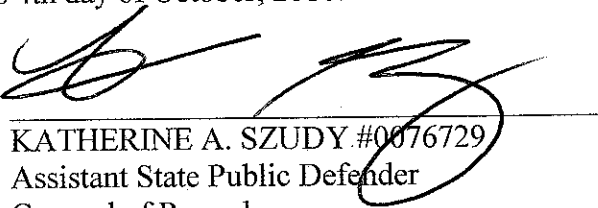
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Merit Brief of Appellant George Williams** has been sent by regular U.S. mail, postage prepaid, to Michael Greer, Assistant Warren County Prosecutor, addressed to his office at the Warren County Courthouse, 500 Justice Drive, Lebanon, Ohio 45036, on this 4th day of October, 2010.


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Assistant State Public Defender
Counsel of Record

COUNSEL FOR GEORGE WILLIAMS

#328181

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

vs.

GEORGE WILLIAMS,

Defendant-Appellant.

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Case No. 2009-0088

On Appeal from the Warren
County Court of Appeals
Twelfth Appellate District

C.A. Case No. CA2008-02-029

APPENDIX TO MERIT BRIEF OF GEORGE WILLIAMS

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

vs.

GEORGE WILLIAMS,

Defendant-Appellant.

Case No.

On Appeal from the Warren
County Court of Appeals
Twelfth Appellate District

C.A. Case No. CA2008-02-029

09-0088

**NOTICE OF APPEAL
OF APPELLANT GEORGE WILLIAMS**

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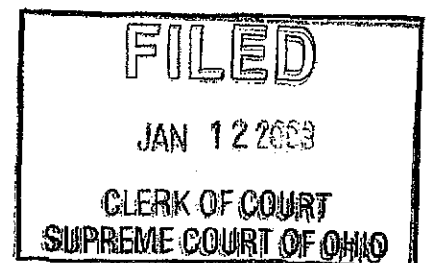
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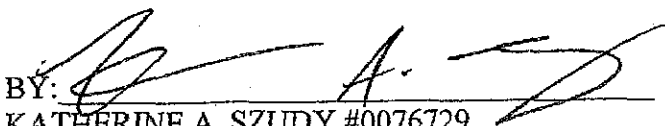
NOTICE OF APPEAL OF APPELLANT GEORGE WILLIAMS

Appellant George Williams hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Warren County Court of Appeals, Twelfth Appellate District, entered in Court of Appeals Case No. CA2008-02-029 on December 4, 2008.

This case raises a substantial constitutional question, involves a felony, and is of public or great general interest.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

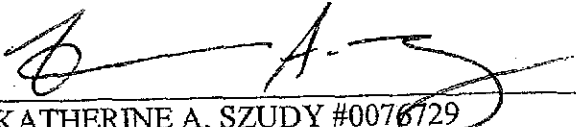
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Notice of Appeal of Appellant George Williams** has been served upon Mary K. Martin, Assistant Warren County Prosecutor, addressed to her office at 500 Justice Drive, Lebanon, Ohio 45035, on this 12th day of January, 2009.


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(Counsel of Record)

COUNSEL FOR GEORGE WILLIAMS

#291347

COURT OF APPEALS
WARREN COUNTY
FILEDIN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

DEC - 4 2008

James L. Spoth, Clerk
LEBANON OHIO

STATE OF OHIO,

Plaintiff-Appellee,

CASE NO. CA2008-02-029

- vs -

JUDGMENT ENTRY

587 393

GEORGE D. WILLIAMS,

Defendant-Appellant.

The assignment of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Warren County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.


H. J. Bessler, Presiding Judge
William W. Young, Judge
Stephen W. Powell, Judge

* WC 024-2008-02-029 *

12/04/08 A JUDGMENT ENTRY FILED (AFFIRMED)

COURT OF APPEALS
WARREN COUNTY
FILEDIN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

DEC - 4 - 2008

James L. Spoth, Clerk
LEBANON OHIO

STATE OF OHIO,

Plaintiff-Appellee,

CASE NO. CA2008-02-029

- VS -

OPINION
12/1/2008

GEORGE D. WILLIAMS,

587 394

Defendant-Appellant.

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 07CR24610Rachel A. Hutzler, Warren County Prosecuting Attorney, Mary K. Martin, Travis J. Vieux, 500
Justice Drive, Lebanon, OH 45036, for plaintiff-appelleeThomas W. Kidd, Jr., 1001 West Main Street, Suite F, Lebanon, OH 45036, for defendant-
appellant

YOUNG, J.

{¶1} Defendant-appellant, George Williams, appeals the decision of the Warren County Court of Common Pleas classifying him as a Tier II Sex Offender/Child Victim Offender Registrant ("Tier II Sex Offender") under Senate Bill 10, a law which was in effect on the date the trial court classified and sentenced appellant but which was not in effect on the date he committed the sexual offense. This appeal challenges the constitutionality of Senate Bill 10.



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{12} Appellant was indicted in 2007 on one count of unlawful sexual conduct with a minor in violation of R.C. 2907.04(A), a fourth-degree felony. According to the state, during the month of May 2007, then 19-year-old appellant engaged in sexual conduct with a 14-year-old girl. On December 14, 2007, appellant pled guilty as charged. He subsequently moved to be sentenced under former R.C. Chapter 2950, the sex offender registration statute that was in effect at the time of his offense. The trial court denied the motion, and on February 1, 2008, sentenced appellant to three years of community control and classified him as a Tier II Sex Offender under Senate Bill 10.

{13} Appellant appeals, raising one assignment of error.

{14} "THE RETROACTIVE APPLICATION OF SENATE BILL 10 VIOLATES THE EX POST FACTO, DUE PROCESS, AND DOUBLE JEOPARDY CLAUSES OF THE UNITED STATES CONSTITUTION AND THE RETROACTIVITY CLAUSE OF ARTICLE II, SECTION 28 OF THE OHIO CONSTITUTION; FIFTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION; ARTICLE I, SECTION 10 OF THE UNITED STATES CONSTITUTION; AND ARTICLE I, SECTION 10 AND ARTICLE II, SECTION 28 OF THE OHIO CONSTITUTION."

{15} In his assignment of error, appellant argues that Senate Bill 10 violates several constitutional rights. Specifically, appellant asserts that the application of Senate Bill 10 (1) violates the Ex Post Facto Clause of the United States Constitution; (2) violates the Ohio Constitution's prohibition on retroactive laws; (3) violates the doctrine of separation of powers; (4) violates the prohibition against cruel and unusual punishment; (5) violates his due process rights; and (6) amounts to double jeopardy.

{16} At this juncture, we note that on the record before us, appellant never raised his constitutional arguments in the trial court. It is well-established that "[f]ailure to raise at the trial court level the issue of the constitutionality of a statute or its application, which is

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apparent at the time of trial, constitutes a waiver of such issue and a deviation from this state's orderly procedure, and therefore need not be heard for the first time on appeal." *State v. Awan* (1986), 22 Ohio St.3d 120, syllabus. However, the "waiver doctrine announced in *Awan* is discretionary." *In re M.D.* (1988), 38 Ohio St.3d 149, 151.

{¶7} Thus, we have discretion to address appellant's constitutional arguments under a plain-error analysis. *Id.*; *State v. Desbiens*, Montgomery App. No. 22489, 2008-Ohio-3375, ¶17. An error qualifies as plain error only if it is obvious and but for the error, the outcome of the proceeding clearly would have been otherwise. *Desbiens* at ¶17. Although appellant failed to raise his constitutional arguments below, we choose to exercise our discretion and address his claims on appeal.

{¶8} Before we address appellant's constitutional arguments, we first proceed with a brief overview of Ohio's sex offender registration legislation before Senate Bill 10.

{¶9} Ohio first enacted a sex offender registration statute in 1963. As it is now, the statute was contained within R.C. Chapter 2950. The law, however, became more complex in 1996 due in large part to New Jersey's 1994 passage of "Megan's Law" and the 1994 enactment of the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Section 14071, Title 42, U.S.Code). See *State v. Williams*, 88 Ohio St.3d 513, 516-517, 2000-Ohio-428. In 1996, against this backdrop, the Ohio Legislature repealed and reenacted R.C. Chapter 2950's sex offender registration statute ("former R.C. Chapter 2950"). In repealing and reenacting former R.C. Chapter 2950, the legislature stated its intent to "protect the safety and general welfare of the people of this state." As a result, the three sets of provisions within former R.C. Chapter 2950, to wit: the sex offender classification, registration, and community notification provisions, became more stringent.

{¶10} Under former R.C. Chapter 2950, a sentencing court was required to determine

whether sex offenders fell into one of the following classifications: (1) sexually oriented offender; (2) habitual sex offender; or (3) sexual predator. When determining whether a sex offender was a sexual predator, including for offenders in prison for sex offenses committed before July 1, 1997 (the effective date of the statute), the sentencing court was to hold a hearing and consider several factors to determine the individual's likelihood to engage in future sex offenses. The registration provisions applied to all three classifications of sex offenders, and applied to offenders sentenced on or after July 1, 1997 regardless of when the offense occurred. The registration provisions also applied to habitual sex offenders required to register immediately prior to the effective date. Finally, the community notification provisions applied to all sexual predators and to the habitual sex offenders upon whom the sentencing court had imposed the notification requirements.¹

{¶11} In *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, the Ohio Supreme Court addressed whether former R.C. Chapter 2950, as applied to conduct prior to the effective date of the statute, violated the Ohio Constitution's prohibition on retroactive laws and the Ex Post Facto Clause of the United States Constitution. The supreme court noted that former R.C. Chapter 2950 sought to "protect the safety and general welfare of the people of this state," which was a "paramount governmental interest." *Id.* at 417. The supreme court held that because the statute was remedial rather than punitive, the registration provisions of former R.C. Chapter 2950 did not violate the Ohio Constitution's ban on retroactive laws. *Id.* at 413. The supreme court further held that in light of the statute's remedial nature, and because there was no clear proof that the statute was punitive in its effect, the registration and notification provisions of former R.C. Chapter 2950 did not violate the Ex Post Facto Clause of the United States Constitution. *Id.* at 423.

1. For a more detailed overview of the three sets of provisions under former R.C. Chapter 2950, see *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291; and *State v. Williams*, 88 Ohio St.3d 513, 2000-Ohio-428.

{¶12} Two years later, in *Williams*, 88 Ohio St.3d 513, the supreme court addressed whether the registration and notification provisions of former R.C. Chapter 2950 amounted to double jeopardy. The supreme court held that because former R.C. Chapter 2950 was "neither 'criminal,' nor a statute that inflicts punishment," former R.C. Chapter 2950 did not violate the Double Jeopardy Clauses of the United States and Ohio Constitutions. *Id.* at 528. Subsequently, in *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, the supreme court reiterated that "the sex-offender-classification proceedings under [former] R.C. Chapter 2950 are civil in nature[.]" *Id.* at ¶32.

{¶13} Former Chapter 2950 was amended by Senate Bill 5, effective July 31, 2003. The amendments required that the designation "predator" and the concomitant duty to register remain for life; required sex offenders to register in three different counties (that is, county of residence, county of employment, and county of school) every 90 days (as opposed to registering only in their county of residence); and expanded the community notification requirements. In *State v. Ferguson*, Slip Opinion No. 2008-Ohio-4824, the Ohio Supreme Court addressed whether the Senate Bill 5 amendments, as applied to conduct prior to the effective date of the statute, violated the Ex Post Facto Clause of the United States Constitution and the Ohio Constitution's prohibition on retroactive laws. Once again, noting the civil, remedial nature of the statute, the supreme court held that the Senate Bill 5 amendments to former R.C. Chapter 2950 neither violated the retroactivity clause of the Ohio Constitution nor the Ex Post Facto Clause of the United States Constitution. *Id.* at ¶36, 40, and 43.

{¶14} On June 30, 2007, the Governor of the state of Ohio signed Senate Bill 10 into effect. Senate Bill 10 implements the federal Adam Walsh Child Protection and Safety Act which was passed by the United States Congress in 2006. Senate Bill 10 amended numerous sections of Ohio's Revised Code. However, for purposes of this appeal, only the

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revisions to former Chapter 2950 are relevant. Thus, when Senate Bill 10 is discussed in the case at bar, it is only pertaining to the revisions to former R.C. Chapter 2950, and not to the revisions of any other chapter of the Revised Code. See *State v. Byers*, Columbiana App. No. 07 CO 39, 2008-Ohio-5051. Senate Bill 10 went into effect on January 1, 2008.

{¶15} Senate Bill 10 classifies each sex offender subject to registration under a new three-tiered system, thereby abolishing the prior classifications in former R.C. Chapter 2950. Designations such as "sexual predator" no longer exist, nor do the related hearings under former R.C. 2950.09.

{¶16} Now, under Senate Bill 10, an offender who commits a sex offense is found to be either a "sex offender" or a "child-victim offender." Then, depending on the sex offense the offender committed, the offender is placed in Tier I, Tier II, or Tier III. Trial courts no longer have discretion in imposing a certain classification on offenders, and an offender's likelihood to reoffend is no longer considered. Rather, offenders are now classified solely on the offense for which they were convicted. *State v. Clay*, 177 Ohio App.3d 78, 2008-Ohio-2980, ¶6. Offenders, however, are automatically placed into a higher tier if (1) they have a prior conviction for a sexually oriented or child-victim-oriented offense, or (2) they have been previously classified as sexual predators. *Id.* at ¶7.

{¶17} Senate Bill 10 also provides for the reclassification of all offenders who were classified prior to its enactment. *In re Smith*, Allen App. No. 1-07-58, 2008-Ohio-3234, ¶32. The reclassification affords no deference to the prior classification given by the trial court. Rather, offenders are reclassified under Senate Bill 10 solely on the offense for which they were convicted. *Id.*

{¶18} Of the three tiers, Tier I is the lowest tier and Tier III is the highest tier. Each tier has registration requirements, but they differ in terms of the duration of the duty and the frequency of the in-person address verification. The registration requirements under Senate

Bill 10 are also longer in duration than their counterparts under former R.C. Chapter 2950. Tier I offenders are required to register for 15 years and to verify their addresses annually, but there are no community notification requirements. Tier II offenders are required to register for 25 years and to verify their addresses every 180 days, but there are no community notification requirements. Finally, Tier III offenders (similar to the former sexual predator classification) are required to register for life and to verify their addresses every 90 days; community notification may occur every 90 days for life.

{¶19} We now turn to appellant's constitutional arguments. The crux of appellant's arguments is that by tying sex offender classification, registration, and community notification requirements solely to the crime committed by the offender, without any consideration of the offender's likelihood of reoffending, Senate Bill 10 has created a sex-offender registration scheme that is no longer remedial and civil in nature. Rather, sex offender registration under Senate Bill 10 is purely punitive and is in fact part of the original sentence.

{¶20} It is well-established that "statutes enjoy a strong presumption of constitutionality." *Cook*, 83 Ohio St.3d at 409. "A regularly enacted statute of Ohio is presumed to be constitutional and is therefore entitled to the benefit of every presumption in favor of its constitutionality. That presumption of validity of such legislative enactment cannot be overcome unless it appear[s] that there is a clear conflict between the legislation in question and some particular provision or provisions of the Constitution." *Id.* (internal citations omitted.)

{¶21} Accordingly, we begin with the strong presumption that Senate Bill 10 is constitutional.

THE RETROACTIVE CLAUSE OF THE OHIO CONSTITUTION

{¶22} Appellant argues that the classification, registration, and residency provisions of Senate Bill 10 violate the Ohio Constitution's prohibition on retroactive laws. We note that

appellant also challenges the constitutionality of Senate Bill 10's residency provision on two other grounds, to wit: it violates the Ex Post Facto Clause of the United States Constitution and his due process rights. For purposes of clarity and concise analysis, we will address appellant's constitutional arguments regarding the residency provision under its own headline.

{¶23} Section 28, Article II of the Ohio Constitution provides that "[t]he general assembly shall have no power to pass retroactive laws." Further, statutes are presumed to apply only prospectively unless specifically made retroactive. R.C. 1.48. In determining whether a statute is unconstitutionally retroactive, courts must apply a two-part test. *Hyle v. Porter*, 117 Ohio St.3d 165, 2008-Ohio-542, ¶8. "Under this test, we first ask whether the legislature expressly made the statute retroactive. If it did, then we determine whether the statutory restriction is substantive or remedial in nature. The first part of the test determines whether the legislature 'expressly made [the statute] retroactive,' as required by R.C. 1.48; the second part determines whether it was empowered to do so." *Id.*, citing *Van Fossen v. Babcock Wilcox Co.* (1988), 36 Ohio St.3d 100.

Whether Senate Bill 10's classification and registration provisions apply retroactively

{¶24} We find that the classification and registration provisions of Senate Bill 10 were intended to apply retroactively. Under Senate Bill 10, R.C. 2950.03 governs when a person "who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense or a child-victim oriented offense and who has a duty to register" must be given notice of that duty. Subsections 1 and 2 of the provision apply to sex offenders "[r]egardless of when the person committed the sexually oriented offense or child-victim oriented offense[.]" Subsection 5 refers to sex offenders who prior to December 1, 2007 had registered under former R.C. Chapter 2950.

{¶25} R.C. 2950.031 provides that at any time on or after July 1, 2007, and no later than December 1, 2007, the attorney general must determine for each offender who prior to

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December 1, 2007 had registered under former R.C. Chapter 2950, their new classification under Senate Bill 10. Likewise, R.C. 2950.032 provides that at any time on or after July 1, 2007, and no later than December 1, 2007, the attorney general must determine for each offender who on December 1, 2007, will be serving a prison term for a sexually oriented offense, their classification under Senate Bill 10. R.C. 2950.04, the registration provision of Senate Bill 10, imposes a duty to register and comply with registration requirements on every "offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense," "[r]egardless of when the sexually oriented offense was committed[.]"

{¶26} "All of the above shows the [legislature's] express intention for those sections to be applicable to acts committed or facts in existence prior to the effective date of [Senate Bill 10]." *Byers*, 2008-Ohio-5051, ¶63 (emphasis added). Thus, Senate Bill 10's tier classification system and its registration provision were intended to apply retroactively to all offenders. "That, however, is not a determination that all of Senate Bill 10 applies retroactively." *Id.* As our analysis regarding Senate Bill 10's residency provision shows below, the residency provision is *not* retroactive.

Whether Senate Bill 10 is remedial or substantive

{¶27} Having determined that the classification and registration provisions of Senate Bill 10 meet the threshold test for retroactive application under R.C. 1.48, we must now determine whether the provisions violate Section 28, Article II of the Ohio Constitution. That is, we must determine whether Senate Bill 10 is substantive or merely remedial. *Cook*, 83 Ohio St.3d at 410-411. The retroactive application of a substantive statute violates the Ohio Constitution but the retroactive application of a remedial statute does not. *Hyle*, 117 Ohio St.3d at ¶7.

{¶28} "A statute is 'substantive' if it impairs or takes away vested rights, affects an

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accrued substantive right, imposes new or additional burdens, duties, obligation, or liabilities as to a past transaction, or creates a new right. Conversely, remedial laws are those affecting only the remedy provided, and include laws that merely substitute a new or more appropriate remedy for the enforcement of an existing right. A purely remedial statute does not violate Section 28, Article II of the Ohio Constitution, even if applied retroactively. Further, while we have recognized the occasional substantive effect, it is generally true that laws that relate to procedures are ordinarily remedial in nature." *Cook* at 411 (internal citations omitted).

{¶29} At the outset, we note that Senate Bill 10 is replete with references to the legislative's "intent to protect the safety and general welfare of the people of this state" and to "assur[e] public protection," in light of the legislative determination that "[s]ex offenders and child-victim offenders pose a risk of engaging in further sexually abusive behavior even after being released from imprisonment." R.C. 2950.02. This legislative intent was already in existence when the supreme court in *Cook* addressed whether the classification and registration provisions of former R.C. Chapter 2950 violated Section 28, Article II of the Ohio Constitution.

{¶30} In *Cook*, the defendant attempted to challenge the 1997 version of former R.C. Chapter 2950, which changed the frequency and duration of the previous sex-offender registration requirements, and which increased the number of classifications from one to three different classifications (sexually oriented offender, habitual sexual offender, and sexual predator). The supreme court rejected the argument that these provisions under the 1997 version of former R.C. Chapter 2950 were substantive because they imposed additional burdens with respect to a past transaction:

{¶31} "However, under the former provisions, habitual sex offenders were already required to register with their county sheriff. *** Only the frequency and duration of the registration requirements have changed. Frequency of registration has increased ***.

Duration has increased ***. Further, the number of classifications has increased from one *** to three[.] This court has held that where no vested right has been created, 'a later enactment will not burden or attach a new disability to a past transaction or consideration in the constitutional sense, unless the past transaction or consideration *** created at least a reasonable expectation of finality.' ***.We held that '[e]xcept with regard to constitutional protections against *ex post facto* laws *** felons have no reasonable right to expect that their conduct will never thereafter be made the subject of legislation.'" Cook, 83 Ohio St.3d at 411-412, quoting *State ex rel. Matz v. Brown* (1988), 37 Ohio St.3d 279 (emphasis sic).

{¶32} The supreme court "conclude[d] that the registration and address verification provisions of [former] R.C. Chapter 2950 are *de minimis* procedural requirements that are necessary to achieve the goals of [former] R.C. Chapter 2950." Cook at 412. In so ruling, the supreme court concurred with the reasoning of the New Jersey Supreme Court in *Doe v. Poritz* (1995), 142 N.J. 1, 662 A.2d 367, which held that:

{¶33} "The Legislature reached the irresistible conclusion that if community safety was its objective, there was no justification for applying these laws only to those who offend or who are convicted in the future, and not applying them to previously-convicted offenders. *** The Legislature concluded that there was no justification for protecting only children of the future from the risk of reoffense by future offenders, and not today's children from the risk of reoffense by previously-convicted offenders, when the nature of those risks were identical and presently arose almost exclusively from previously-convicted offenders, their numbers now and for a fair number of years obviously vastly exceeding the number of those who, after passage of these laws, will be convicted and released, and only then, for the first time, potentially subject to community notification.'" Cook at 413, quoting *Poritz*, 142 N.J. at 13-14, 662 A.2d at 373.

{¶34} As a result, the Ohio Supreme Court held that "the registration and verification

provisions are remedial in nature and do not violate the ban on retroactive laws set forth in Section 28, Article II of the Ohio Constitution." *Cook* at 413. The supreme court further stated that "[t]he harsh consequences [of] classification and community notification come not as a direct result of the sexual offender law, but instead as a direct societal consequence of [the offender's] past actions." *Id.*, quoting *State v. Lytle* (Dec. 22, 1997), Butler App. No. CA97-03-060, at 27.

{¶35} As noted earlier, Senate Bill 10 abolished the three prior classifications in former R.C. Chapter 2950 and replaced them with a new three-tiered system. The designations have changed but the sex offenders are still classified into one out of three different categories. The registration requirements for the first two tiers under Senate Bill 10 are longer in duration than their counterparts under former R.C. Chapter 2950; however, whether a sex offender was classified as a sexual predator under former R.C. Chapter 2950 or is classified as a Tier III Sex Offender under Senate Bill 10, the offender is required to register for life. The frequency of the in-person address verification for each tier under Senate Bill 10 is identical to the frequency required under former R.C. Chapter 2950 for each classification.

{¶36} As the Clermont County Common Pleas Court noted in *Slagle v. State*, 145 Ohio Misc.2d 98, 2008-Ohio-593, "as it currently stands, *Cook* is good law and must be followed by this court." *Id.* at ¶40. The Ohio Supreme Court has continued to indicate the remedial nature of sex offender classification statutes. See *Williams*, 88 Ohio St.3d at 528; *Ferguson*, 2008-Ohio-4824, ¶29. As a result, we find that the classification and registrations provisions of Senate Bill 10 are remedial in nature and do not violate the ban on retroactive laws set forth in Section 28, Article II of the Ohio Constitution. *Slagle* at ¶40; *Byers*, 2008-Ohio-5051, ¶69.

EX POST FACTO

{¶37} Appellant argues that applying Senate Bill 10 to crimes that occurred before January 1, 2008, violates the Ex Post Facto Clause of the United States Constitution.

{¶38} Section 10, Article I of the United States Constitution prohibits ex post facto laws. An ex post facto law "punishes as a crime an act previously committed, which was innocent when done, [or] which makes more burdensome the punishment for a crime, after its commission." *Cook*, 83 Ohio St.3d at 414. The Ex Post Facto Clause, however, only applies to criminal statutes. *Id.* at 415.

{¶39} To determine whether Senate Bill 10 is a civil or criminal statute for purposes of an ex post facto analysis, we apply the "intent-effects" test. *Id.* We must first determine whether the legislature meant Senate Bill 10 to be a civil statute and non-punitive, or to impose punishment. A determination that the legislature intended the statute to be punitive ends the analysis and results in a finding that the statute is unconstitutional. If, however, the legislature's intent was to enact a regulatory scheme that is civil and non-punitive, we must then determine whether the statutory scheme is so punitive either in purpose or effect as to negate the legislature's intent. *Id.*; *Smith v. Doe* (2002), 538 U.S. 84, 92, 123 S.Ct. 1140; *In re G.E.S.*, Summit App. No. 24079, 2008-Ohio-4076, ¶18.

The legislature's intent in enacting Senate Bill 10

{¶40} Upon reviewing Senate Bill 10, we find that the legislature's intent in enacting the statute was civil, not punitive. "A court must look to the language and the purpose of the statute in order to determine legislative intent." *Cook* at 416. Senate Bill 10 is devoid of any language indicating an intent to punish. To the contrary, and just as the supreme court found in *Cook* with regard to former R.C. Chapter 2950, the legislature has expressly declared that the intent of Senate Bill 10 is "to protect the safety and general welfare of the people of this state," which is "a paramount governmental interest," and that "the exchange or release of [information required by this law] is not punitive." R.C. 2950.02; *Cook* at 417. In fact, the

language in former R.C. Chapter 2950, which the supreme court in *Cook* relied on to find that the legislature's intent was remedial, is almost identical to the language used in Senate Bill 10. The only difference is the use of the new tier classification labels in lieu of the former classification labels.

{¶41} Appellant nevertheless argues that the legislature intended Senate Bill 10 to be punitive because (1) an offender's classification and registration obligations depend solely on the offense committed, rather than the offender's risk to the community or likelihood of reoffending; (2) Senate Bill 10 criminalizes an offender's failure to comply with the registration and verification requirements; and (3) the legislature placed Senate Bill 10 within Title 29, Ohio's Criminal Code. We disagree.

{¶42} Appellant's first argument was rejected by two appellate courts. In *State v. King*, Miami App. No. 08-CA-02, 2008-Ohio-2594, the Second Appellate District stated: "[The offender's] attempt to divine punitive intent from the absence of any individualized risk assessment under S.B. 10 is unavailing. As noted above, the new legislation automatically places offenders into one of three tiers based solely on the offense of conviction and imposes corresponding registration requirements. In [*Doe*, 538 U.S. 84], the United States Supreme Court recognized that a legislature may take such a categorical approach without transforming a regulatory scheme into a punitive one." *King* at ¶12; see, also, *Desbiens*, 2008-Ohio-3375.

{¶43} Likewise, the Seventh Appellate District stated: "However, [former] R.C. Chapter 2950's classification was also partially tied to the offense. *** [I]t cannot necessarily be concluded that Senate Bill 10's tiers are not directly tied to the ongoing threat to the community that sex offenders pose. The types of offenses that are placed in Tier I are less severe sex offenses, Tier II are more severe, and Tier III are the most severe offenses. Also within these tiers are some factual determination, such as if the offense was sexually motivated, age of victim and offender, and consent. Likewise, every time an offender

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commits another sexually oriented offense the tier level rises. R.C. 2950.01(F)(1)(i) and (G)(1)(i). This formula detailed by the legislature illustrates that it is considering protecting the public. Consequently, this new formula does not appear to change the spelled out intent of the General Assembly in R.C. 2950.02." *Byers*, 2008-Ohio-5051, ¶25-26.

{¶44} We agree with the foregoing analyses. The legislature's intent in enacting Senate Bill 10 was not punitive simply because an offender's classification and registration obligations depend on the offense committed, rather than on the offender's risk to the community or likelihood of reoffending.

{¶45} Next, appellant argues that the legislature intended Senate Bill 10 to be punitive because the statute criminalizes an offender's failure to comply with the registration and verification requirements. We disagree.

{¶46} Failure to register was already a punishable offense before former R.C. Chapter 2950. See *Cook*, 83 Ohio St.3d at 420. As the Ninth Appellate District stated, "these provisions do not impact [Senate Bill 10's] remedial nature. The pre-[Senate Bill 10] statutory scheme also criminalized an offender's failure to comply with the registration and verification requirements. See former R.C. 2950.06(G)(1); former R.C. 2950.99. [In *Cook*], the Ohio Supreme Court specifically noted these provisions in its retroactivity discussion, but did not identify these provisions as presenting a problem in its Ex Post Facto analysis. *** See, also, *Doe*, 538 [U.S.] at 101-102 (noting that criminal prosecution for failure to comply with SORA's reporting requirements is a proceeding separate from the individual's original offense). Furthermore, [the offender] has not provided any law that demonstrate that [Senate Bill 10's] penalties are more burdensome than the former penalties or make formerly innocent conduct criminal." *In re G.E.S.*, 2008-Ohio-4078, ¶23.

{¶47} We therefore find that the legislature's intent in enacting Senate Bill 10 was not punitive simply because Senate Bill 10 criminalizes an offender's failure to comply with the

registration and verification requirements.

{¶48} Finally, appellant argues that because the legislature placed Senate Bill 10 in Ohio's Criminal Code, it intended Senate Bill 10 to be punitive. This argument is not persuasive. "The location and labels of a statutory provision do not by themselves transform a civil remedy into a criminal one." *Doe*, 538 U.S. at 94. As the Seventh Appellate District aptly stated, "[former] R.C. Chapter 2950 was within the criminal code, yet the Ohio Supreme Court determined that it was civil in nature. While [Senate Bill 10] is in the criminal code, that placement is not dispositive of the issue, especially since the legislature specifically indicated the intent to be civil." *Byers*, 2008-Ohio-5051, ¶27; see, also, *King*, 2008-Ohio-2594, ¶12; *In re G.E.S.*, 2008-Ohio-4076, ¶21-22.

{¶49} We therefore find that the legislature's intent in enacting Senate Bill 10 was remedial, not punitive.

Whether Senate Bill 10 has a punitive effect

{¶50} We now move to the "effects" prong of the test and determine whether Senate Bill 10 has a punitive effect such that its effect negates the legislative intent. "[O]nly the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty." *Doe*, 538 U.S. at 92; *Cook*, 83 Ohio St.3d at 418. The United States Supreme Court has "fashioned useful guideposts for determining whether a statute is punitive." *Cook*, citing *Kennedy v. Mendoza-Martinez* (1963), 372 U.S. 144, 83 S.Ct. 554. The guideposts are as follows:

{¶51} "[1] whether the sanction involves an affirmative disability or restraint; [2] whether it has historically been regarded as a punishment; [3] whether it comes into play only on a finding of scienter; [4] whether its operation will promote the traditional aims of punishment – retribution and deterrence; [5] whether the behavior to which it applies is already a crime; [6] whether an alternative purpose to which it may rationally be connected is

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assignable for it; and [7] whether it appears excessive in relation to the alternative purpose assigned." Cook at 418. While useful, the following guideposts are "neither exhaustive nor dispositive." Doe at 97.

{¶52} On appeal, although he cites five of the foregoing guideposts, appellant only addresses three of the guideposts. Specifically, appellant argues that Senate Bill 10 imposes burdens that operate as affirmative disabilities and restraints; is analogous to colonial punishments; and furthers the traditional aims of punishment. We find that appellant has not come forward with the "clearest proof" that the effect of Senate Bill 10 is so punitive that it overcomes the legislature's non-punitive intent.

{¶53} Appellant first asserts that Senate Bill 10 imposes a new affirmative disability or restraint. In Cook, the supreme court found that former R.C. Chapter 2950 imposed no new affirmative disability or restraint: "The act of registering does not restrain the offender in any way. Registering may cause some inconvenience for offenders. However, the inconvenience is comparable to renewing a driver's license. Thus we find that the inconvenience of registration is a de minimis administrative requirement.

{¶54} "[Former] R.C. Chapter 2950 also requires that information be disseminated to certain persons. Admittedly, that information could have a detrimental effect on offenders, causing them to be ostracized and subjecting them to embarrassment or harassment. However, whether a sanction constitutes punishment is not determined from the defendant's perspective, as even remedial sanctions carry the "sting of punishment." In addition, the burden of dissemination is not imposed on the defendant, but rather on law enforcement." Cook at 418 (internal citations omitted).

{¶55} In King, the Second Appellate District held that "In Cook, *** the court reasoned that the act of registering as a sex offender does not impose any restraint. This remains true regardless of whether King is required to register once a year for ten years, as

under the old law, or *** for twenty-five years, as S.B. 10 now requires. Although S.B. 10 also requires King to disclose a substantial amount of personal information that may be subject to dissemination over the Internet, the same was true in [the Ohio Supreme Court's decision in *Wilson*] as pointed out by the three-member dissent in that case, and in [*Doe*]. On this issue, we fail to see a constitutionally meaningful distinction between S.B. 10 and the version of R.C. Chapter 2950 in effect when *Wilson* was decided. *** Therefore, in light of existing precedent, we do not find that S.B. 10 imposes an affirmative disability or restraint." *King*, 2008-Ohio-2594, ¶16.

{¶56} The Ninth Appellate District likewise rejected appellant's argument: "The [United States] Supreme Court reasoned [in *Doe*] that while SORA required offenders to notify authorities if they changed address, place of employment, or physical appearance, the statute did not require offenders to seek permission to do so. *** Offenders were free to make these changes so long as they forewarned authorities. While the Supreme Court did not have to consider the matter of in-person registration, as SORA contained no such requirement, the Ohio Supreme Court upheld the [former R.C. Chapter 2950] statutory scheme's in-person registration requirement in *Cook*."

{¶57} "As with the statutory schemes in *Doe* and *Cook*, [Senate Bill 10] does not impose any constitutional disabilities or restraints[.] *** [Senate Bill 10] does not restrain [sex offenders] or otherwise forbid them from engaging in activities. *** [F]reedom from humiliation and other disagreeable consequences is not a constitutional right. Such humiliation or ostracism may flow naturally from an underlying conviction (including convictions for non-sexually oriented offenses) regardless of [Senate Bill 10's] applicability. We do not ignore the potential impact of [Senate Bill 10], but whether a sanction constitutes punishment is not determined from the defendant's perspective, as even remedial sanctions carry the sting of punishment." *In re G.E.S.*, 2008-Ohio-4076, ¶29-30 (internal citations omitted).

{¶58} In *Byers*, the Seventh Appellate District acknowledged that "sex offender registration under Senate Bill 10 *** requires more than the version discussed in *Cook*" as Senate Bill 10 requires sex offenders to register in several counties and to provide a substantial amount of personal information. *Byers*, 2008-Ohio-5051, ¶¶31-32. "As can be seen, these requirements are more involved than the registration requirements in the version discussed in *Cook*. However, the Ohio Supreme Court has continually stated that sex offender classifications are civil in nature. Most recently, in [*Wilson*], the Court restated the decision in *Cook* that the sex offenders classification laws are remedial, not punitive. The registration statute that was in effect in *Wilson*, is not too different from Senate Bill 10's version. *** We must follow the Supreme Court's decision in *Cook* and the majority decision in *Wilson* that offender classification is civil in nature and the registration requirement is still de minimis; *Cook* and *Wilson* are still controlling law." *Id.* at ¶37. See, also, *Ferguson*, 2008-Ohio-4824 (finding that amendments to former R.C. Chapter 2950 expanding registration and notification requirements did not violate the Ex Post Facto Clause; reaffirming that sex offenders classification laws are remedial; and stating that the dissent in *Wilson* had no precedential value).

{¶59} With regard to the issue of dissemination of information on the offender to the public, the Seventh Appellate District held that: "It is noted that the dissemination requirements under the Senate Bill 10 version of R.C. Chapter 2950 falls upon law enforcement, like the prior version, and puts none of this duty on the offender. Consequently, for the same reasoning as in *Cook*, we find that R.C. Chapter 2950, as changed by Senate Bill 10, does not impose a new affirmative disability or restraint." *Byers* at ¶38.

{¶60} We agree with the foregoing analyses and find them to be persuasive. We therefore find that Senate Bill 10 does not impose a new affirmative disability or restraint.

{¶61} Next, appellant asserts that Senate Bill 10 is analogous to "colonial

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punishments of 'public shaming, humiliation, and banishment,'" and that the wide dissemination of sex offenders' personal information "resemble shaming punishments intended to inflict public disgrace." We disagree.

{¶62} We initially note that in *Cook*, the supreme court recognized that registration has long been a valid regulatory technique with a remedial purpose; Ohio has had a registration requirement since 1963; and public dissemination of registered information about a sex offender has not been regarded as punishment when done in furtherance of a legitimate governmental interest. *Cook*, 83 Ohio St.3d at 418-419.

{¶63} In *Doe*, the United States Supreme Court addressed, and rejected, a similar argument:

{¶64} "Any initial resemblance to early punishment is, however, misleading. *** Even punishments that lacked the corporal component, such as public shaming, humiliation, and banishment, involved more than the dissemination of information. They either held the person up before his fellow citizens for face-to-face shaming or expelled him from the community. By contrast, the stigma of Alaska's Megan's Law results not from public display for ridicule and shaming but from the dissemination of accurate information about a criminal record, most of which is already public. Our system does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment. *** The publicity may cause adverse consequences for the convicted defendant, running from mild embarrassment to social ostracism. In contrast to the colonial shaming punishments, however, the State does not make the publicity and the resulting stigma an integral part of the objective of the regulatory scheme.

{¶65} "The fact that Alaska posts the information on the Internet does not alter our conclusion. It must be acknowledged that notice of a criminal conviction subjects the offender to public shame, the humiliation increasing in proportion to the extent of the publicity. And the

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geographic reach of the Internet is greater than anything which could have been designed in colonial times. These facts do not render Internet notification punitive. The purpose and the principal effect of notification are to inform the public for its own safety, not to humiliate the offender. Widespread public access is necessary for the efficacy of the scheme, and the attendant humiliation is but a collateral consequence of a valid regulation." *Doe*, 538 U.S. at 98-99.

{¶66} In light of the foregoing, we find that Senate Bill 10 is not analogous to colonial punishments; nor does the wide dissemination of sex offenders' personal information resemble shaming punishments. *King*, 2008-Ohio-2594, ¶17-20; *In re G.E.S.*, 2008-Ohio-4076, ¶31; see, also, *Byers*, 2008-Ohio-5051, ¶49-54 (finding that the registration and notification provisions of Senate Bill 10 were non-punitive and reasonably necessary for the intended purpose of protecting the public, even though Senate Bill 10 requires more information to be given by the offender when registering than under former R.C. Chapter 2950, and even though information about a sex offender is more widely and readily available than at the time *Cook* was decided).

{¶67} Finally, appellant asserts that Senate Bill 10 furthers the traditional aims of punishment, to wit: retribution and deterrence.

{¶68} "Retribution is vengeance for its own sake. It does not seek to affect future conduct or solve any problem except realizing justice. Deterrent measures serve as a threat of negative repercussions to discourage people from engaging in certain behavior. Remedial measures, on the other hand, seek to solve a problem, for instance by removing the likely perpetrators of future corruption." *Cook*, 83 Ohio St.3d at 420, quoting *Artway v. New Jersey Atty. Gen.* (C.A.3, 1996), 81 F.3d 1235, 1255.

{¶69} Relying on these definitions, the supreme court in *Cook* found that the registration and notification provisions of former R.C. Chapter 2950 neither sought vengeance

for vengeance's sake nor retribution. Cook at 420. Rather, the provisions were remedial because they sought to collect and disseminate information to protect the public from registrants who may reoffend. Id. The supreme court further found that former R.C. Chapter 2950 did not have a deterrent effect as sex offenders "are not deterred even by the threat of incarceration." Id. Further, "deterrence alone is insufficient to make a statute punitive." Id.

{¶70} We find that the same reasoning applies to Senate Bill 10. Byers at ¶41. "Our review of [Senate Bill 10] convinces us that Cook applies to the vast majority of its provisions, which are targeted to maximize the flow of information to the public. [Senate Bill 10] attempts to 'solve a problem' by keeping the public well informed of possible sources of danger. We cannot say that any of the additions to the [former R.C. Chapter 2950] statutory scheme, which are comprised mainly of additional demands from offenders, transform the scheme into one that has either a noticeable retributive or deterrent effect." *In re G.E.S.* at ¶35 (internal citations omitted).

{¶71} Further, "[b]y tying an offender's classification to the offense committed rather than to an individual assessment of dangerousness, the [legislature] merely adopted an alternative approach to the regulation and categorization of sex offenders. In [Doe], the United States Supreme Court expressly rejected an argument that Alaska's sex-offender registration obligations were retributive because they were based on the crime committed rather than the particular risk an offender posed. *** Similarly, the [Doe] court rejected the notion that deterrence resulting from Alaska's statute was sufficient to establish a punitive effect." *King* at ¶22.

{¶72} We find that Senate Bill 10 does not promote the traditional aims of punishment – retribution and deterrence.

{¶73} We note that the remaining *Kennedy* guideposts, which were not argued by appellant with regard to Senate Bill 10, were addressed by Ohio appellate courts and found to

be inapplicable. See *Byers* at ¶¶39, 40, 42-54; *In re G.E.S.* at ¶¶33-34, 38-40; *King* at ¶¶23-29.

{¶74} In light of all of the foregoing, we reject appellant's argument that Senate Bill 10 is so punitive in effect that it negates the legislature's non-punitive intent. Appellant cannot show, much less by the clearest proof, that the effects of Senate Bill 10 negate the legislature's intent to establish a civil regulatory scheme. The guideposts set forth in *Kennedy* and argued by appellant indicate that Senate Bill 10 serves the solely remedial purpose of protecting the public. While the notification requirements may be a detriment to registered sex offenders, "the sting of public censure does not convert a remedial statute into a punitive one." *Cook*, 83 Ohio St.3d. at 423.

{¶75} We therefore find that Senate Bill 10 is remedial, and not punitive, and that the retroactive application of its classification, registration, and notification provisions do not violate the Ex Post Facto Clause of the United States Constitution.

SENATE BILL 10'S RESIDENCY PROVISION

{¶76} Appellant argues that Senate Bill 10's residency provision violates the Ohio Constitution's ban on retroactive laws, the Ex Post Facto Clause of the United States Constitution, and his due process rights. The residency provision prohibits any "person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense, [from] establish[ing] a residence or occupy[ing] residential premises within [1,000] feet of any school premises or preschool or child day-care center premises." The crux of appellant's arguments is that (1) because the legislature has mandated that Senate Bill 10 be applied retroactively, the residency provision is unconstitutionally retroactive, and (2) the residency provision operates as a direct restraint on a person's liberty and infringes a person's right to live and work where they wish.

{¶77} Appellant challenges the fact that under Senate Bill 10, he "is categorically barred from residing within 1,000 feet of a school, preschool, or day-care center." We note

that there is absolutely no evidence in the record before us, nor does appellant claim, that he currently resides within 1,000 feet of a school, preschool, or day-care center. Nor has appellant alleged he was forced to move from an area due to his proximity to a school, preschool, or day-care center, or that he has any intention of moving to a residence within 1,000 feet of a school, preschool, or day-care center.

{¶78} Assuming, arguendo, that appellant currently resides within 1,000 feet of a school, preschool, or day-care center *and that he was residing there before July 1, 2007* (the effective date for Senate Bill 10's residency provision), we find that the Ohio Supreme Court's decision in *Hyle*, 117 Ohio St.3d 165, applies. Appellant committed his offense before July 1, 2007.

{¶79} In *Hyle*, the supreme court was asked to determine whether the residency provision in former R.C. Chapter 2950, which prohibited certain sexually oriented offenders from living within 1,000 feet of a school, could be applied to an offender who had bought his home and committed his offense before the effective date of the statute. The provision at the time provided that "[n]o person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to either a sexually oriented offense or a child-victim oriented offense shall establish a residence or occupy residential premises within [1,000] feet of any school premises."

{¶80} The supreme court held that the residency provision in former R.C. Chapter 2950 did not apply retroactively to an offender who had bought his home or resided in a home and had committed sex offenses prior to the statute's effective date:

{¶81} "On review of the text of [the former residency provision], we find that neither the description of convicted sex offenders nor the description of prohibited acts includes a clear declaration of retroactivity. Although we acknowledge that the language of [the provision] is ambiguous regarding its prospective or retroactive application, we emphasize that

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ambiguous language is not sufficient to overcome the presumption of prospective application. The language in [the provision] presents at best a *suggestion* of retroactivity, which is not sufficient to establish that a statute applies retroactively.

{¶82}

{¶83} "Our conclusion that [the residency provision] was not expressly made retrospective precludes us from addressing the constitutional prohibition against retroactivity. *** We hold that because [the provision] was not expressly made retroactive, it does not apply to an offender who bought his home and committed his offense before the effective date of the statute." *Hyle* at ¶13, 24.

{¶84} When comparing the language of the residency provision in Senate Bill 10 and its counterpart in former R.C. Chapter 2950, the only differences between the two provisions are that Senate Bill 10's residency provision prohibits all sexually oriented offenders, and not certain sexually oriented offenders, from living within 1,000 feet of a preschool or day-care center, in addition to a school. Those differences are minor and do not impact the analysis in *Hyle*. The reasoning in *Hyle* therefore applies. Accordingly, we find that Senate Bill 10's residency provision does not apply to an offender who bought his home or resided in a home and committed his offense before July 1, 2007, the effective date of Senate Bill 10's residency provision. See *Byers*, 2008-Ohio-5051, ¶98-99.

{¶85} Next, appellant argues that the residency provision violates the Ex Post Facto Clause of the United States Constitution because it imposes an affirmative disability or restraint and resembles colonial punishments. We disagree.

{¶86} In *King*, the Second Appellate District noted that "we fail to see a constitutionally meaningful distinction between S.B. 10 and the version of R.C. Chapter 2950 in effect when [the supreme court's decision in *Wilson*] was decided. Likewise, while S.B. 10 precludes sex offenders from living within 1,000 feet of certain facilities, a similar restriction

existed when the *Wilson* majority declared [former] R.C. Chapter 2950 to be non-punitive. Therefore, in light of existing precedent, we do not find that S.B. 10 imposes an affirmative disability or restraint." *King*, 2008-Ohio-2594, ¶16.

{¶87} In *Coston v. Petro* (S.D. Ohio 2005), 398 F.Supp.2d 878, the district court held that the residency provision in former R.C. Chapter 2950 was neither a criminal provision nor did it have a punitive effect. As noted earlier, Senate Bill 10 only made a slight change to the residency provision in former R.C. Chapter 2950 by adding day-cares and preschools to the residency prohibition; no drastic change was made. The reasoning in *Coston* was as follows:

{¶88} "[The residency provision] does not, however, impose punishment and accordingly is not a criminal statute. [The provision] on its face imposes no criminal sanctions *** and the expressed intent of the sex offender registration statute is to protect the safety and general welfare of the public. ***

{¶89} "****

{¶90} "[A]lthough [the provision] prohibits sex offenders from living within the designated areas, this statute is unlike the traditional punishment of banishment because sex offenders are not expelled from the community or even prohibited from accessing these areas for employment or conducting commercial transactions. *** [The provision] does impose an affirmative restraint or disability in that registered sex offenders are precluded from living within designated areas of the state. Nevertheless, [the provision] imposes no physical restraint on sex offenders and in fact is less restrictive than the involuntary commitment provisions for mentally ill sex offenders held to be nonpunitive in *Kansas v. Hendricks*, 521 U.S. 346, 363-65, 117 S.Ct. 2072 (1997). [S]ex offenders are free to move about within the zone, but they cannot establish a permanent residence there. Therefore, the Court cannot

conclude that this relatively limited restraint on sex offenders constitutes punishment."² *Coston*, 398 F.Supp.2d at 885-886. But see, contra, *Mikaloff v. Walsh* (N.D. Ohio 2007), 2007 WL 2572268 (declaring that Senate Bill 10's residency provision violated the Ex Post Facto Clause of the United States Constitution and enjoining prosecutors from enforcing the provision against the plaintiff, a sex offender who was living within 1,000 feet of a school).³

{¶91} Finally, appellant argues that the residency provision violates his due process rights. Assuming appellant's argument is based on an assumption that the provision will eventually affect him, we decline to address appellant's argument. As noted earlier, appellant has not alleged he was forced to move from an area due to his proximity to a school, preschool, or day-care center, or that he has any intention of moving to a residence within 1,000 feet of a school, preschool, or day-care center. Appellant has failed to show he has suffered any actual deprivation of his rights by operation of Senate Bill 10's residency provision.

{¶92} It follows that appellant lacks standing to raise constitutional challenges to Senate Bill 10's residency provision: "It has been held that a defendant lacks standing to challenge the constitutionality of [the residency provision] where the record fails to show whether the defendant has suffered an actual deprivation of his property rights by operation of

2. See, also, *Hyle v. Porter*, 170 Ohio App.3d 710, 2006-Ohio-5454, overruled on other grounds in *Hyle*, 117 Ohio St.3d 899 (Although the rule affirmatively restrains or disables in the sense that convicted sex offenders may not live within 1,000 feet of a school, we cannot say that this restriction rises to the level of restraint that constitutes punishment. We note that the rule does not physically restrain or otherwise impede sexually oriented offenders from [1] traveling through school zones, [2] entering these areas for employment, or [3] conducting commercial transactions within the zone. Moreover, the rule does not prohibit an offender from owning, renting, or leasing a home within 1,000 feet of a school. Sexually oriented offenders are simply prohibited from living within 1,000 feet of a school. The restriction does not affirmatively disable or restrain offenders so severely as to be penal).

3. In *Mikaloff*, after being ordered by prosecutors to move out of his residence because it was within 1,000 feet of a school, the plaintiff sought to enjoin the enforcement of Senate Bill 10's residency provision against him. The plaintiff had committed his sex offenses and resided in his home before the effective date of the residency provision. We find that *Mikaloff* is not applicable to the case at bar. Unlike in the case at bar, the plaintiff in *Mikaloff* was ordered to move out of his residence because it was within 1,000 feet of a school. Thus, the plaintiff sought to avoid suffering an actual deprivation of his property rights by operation of the residency provision. Further, *Mikaloff* was decided before the Ohio Supreme Court's decision in *Hyle*.

[the residency provision]." *State v. Amos*, Cuyahoga App. No. 89855, 2008-Ohio-1834, ¶43 (addressing a constitutional challenge to the residency provision in former R.C. Chapter 2950).

{¶93} "The constitutionality of a state statute may not be brought into question by one who is not within the class against whom the operation of the statute is alleged to have been unconstitutionally applied and who has not been injured by its alleged unconstitutional provision." *State v. Bruce*, Cuyahoga App. No. 89641, 2008-Ohio-926, ¶12. "[Defendant] has failed to provide any evidence to demonstrate an injury in fact or an actual deprivation of his property rights or his right to privacy. Neither can he prosecute a facial challenge in order to assert the rights of third parties not before the court." *Id.*, citing *Coston*, 398 F.Supp.2d at 884 (both decisions addressing a constitutional challenge to the residency provision in former R.C. Chapter 2950).

{¶94} We therefore find that Senate Bill 10's residency provision does not apply to a sex offender who bought his home or resided in a home and committed his offense before July 1, 2007, the effective date of the residency provision; the provision does not violate the Ex Post Facto Clause of the United States Constitution; and appellant lacks standing to challenge the constitutionality of Senate Bill 10's residency provision on due process grounds.

SEPARATION OF POWERS

{¶95} Appellant argues that Senate Bill 10 violates the separation-of-powers doctrine "inherent in Ohio's constitutional framework by unconstitutionally limiting the powers of the judicial branch of the government." Specifically, "Senate Bill 10 divests the judiciary branch of its power to sentence a defendant [b]y automatically directing a trial court to place an offender in a specific tier based on the crime with which a defendant is convicted[.]"

{¶96} The Ohio Constitution vests the legislative power of the state in the General Assembly, the executive power in the Governor, and the judicial power in the courts. "A

statute that violates the doctrine of separation of powers is unconstitutional." *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 475, 1999-Ohio-123. "The principle of separation of powers is embedded in the constitutional framework of our state government. The Ohio Constitution applies the principle in defining the nature and scope of powers designated to the three branches of the government. It is inherent in our theory of government that each of the three grand divisions of the government, must be protected from the encroachments of the others, so far that its integrity and independence may be preserved." *Id.* (internal citations omitted).

{¶97} Senate Bill 10, however, does not violate the doctrine of separation of powers.

{¶98} As the Third Appellate District stated in *In re Smith*, 2008-Ohio-3234:

{¶99} "However, we note that the classification of sex offenders has always been a legislative mandate, not an inherent power of the courts. Without the legislature's creation of sex offender classifications, no such classification would be warranted. Therefore, *** we cannot find that sex offender classification is anything other than a creation of the legislature, and therefore, the power to classify is properly expanded or limited by the legislature." *Id.* at ¶39 (internal citation omitted).

{¶100} Or, as the Clermont County Common Pleas Court stated in *Slagle*, 2008-Ohio-593:

{¶101} "[The legislature] has not abrogated final judicial decisions without amending the underlying applicable law. Instead, the [legislature] has enacted a new law, which changes the different sexual offender classifications and time spans for registration requirements, among other things, and is requiring that the new procedures be applied to offenders currently registering under the old law or offenders currently incarcerated for committing a sexually oriented offense. Application of this new law does not order the courts to reopen a final judgment, but instead simply changes the classification scheme. This is not

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an encroachment on the power of the judicial branch of Ohio's government." *Id.* at ¶21. See, also, *Byers*, 2008-Ohio-5051, ¶73-74 (adopting the reasoning of *Slagle* as its own).

{¶102} In light of the foregoing, we find that Senate Bill 10 does not violate the separation-of-powers doctrine.

CRUEL AND UNUSUAL PUNISHMENT

{¶103} As a Tier II Sex Offender, appellant is required to register for 25 years. Appellant argues that the 25-year registration period is excessive and violates the prohibition against cruel and unusual punishment. We disagree.

{¶104} The Eighth Amendment of the United States Constitution and Section 9, Article I of the Ohio Constitution prohibit the imposition of cruel and unusual punishment. In *Cook*, the supreme court held that the registration and community notification provisions of former R.C. Chapter 2950 were not punishment or punitive in nature. *Cook*, 83 Ohio St.3d at 417, 423. Rather, these provisions were remedial in nature, designed to ensure public safety. *Id.*; see, also, *Williams*, 88 Ohio St.3d 513; *Ferguson*, 2008-Ohio-4824. Based on the holding in *Cook*, the Third and Seventh Appellate Districts found that the protections against cruel and unusual punishment were not implicated; thus, Senate Bill 10 did not violate the prohibition against cruel and unusual punishment. *In re Smith*, 2008-Ohio-3234, ¶37; *Byers* at ¶75. We agree.

{¶105} Likewise, the fact that the registration period is longer under Senate Bill 10 than it was under former R.C. Chapter 2950 "does not impact the analysis. As long as R.C. Chapter 2950 is viewed as civil, and not criminal, remedial and not punitive, then the period of registration cannot be viewed as punishment. Accordingly, it logically follows that it does not constitute cruel and unusual punishment since the punishment element is lacking." *Byers* at ¶77.

{¶106} We therefore find that Senate Bill 10 does not violate the prohibition against

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cruel and unusual punishment.

DOUBLE JEOPARDY

{¶107} Appellant argues that Senate Bill 10 violates the Double Jeopardy Clause contained in the Fifth Amendment of the United States Constitution and in Section 10, Article I of the Ohio Constitution. Specifically, appellant argues that because Senate Bill 10 is punitive in its intent and effect, the registration and community notification provisions of the statute unconstitutionally inflict a second punishment upon a sex offender for a singular offense.

{¶108} The Double Jeopardy Clause of the Fifth Amendment of the United States Constitution states that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." Section 10, Article I of the Ohio Constitution likewise provides that "[n]o person shall be twice put in jeopardy for the same offense." "Although the Double Jeopardy Clause was commonly understood to prevent a second prosecution for the same offense, the United States Supreme Court has applied the clause to prevent a state from punishing twice, or from attempting a second time to criminally punish for the same offense. The threshold question in a double jeopardy analysis, therefore, is whether the government's conduct involves criminal punishment." *Williams*, 88 Ohio St.3d at 528 (internal citations omitted).

{¶109} As noted earlier, the supreme court in *Williams* found no merit with the argument that former R.C. Chapter 2950 violated the Double Jeopardy Clause. The supreme court explained that since former R.C. Chapter 2950 was remedial and not punitive, it could not violate the Double Jeopardy Clause:

{¶110} "This court, in *Cook*, addressed whether [former] R.C. Chapter 2950 is a 'criminal' statute, and whether the registration and notification provisions involved 'punishment.' Because *Cook* held that [former] R.C. Chapter 2950 is neither 'criminal,' nor a statute that inflicts punishment, [former] R.C. Chapter 2950 does not violate the Double

Jeopardy Clauses of the United States and Ohio Constitutions." *Williams* at 528.

{¶111} Since we found earlier in this decision that Senate Bill 10 is a civil, remedial statute, and not a criminal, punitive statute, the above analysis in *Williams* applies. We therefore find that Senate Bill 10 does not violate the Double Jeopardy Clauses of the United States and Ohio Constitution. See *In re Smith*, 2008-Ohio-3234, ¶¶36, 38; *Byers*, 2008-Ohio-5051, ¶¶103; and *Slagle*, 2008-Ohio-593, ¶¶54.

CONCLUSION

{¶112} In light of all of the foregoing, we find that the classification and registration provisions of Senate Bill 10 do not violate the Ohio Constitution's ban on retroactive laws, nor do they violate the Ex Post Facto Clause of the United States Constitution. Senate Bill 10 does not violate the doctrine of separation of powers; does not violate the prohibition against cruel and unusual punishment; and does not violate the Double Jeopardy Clauses of the United States and Ohio Constitutions. Further, based upon the supreme court's decision in *Hyle*, 117 Ohio St.3d 165, Senate Bill 10's residency provision does not apply to a sex offender who bought his home or resided in a home and committed his offense before July 1, 2007, the effective date of the residency provision. The residency provision also does not violate the Ex Post Facto Clause of the United States Constitution. Finally, appellant lacks standing to challenge the constitutionality of the residency provision on due process grounds.

{¶113} The trial court, therefore, did not err by classifying appellant under Senate Bill 10. Appellant's assignment of error is overruled.

{¶114} Judgment affirmed.

BRESSLER, P.J., and POWELL, J., concur.

This opinion or decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <http://www.sconet.state.oh.us/ROD/documents/>. Final versions of decisions are also available on the Twelfth District's web site at: <http://www.twelfth.courts.state.oh.us/search.asp>

AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim or the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I: BILL OF RIGHTS

§ 10 [Trial of accused persons and their rights; depositions by state and comment on failure to testify in criminal cases.]

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense. (As amended September 3, 1912.)

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I: BILL OF RIGHTS

§ 16 REDRESS FOR INJURY; DUE PROCESS

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

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*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***

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CONSTITUTION OF THE STATE OF OHIO
ARTICLE VIII. PUBLIC DEBT AND PUBLIC WORKS

Go to the Ohio Code Archive Directory

Oh. Const. Art. VIII, § 16 (2010)

§ 16. Financing housing for individuals and families by state and political subdivisions

To enhance the availability of adequate housing in the state and to improve the economic and general well-being of the people of the state, it is determined to be in the public interest and a proper public purpose for the state or its political subdivisions, directly or through a public authority, agency, or instrumentality, to provide, or assist in providing, by grants, loans, subsidies to loans, loans to lenders, purchase of loans, guarantees of loans, or otherwise as determined by the general assembly, housing, including shelters to provide temporary housing, in the state for individuals and families by the acquisition, financing, construction, leasing, rehabilitation, remodeling, improvement, or equipping of publicly or privately owned housing, including the acquisition of real property and interests in real property. Laws, including charters, ordinances, and resolutions, may be passed to carry into effect those purposes, including but not limited to the authorization of the making of grants, loans, subsidies to loans, loans to lenders, purchase of loans, and guarantees of loans by the state or its political subdivisions, directly or through a public authority, agency, or instrumentality, which laws, charters, ordinances, resolutions, grants, loans, subsidies to loans, loans to lenders, purchase of loans, guarantees of loans, and any other actions authorized by the general assembly shall not be subject to the requirement, limitations, or prohibitions of any other section of Article VIII, or Sections 6 and 11 of Article XII, *Ohio Constitution*.

The general assembly also may authorize the issuance by the state, directly or through its public authorities, agencies, or instrumentalities, or obligations to provide moneys for the provision of or assistance in the provision of housing, including shelters to provide temporary housing, in the state for individuals and families, which obligations are not supported by the full faith and credit of the state, and shall not be deemed to be debts or bonded indebtedness of the state under other provisions

of this constitution. Such obligations may be secured by a pledge under law, without necessity for further appropriation, of all or such portion as the general assembly authorizes of revenues or receipts of the state or its public authorities, agencies, or instrumentalities, and this provision may be implemented by law to better provide therefor.

The powers granted under this section are independent of, in addition to, and not in derogation of other powers under laws, charters, ordinances, resolutions, or this constitution, including the powers granted under Section 14 of Article VIII and Articles X and XVIII, and the provision of any capital improvements under *Section 2i of Article VIII, Ohio Constitution*. The powers granted under this section do not impair any law, charter, ordinance, or resolution enacted prior to the effective date of this section or any obligations issued under such law, charter, ordinance, or resolution. The powers granted under this section are subject to the power of the general assembly to regulate taxation and debt of political subdivisions, including the regulation of municipal taxation and debt pursuant to Section 6 of Article XIII and *Section 13 of Article XVIII, Ohio Constitution*.

The powers granted to political subdivisions under this section shall be operative on and after September 1, 1991, or on an earlier date that an act of the general assembly declares such powers shall be operative.

HISTORY:

(Adopted November 6, 1990.)

CONSTITUTION OF THE STATE OF OHIO

ARTICLE II: LEGISLATIVE

§ 28 Retroactive laws

The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state

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TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2907. SEX OFFENSES
 SEXUAL ASSAULTS

Go to the Ohio Code Archive Directory

ORC Ann. 2907.04 (2010)

§ 2907.04. Unlawful sexual conduct with minor

(A) No person who is eighteen years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard.

(B) Whoever violates this section is guilty of unlawful sexual conduct with a minor.

(1) Except as otherwise provided in divisions (B)(2), (3), and (4) of this section, unlawful sexual conduct with a minor is a felony of the fourth degree.

(2) Except as otherwise provided in division (B)(4) of this section, if the offender is less than four years older than the other person, unlawful sexual conduct with a minor is a misdemeanor of the first degree.

(3) Except as otherwise provided in division (B)(4) of this section, if the offender is ten or more years older than the other person, unlawful sexual conduct with a minor is a felony of the third degree.

(4) If the offender previously has been convicted of or pleaded guilty to a violation of *section 2907.02, 2907.03, or 2907.04 of the Revised Code* or a violation of former *section 2907.12 of the Revised Code*, unlawful sexual conduct with a minor is a felony of the second degree.

HISTORY:

134 v H 511 (Eff 1-1-74); 143 v H 44 (Eff 7-24-90); 146 v S 2 (Eff 7-1-96); 148 v H 442. Eff 10-17-2000.

LEXSTAT ORC ANN. 2929.01

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2929. PENALTIES AND SENTENCING
IN GENERAL

Go to the Ohio Code Archive Directory

ORC Ann. 2929.01 (2010)

§ 2929.01. Definitions

As used in this chapter:

(A) (1) "Alternative residential facility" means, subject to division (A)(2) of this section, any facility other than an offender's home or residence in which an offender is assigned to live and that satisfies all of the following criteria:

(a) It provides programs through which the offender may seek or maintain employment or may receive education, training, treatment, or habilitation.

(b) It has received the appropriate license or certificate for any specialized education, training, treatment, habilitation, or other service that it provides from the government agency that is responsible for licensing or certifying that type of education, training, treatment, habilitation, or service.

(2) "Alternative residential facility" does not include a community-based correctional facility, jail, halfway house, or prison.

(B) "Basic probation supervision" means a requirement that the offender maintain contact with a person appointed to supervise the offender in accordance with sanctions imposed by the court or imposed by the parole board pursuant to *section 2967.28 of the Revised Code*. "Basic probation supervision" includes basic parole supervision and basic post-release control supervision.

(C) "Cocaine," "crack cocaine," "hashish," "L.S.D.," and "unit dose" have the same meanings as in *section 2925.01 of the Revised Code*.

(D) "Community-based correctional facility" means a community-based correctional facility and program or district community-based correctional facility and program developed pursuant to *sections 2301.51 to 2301.58 of the Revised Code*.

(E) "Community control sanction" means a sanction that is not a prison term and that is described in *section 2929.15, 2929.16, 2929.17, or 2929.18 of the Revised Code* or a sanction that is not a jail term and that is described in *section 2929.26, 2929.27, or 2929.28 of the Revised Code*. "Community control sanction" includes probation if the sentence involved was imposed for a felony that was committed prior to July 1, 1996, or if the sentence involved was imposed for a misdemeanor that was committed prior to January 1, 2004.

(F) "Controlled substance," "marihuana," "schedule I," and "schedule II" have the same meanings as in *section 3719.01 of the Revised Code*.

(G) "Curfew" means a requirement that an offender during a specified period of time be at a designated place.

(H) "Day reporting" means a sanction pursuant to which an offender is required each day to report to and leave a center or other approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center.

(I) "Deadly weapon" has the same meaning as in *section 2923.11 of the Revised Code*.

(J) "Drug and alcohol use monitoring" means a program under which an offender agrees to submit to random chemical analysis of the offender's blood, breath, or urine to determine whether the offender has ingested any alcohol or other drugs.

(K) "Drug treatment program" means any program under which a person undergoes assessment and treatment designed to reduce or completely eliminate the person's physical or emotional reliance upon alcohol, another drug, or alcohol and another drug and under which the person may be required to receive assessment and treatment on an outpatient basis or may be required to reside at a facility other than the person's home or residence while undergoing assessment and treatment.

(L) "Economic loss" means any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the commission of the offense. "Economic loss" does not include non-economic loss or any punitive or exemplary damages.

(M) "Education or training" includes study at, or in conjunction with a program offered by, a university, college, or technical college or vocational study and also includes the completion of primary school, secondary school, and literacy curricula or their equivalent.

(N) "Firearm" has the same meaning as in *section 2923.11 of the Revised Code*.

(O) "Halfway house" means a facility licensed by the division of parole and community services of the department of rehabilitation and correction pursuant to *section 2967.14 of the Revised Code* as a suitable facility for the care and treatment of adult offenders.

(P) "House arrest" means a period of confinement of an offender that is in the offender's home or in other premises specified by the sentencing court or by the parole board pursuant to *section 2967.28 of the Revised Code* and during which all of the following apply:

(1) The offender is required to remain in the offender's home or other specified premises for the specified period of confinement, except for periods of time during which the offender is at the offender's place of employment or at other premises as authorized by the sentencing court or by the parole board.

(2) The offender is required to report periodically to a person designated by the court or parole board.

(3) The offender is subject to any other restrictions and requirements that may be imposed by the sentencing court or by the parole board.

(Q) "Intensive probation supervision" means a requirement that an offender maintain frequent contact with a person appointed by the court, or by the parole board pursuant to *section 2967.28 of the Revised Code*, to supervise the offender while the offender is seeking or maintaining necessary employment and participating in training, education, and treatment programs as required in the court's or parole board's order. "Intensive probation supervision" includes intensive parole supervision and intensive post-release control supervision.

(R) "Jail" means a jail, workhouse, minimum security jail, or other residential facility used for the confinement of alleged or convicted offenders that is operated by a political subdivision or a combination of political subdivisions of this state.

(S) "Jail term" means the term in a jail that a sentencing court imposes or is authorized to impose pursuant to *section 2929.24 or 2929.25 of the Revised Code* or pursuant to any other provision of the Revised Code that authorizes a term in a jail for a misdemeanor conviction.

(T) "Mandatory jail term" means the term in a jail that a sentencing court is required to impose pursuant to division (G) of *section 1547.99 of the Revised Code*, division (E) or (G) of *section 2929.24 of the Revised Code*, division (E) of *section 2903.06* or division (D) of *section 2903.08 of the Revised Code*, division (B) of *section 4510.14 of the Revised Code*, or division (G) of *section 4511.19 of the Revised Code* or pursuant to any other provision of the Revised Code that requires a term in a jail for a misdemeanor conviction.

(U) "Delinquent child" has the same meaning as in *section 2152.02 of the Revised Code*.

(V) "License violation report" means a report that is made by a sentencing court, or by the parole board pursuant to *section 2967.28 of the Revised Code*, to the regulatory or licensing board or agency that issued an offender a professional license or a license or permit to do business in this state and that specifies that the offender has been convicted of or pleaded guilty to an offense that may violate the conditions under which the offender's professional license or license or permit to do business in this state was granted or an offense for which the offender's professional license or license or permit to do business in this state may be revoked or suspended.

(W) "Major drug offender" means an offender who is convicted of or pleads guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains at least one thousand grams of hashish; at least one hundred grams of crack cocaine; at least one thousand grams of cocaine that is not crack cocaine; at least two thousand five hundred unit doses or two hundred fifty grams of heroin; at least five thousand unit doses of L.S.D. or five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form; or at least one hundred times the amount of any other schedule I or II controlled substance other than marihuana that is necessary to commit a felony of the third degree pursuant to *section 2925.03*,

2925.04, 2925.05, or 2925.11 of the Revised Code that is based on the possession of, sale of, or offer to sell the controlled substance.

(X) "Mandatory prison term" means any of the following:

(1) Subject to division (X)(2) of this section, the term in prison that must be imposed for the offenses or circumstances set forth in divisions (F)(1) to (8) or (F)(12) to (18) of section 2929.13 and division (D) of section 2929.14 of the Revised Code. Except as provided in sections 2925.02, 2925.03, 2925.04, 2925.05, and 2925.11 of the Revised Code, unless the maximum or another specific term is required under section 2929.14 or 2929.142 [2929.14.2] of the Revised Code, a mandatory prison term described in this division may be any prison term authorized for the level of offense.

(2) The term of sixty or one hundred twenty days in prison that a sentencing court is required to impose for a third or fourth degree felony OVI offense pursuant to division (G)(2) of section 2929.13 and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code or the term of one, two, three, four, or five years in prison that a sentencing court is required to impose pursuant to division (G)(2) of section 2929.13 of the Revised Code..

(3) The term in prison imposed pursuant to division (A) of section 2971.03 of the Revised Code for the offenses and in the circumstances described in division (F)(11) of section 2929.13 of the Revised Code or pursuant to division (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code and that term as modified or terminated pursuant to section 2971.05 of the Revised Code.

(Y) "Monitored time" means a period of time during which an offender continues to be under the control of the sentencing court or parole board, subject to no conditions other than leading a law-abiding life.

(Z) "Offender" means a person who, in this state, is convicted of or pleads guilty to a felony or a misdemeanor.

(AA) "Prison" means a residential facility used for the confinement of convicted felony offenders that is under the control of the department of rehabilitation and correction but does not include a violation sanction center operated under authority of section 2967.141 of the Revised Code.

(BB) "Prison term" includes either of the following sanctions for an offender:

(1) A stated prison term;

(2) A term in a prison shortened by, or with the approval of, the sentencing court pursuant to section 2929.20, 2967.26, 5120.031 [5120.03.1], 5120.032 [5120.03.2], or 5120.073 [5102.07.3] of the Revised Code.

(CC) "Repeat violent offender" means a person about whom both of the following apply:

(1) The person is being sentenced for committing or for complicity in committing any of the following:

(a) Aggravated murder, murder, any felony of the first or second degree that is an offense of violence, or an attempt to commit any of these offenses if the attempt is a felony of the first or second degree;

(b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense described in division (CC)(1)(a) of this section.

(2) The person previously was convicted of or pleaded guilty to an offense described in division (CC)(1)(a) or (b) of this section.

(DD) "Sanction" means any penalty imposed upon an offender who is convicted of or pleads guilty to an offense, as punishment for the offense. "Sanction" includes any sanction imposed pursuant to any provision of *sections 2929.14 to 2929.18 or 2929.24 to 2929.28 of the Revised Code*.

(EE) "Sentence" means the sanction or combination of sanctions imposed by the sentencing court on an offender who is convicted of or pleads guilty to an offense.

(FF) "Stated prison term" means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court pursuant to *section 2929.14, 2929.142 [2929.14.2], or 2971.03 of the Revised Code* or under *section 2919.25 of the Revised Code*. "Stated prison term" includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison for the offense and any time spent under house arrest or house arrest with electronic monitoring imposed after earning credits pursuant to *section 2967.193 [2967.19.3] of the Revised Code*.

(GG) "Victim-offender mediation" means a reconciliation or mediation program that involves an offender and the victim of the offense committed by the offender and that includes a meeting in which the offender and the victim may discuss the offense, discuss restitution, and consider other sanctions for the offense.

(HH) "Fourth degree felony OVI offense" means a violation of division (A) of *section 4511.19 of the Revised Code* that, under division (G) of that section, is a felony of the fourth degree.

(II) "Mandatory term of local incarceration" means the term of sixty or one hundred twenty days in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility that a sentencing court may impose upon a person who is convicted of or pleads guilty to a fourth degree felony OVI offense pursuant to division (G)(1) of *section 2929.13 of the Revised Code* and division (G)(1)(d) or (e) of *section 4511.19 of the Revised Code*.

(JJ) "Designated homicide, assault, or kidnapping offense," "violent sex offense," "sexual motivation specification," "sexually violent offense," "sexually violent predator," and "sexually violent predator specification" have the same meanings as in *section 2971.01 of the Revised Code*.

(KK) "Sexually oriented offense," "child-victim oriented offense," and "tier III sex offender/child-victim offender," have the same meanings as in *section 2950.01 of the Revised Code*.

(LL) An offense is "committed in the vicinity of a child" if the offender commits the offense within thirty feet of or within the same residential unit as a child who is under eighteen years of age, regardless of whether the offender knows the age of the child or whether the offender knows the offense is being committed within thirty feet of or within the same residential unit as the child and regardless of whether the child actually views the commission of the offense.

(MM) "Family or household member" has the same meaning as in *section 2919.25 of the Revised Code*.

(NN) "Motor vehicle" and "manufactured home" have the same meanings as in *section 4501.01 of the Revised Code*.

(OO) "Detention" and "detention facility" have the same meanings as in *section 2921.01 of the Revised Code*.

(PP) "Third degree felony OVI offense" means a violation of division (A) of *section 4511.19 of the Revised Code* that, under division (G) of that section, is a felony of the third degree.

(QQ) "Random drug testing" has the same meaning as in *section 5120.63 of the Revised Code*.

(RR) "Felony sex offense" has the same meaning as in *section 2967.28 of the Revised Code*.

(SS) "Body armor" has the same meaning as in *section 2941.1411 [2941.14.11] of the Revised Code*.

(TT) "Electronic monitoring" means monitoring through the use of an electronic monitoring device.

(UU) "Electronic monitoring device" means any of the following:

(1) Any device that can be operated by electrical or battery power and that conforms with all of the following:

(a) The device has a transmitter that can be attached to a person, that will transmit a specified signal to a receiver of the type described in division (UU)(1)(b) of this section if the transmitter is removed from the person, turned off, or altered in any manner without prior court approval in relation to electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with, that can transmit continuously and periodically a signal to that receiver when the person is within a specified distance from the receiver, and that can transmit an appropriate signal to that receiver if the person to whom it is attached travels a specified distance from that receiver.

(b) The device has a receiver that can receive continuously the signals transmitted by a transmitter of the type described in division (UU)(1)(a) of this section, can transmit continuously those signals by a wireless or landline telephone connection to a central monitoring computer of the type described in division (UU)(1)(c) of this section, and can transmit continuously an appropriate signal to that central monitoring computer if the device has been turned off or altered without prior court approval or otherwise tampered with. The device is designed specifically for use in electronic monitoring, is not a converted wireless phone or another tracking device that is clearly not designed for electronic monitoring, and provides a means of text-based or voice communication with the person.

(c) The device has a central monitoring computer that can receive continuously the signals transmitted by a wireless or landline telephone connection by a receiver of the type described in division (UU)(1)(b) of this section and can monitor continuously the person to whom an electronic monitoring device of the type described in division (UU)(1)(a) of this section is attached.

(2) Any device that is not a device of the type described in division (UU)(1) of this section and that conforms with all of the following:

(a) The device includes a transmitter and receiver that can monitor and determine the location of a subject person at any time, or at a designated point in time, through the use of a central monitoring computer or through other electronic means.

(b) The device includes a transmitter and receiver that can determine at any time, or at a designated point in time, through the use of a central monitoring computer or other electronic means the fact that the transmitter is turned off or altered in any manner without prior approval of the court in relation to the electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with.

(3) Any type of technology that can adequately track or determine the location of a subject person at any time and that is approved by the director of rehabilitation and correction, including, but not limited to, any satellite technology, voice tracking system, or retinal scanning system that is so approved.

(VV) "Non-economic loss" means nonpecuniary harm suffered by a victim of an offense as a result of or related to the commission of the offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

(WW) "Prosecutor" has the same meaning as in *section 2935.01 of the Revised Code*.

(XX) "Continuous alcohol monitoring" means the ability to automatically test and periodically transmit alcohol consumption levels and tamper attempts at least every hour, regardless of the location of the person who is being monitored.

(YY) A person is "adjudicated a sexually violent predator" if the person is convicted of or pleads guilty to a violent sex offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that violent sex offense or if the person is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that designated homicide, assault, or kidnapping offense.

(ZZ) An offense is "committed in proximity to a school" if the offender commits the offense in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises, regardless of whether the offender knows the offense is being committed in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises.

(AAA) "Human trafficking" means a scheme or plan to which all of the following apply:

(1) Its object is to compel a victim or victims to engage in sexual activity for hire, to engage in a performance that is obscene, sexually oriented, or nudity oriented, or to be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented.

(2) It involves at least two felony offenses, whether or not there has been a prior conviction for any of the felony offenses, to which all of the following apply:

(a) Each of the felony offenses is a violation of section 2905.01, 2905.02, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323 [2907.32.3], or division (B)(1), (2), (3), (4), or (5) of *section 2919.22 of the Revised Code* or is a violation of a law of any state other than this state that is substantially similar to any of the sections or divisions of the Revised Code identified in this division.

(b) At least one of the felony offenses was committed in this state.

(c) The felony offenses are related to the same scheme or plan, are not isolated instances, and are not so closely related to each other and connected in time and place that they constitute a single event or transaction.

(BBB) "Material," "nudity," "obscene," "performance," and "sexual activity" have the same meanings as in *section 2907.01 of the Revised Code*.

(CCC) "Material that is obscene, sexually oriented, or nudity oriented" means any material that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.

(DDD) "Performance that is obscene, sexually oriented, or nudity oriented" means any performance that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 445 (Eff 9-3-96); 146 v H 480 (Eff 10-16-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 147 v H 378 (Eff 3-10-98); 147 v S 111 (Eff 3-17-98); 148 v S 9 (Eff 3-8-2000); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 349 (Eff 9-22-2000); 148 v S 222 (Eff 3-22-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 327. Eff 7-8-2002; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 1, Eff 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v S 57, § 1, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 95, § 1, eff. 8-3-06; 151 v H 162, § 1, eff. 10-12-06; 151 v S 260, § 1, eff. 1-2-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08; 152 v S 220, § 1, eff. 9-30-08; 152 v H 280, § 1, eff. 4-7-09; 152 v H 130, § 1, eff. 4-7-09; 153 v S 162, § 1, eff. 9-13-10.

LEXSTAT ORC ANN. 2929.19

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL AS-
 SSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
 *** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
 *** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2929. PENALTIES AND SENTENCING
 PENALTIES FOR FELONY

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ORC Ann. 2929.19 (2010)

§ 2929.19. Sentencing hearing

(A) The court shall hold a sentencing hearing before imposing a sentence under this chapter upon an offender who was convicted of or pleaded guilty to a felony and before resentencing an offender who was convicted of or pleaded guilty to a felony and whose case was remanded pursuant to *section 2953.07 or 2953.08 of the Revised Code*. At the hearing, the offender, the prosecuting attorney, the victim or the victim's representative in accordance with *section 2930.14 of the Revised Code*, and, with the approval of the court, any other person may present information relevant to the imposition of sentence in the case. The court shall inform the offender of the verdict of the jury or finding of the court and ask the offender whether the offender has anything to say as to why sentence should not be imposed upon the offender.

(B) (1) At the sentencing hearing, the court, before imposing sentence, shall consider the record, any information presented at the hearing by any person pursuant to division (A) of this section, and, if one was prepared, the presentence investigation report made pursuant to *section 2951.03 of the Revised Code* or *Criminal Rule 32.2*, and any victim impact statement made pursuant to *section 2947.051 [2947.05.1] of the Revised Code*.

(2) The court shall impose a sentence and shall make a finding that gives its reasons for selecting the sentence imposed in any of the following circumstances:

(a) Unless the offense is a violent sex offense or designated homicide, assault, or kidnapping offense for which the court is required to impose sentence pursuant to division (G) of *section 2929.14 of the Revised Code*, if it imposes a prison term for a felony of the fourth or fifth degree or for a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and

that is specified as being subject to division (B) of *section 2929.13 of the Revised Code* for purposes of sentencing, its reasons for imposing the prison term, based upon the overriding purposes and principles of felony sentencing set forth in *section 2929.11 of the Revised Code*, and any factors listed in divisions (B)(1)(a) to (i) of *section 2929.13 of the Revised Code* that it found to apply relative to the offender.

(b) If it does not impose a prison term for a felony of the first or second degree or for a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and for which a presumption in favor of a prison term is specified as being applicable, its reasons for not imposing the prison term and for overriding the presumption, based upon the overriding purposes and principles of felony sentencing set forth in *section 2929.11 of the Revised Code*, and the basis of the findings it made under divisions (D)(1) and (2) of *section 2929.13 of the Revised Code*.

(c) If it imposes consecutive sentences under *section 2929.14 of the Revised Code*, its reasons for imposing the consecutive sentences;

(d) If the sentence is for one offense and it imposes a prison term for the offense that is the maximum prison term allowed for that offense by division (A) of *section 2929.14 of the Revised Code* or *section 2929.142 [2929.14.2] of the Revised Code*, its reasons for imposing the maximum prison term;

(e) If the sentence is for two or more offenses arising out of a single incident and it imposes a prison term for those offenses that is the maximum prison term allowed for the offense of the highest degree by division (A) of *section 2929.14 of the Revised Code* or *section 2929.142 [2929.14.2] of the Revised Code*, its reasons for imposing the maximum prison term.

(3) Subject to division (B)(4) of this section, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

(a) Impose a stated prison term and, if the court imposes a mandatory prison term, notify the offender that the prison term is a mandatory prison term;

(b) In addition to any other information, include in the sentencing entry the name and section reference to the offense or offenses, the sentence or sentences imposed and whether the sentence or sentences contain mandatory prison terms, if sentences are imposed for multiple counts whether the sentences are to be served concurrently or consecutively, and the name and section reference of any specification or specifications for which sentence is imposed and the sentence or sentences imposed for the specification or specifications;

(c) Notify the offender that the offender will be supervised under *section 2967.28 of the Revised Code* after the offender leaves prison if the offender is being sentenced for a felony of the first degree or second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person. If a court imposes a sentence including a prison term of a type described in division (B)(3)(c) of this section on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(3)(c) of this section that the offender will be supervised under *section 2967.28 of the Revised Code* after the offender leaves prison or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the mandatory period of supervision that is required for the offender under division (B) of *section 2967.28 of the Revised Code*. *Section 2929.191 [2929.19.1] of the Revised Code* applies if, prior to

July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(3)(c) of this section and failed to notify the offender pursuant to division (B)(3)(c) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.

(d) Notify the offender that the offender may be supervised under *section 2967.28 of the Revised Code* after the offender leaves prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree that is not subject to division (B)(3)(c) of this section. *Section 2929.191 [2929.19.1] of the Revised Code* applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(3)(d) of this section and failed to notify the offender pursuant to division (B)(3)(d) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.

(e) Notify the offender that, if a period of supervision is imposed following the offender's release from prison, as described in division (B)(3)(c) or (d) of this section, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of *section 2967.131 [2967.13.1] of the Revised Code*, the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender. If a court imposes a sentence including a prison term on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(3)(e) of this section that the parole board may impose a prison term as described in division (B)(3)(e) of this section for a violation of that supervision or a condition of post-release control imposed under division (B) of *section 2967.131 [2967.13.1] of the Revised Code* or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the authority of the parole board to so impose a prison term for a violation of that nature if, pursuant to division (D)(1) of *section 2967.28 of the Revised Code*, the parole board notifies the offender prior to the offender's release of the board's authority to so impose a prison term. *Section 2929.191 [2929.19.1] of the Revised Code* applies if, prior to July 11, 2006, a court imposed a sentence including a prison term and failed to notify the offender pursuant to division (B)(3)(e) of this section regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control.

(f) Require that the offender not ingest or be injected with a drug of abuse and submit to random drug testing as provided in *section 341.26, 753.33, or 5120.63 of the Revised Code*, whichever is applicable to the offender who is serving a prison term, and require that the results of the drug test administered under any of those sections indicate that the offender did not ingest or was not injected with a drug of abuse.

(4) (a) The court shall include in the offender's sentence a statement that the offender is a tier III sex offender/child-victim offender, and the court shall comply with the requirements of *section 2950.03 of the Revised Code* if any of the following apply:

(i) The offender is being sentenced for a violent sex offense or designated homicide, assault, or kidnapping offense that the offender committed on or after January 1, 1997, and the offender is adjudicated a sexually violent predator in relation to that offense.

(ii) The offender is being sentenced for a sexually oriented offense that the offender committed on or after January 1, 1997, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iii) The offender is being sentenced on or after July 31, 2003, for a child-victim oriented offense, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iv) The offender is being sentenced under *section 2971.03 of the Revised Code* for a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* committed on or after January 2, 2007.

(v) The offender is sentenced to a term of life without parole under division (B) of *section 2907.02 of the Revised Code*.

(vi) The offender is being sentenced for attempted rape committed on or after January 2, 2007, and a specification of the type described in *section 2941.1418 [2941.14.18]*, *2941.1419 [2941.14.19]*, or *2941.1420 [2941.14.20]* of the *Revised Code*.

(vii) The offender is being sentenced under division (B)(3)(a), (b), (c), or (d) of *section 2971.03 of the Revised Code* for an offense described in those divisions committed on or after January 1, 2008.

(b) Additionally, if any criterion set forth in divisions (B)(4)(a)(i) to (vii) of this section is satisfied, in the circumstances described in division (G) of *section 2929.14 of the Revised Code*, the court shall impose sentence on the offender as described in that division.

(5) If the sentencing court determines at the sentencing hearing that a community control sanction should be imposed and the court is not prohibited from imposing a community control sanction, the court shall impose a community control sanction. The court shall notify the offender that, if the conditions of the sanction are violated, if the offender commits a violation of any law, or if the offender leaves this state without the permission of the court or the offender's probation officer, the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender and shall indicate the specific prison term that may be imposed as a sanction for the violation, as selected by the court from the range of prison terms for the offense pursuant to *section 2929.14 of the Revised Code*.

(6) Before imposing a financial sanction under *section 2929.18 of the Revised Code* or a fine under *section 2929.32 of the Revised Code*, the court shall consider the offender's present and future ability to pay the amount of the sanction or fine.

(7) If the sentencing court sentences the offender to a sanction of confinement pursuant to *section 2929.14* or *2929.16 of the Revised Code* that is to be served in a local detention facility, as defined in *section 2929.36 of the Revised Code*, and if the local detention facility is covered by a policy adopted pursuant to *section 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code* and *section 2929.37 of the Revised Code*, both of the following apply:

(a) The court shall specify both of the following as part of the sentence:

(i) If the offender is presented with an itemized bill pursuant to *section 2929.37 of the Revised Code* for payment of the costs of confinement, the offender is required to pay the bill in accordance with that section.

(ii) If the offender does not dispute the bill described in division (B)(7)(a)(i) of this section and does not pay the bill by the times specified in *section 2929.37 of the Revised Code*, the clerk of the court may issue a certificate of judgment against the offender as described in that section.

(b) The sentence automatically includes any certificate of judgment issued as described in division (B)(7)(a)(ii) of this section.

(8) The failure of the court to notify the offender that a prison term is a mandatory prison term pursuant to division (B)(3)(a) of this section or to include in the sentencing entry any information required by division (B)(3)(b) of this section does not affect the validity of the imposed sentence or sentences. If the sentencing court notifies the offender at the sentencing hearing that a prison term is mandatory but the sentencing entry does not specify that the prison term is mandatory, the court may complete a corrected journal entry and send copies of the corrected entry to the offender and the department of rehabilitation and correction, or, at the request of the state, the court shall complete a corrected journal entry and send copies of the corrected entry to the offender and department of rehabilitation and correction.

(C) (1) If the offender is being sentenced for a fourth degree felony OVI offense under division (G)(1) of *section 2929.13 of the Revised Code*, the court shall impose the mandatory term of local incarceration in accordance with that division, shall impose a mandatory fine in accordance with division (B)(3) of *section 2929.18 of the Revised Code*, and, in addition, may impose additional sanctions as specified in *sections 2929.15, 2929.16, 2929.17, and 2929.18 of the Revised Code*. The court shall not impose a prison term on the offender except that the court may impose a prison term upon the offender as provided in division (A)(1) of *section 2929.13 of the Revised Code*.

(2) If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of *section 2929.13 of the Revised Code*, the court shall impose the mandatory prison term in accordance with that division, shall impose a mandatory fine in accordance with division (B)(3) of *section 2929.18 of the Revised Code*, and, in addition, may impose an additional prison term as specified in *section 2929.14 of the Revised Code*. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may impose a community control sanction on the offender, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(D) The sentencing court, pursuant to division (K) of *section 2929.14 of the Revised Code*, may recommend placement of the offender in a program of shock incarceration under *section 5120.031 [5120.03.1] of the Revised Code* or an intensive program prison under *section 5120.032 [5120.03.2] of the Revised Code*, disapprove placement of the offender in a program or prison of that nature, or make no recommendation. If the court recommends or disapproves placement, it shall make a finding that gives its reasons for its recommendation or disapproval.

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 349 (Eff 9-22-2000); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-8-2002); 149 v H 170 (Eff 9-6-2002); 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 1, Eff 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 137, § 1, eff. 7-11-06; 151 v S 260, § 1, eff. 1-2-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08; 152 v H 130, § 1, eff. 4-7-09.

LEXSTAT ORC ANN. 2929.23

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 54 ***

*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2929. PENALTIES AND SENTENCING
 PENALTIES FOR MISDEMEANOR

Go to the Ohio Code Archive Directory

ORC Ann. 2929.23 (2010)

§ 2929.23. Sentencing for sexually oriented offense or child-victim misdemeanor offense committed on or after January 1, 1997

(A) If an offender is being sentenced for a sexually oriented offense or child-victim oriented offense that is a misdemeanor committed on or after January 1, 1997, and the offender is a tier III sex offender/child-victim offender relative to the offense or the offense is any offense listed in division (D)(1) to (3) of *section 2901.07 of the Revised Code*, the judge shall include in the offender's sentence a statement that the offender is a tier III sex offender/child-victim offender, shall comply with the requirements of *section 2950.03 of the Revised Code*, and shall require the offender to submit to a DNA specimen collection procedure pursuant to *section 2901.07 of the Revised Code*.

(B) If an offender is being sentenced for a sexually oriented offense or a child-victim oriented offense that is a misdemeanor committed on or after January 1, 1997, the judge shall include in the sentence a summary of the offender's duties imposed under *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* and the duration of the duties. The judge shall inform the offender, at the time of sentencing, of those duties and of their duration. If required under division (A)(2) of *section 2950.03 of the Revised Code*, the judge shall perform the duties specified in that section or, if required under division (A)(6) of *section 2950.03 of the Revised Code*, the judge shall perform the duties specified in that division.

HISTORY:

149 v H 490, §§ 1, 2, (eff. 1-1-04); 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 3, eff. 1-1-04; 152 v S 10, § 1, eff. 1-1-08.

LEXSTAT ORC 2950.01

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL AS-
 SSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
 *** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
 *** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

Go to the Ohio Code Archive Directory

ORC Ann. 2950.01 (2010)

§ 2950.01. Definitions

As used in this chapter, unless the context clearly requires otherwise:

(A) "Sexually oriented offense" means any of the following violations or offenses committed by a person, regardless of the person's age:

(1) A violation of *section 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.08, 2907.21, 2907.32, 2907.321 [2907.32.1], 2907.322 [2907.32.2], or 2907.323 [2907.32.3] of the Revised Code*;

(2) A violation of *section 2907.04 of the Revised Code* when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to a violation of *section 2907.02, 2907.03, or 2907.04 of the Revised Code* or a violation of former *section 2907.12 of the Revised Code*;

(3) A violation of *section 2907.04 of the Revised Code* when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to a violation of *section 2907.02, 2907.03, or 2907.04 of the Revised Code* or a violation of former *section 2907.12 of the Revised Code*;

(4) A violation of *section 2903.01, 2903.02, or 2903.11 of the Revised Code* when the violation was committed with a sexual motivation;

(5) A violation of division (A) of *section 2903.04 of the Revised Code* when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;

(6) A violation of division (A)(3) of *section 2903.211 [2903.21.1] of the Revised Code*;

(7) A violation of division (A)(1), (2), (3), or (5) of *section 2905.01 of the Revised Code* when the offense is committed with a sexual motivation;

(8) A violation of division (A)(4) of *section 2905.01 of the Revised Code*;

(9) A violation of division (B) of *section 2905.01 of the Revised Code* when the victim of the offense is under eighteen years of age and the offender is not a parent of the victim of the offense;

(10) A violation of division (B) of *section 2905.02*, of division (B) of *section 2905.03*, of division (B) of *section 2905.05*, or of division (B)(5) of *section 2919.22 of the Revised Code*;

(11) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), or (10) of this section;

(12) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11) of this section.

(B) (1) "Sex offender" means, subject to division (B)(2) of this section, a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing any sexually oriented offense.

(2) "Sex offender" does not include a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing a sexually oriented offense if the offense involves consensual sexual conduct or consensual sexual contact and either of the following applies:

(a) The victim of the sexually oriented offense was eighteen years of age or older and at the time of the sexually oriented offense was not under the custodial authority of the person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing the sexually oriented offense.

(b) The victim of the offense was thirteen years of age or older, and the person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing the sexually oriented offense is not more than four years older than the victim.

(C) "Child-victim oriented offense" means any of the following violations or offenses committed by a person, regardless of the person's age, when the victim is under eighteen years of age and is not a child of the person who commits the violation:

(1) A violation of division (A)(1), (2), (3), or (5) of *section 2905.01 of the Revised Code* when the violation is not included in division (A)(7) of this section;

(2) A violation of division (A) of *section 2905.02*, division (A) of *section 2905.03*, or division (A) of *section 2905.05 of the Revised Code*;

(3) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in division (C)(1) or (2) of this section;

(4) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (C)(1), (2), or (3) of this section.

(D) "Child-victim offender" means a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing any child-victim oriented offense.

(E) "Tier I sex offender/child-victim offender" means any of the following:

(1) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses:

(a) A violation of *section 2907.06, 2907.07, 2907.08, or 2907.32 of the Revised Code*;

(b) A violation of *section 2907.04 of the Revised Code* when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to a violation of *section 2907.02, 2907.03, or 2907.04 of the Revised Code* or a violation of former *section 2907.12 of the Revised Code*;

(c) A violation of division (A)(1), (2), (3), or (5) of *section 2907.05 of the Revised Code*;

(d) A violation of division (A)(3) of *section 2907.323 [2907.32.3] of the Revised Code*;

(e) A violation of division (A)(3) of *section 2903.211 [2903.21.1]*, of division (B) of *section 2905.03*, or of division (B) of *section 2905.05 of the Revised Code*;

(f) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in division (E)(1)(a), (b), (c), (d), or (e) of this section;

(g) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (E)(1)(a), (b), (c), (d), (e), or (f) of this section.

(2) A child-victim offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a child-victim oriented offense and who is not within either category of child-victim offender described in division (F)(2) or (G)(2) of this section.

(3) A sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court, pur-

suant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code*, classifies a tier I sex offender/child-victim offender relative to the offense.

(4) A child-victim offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any child-victim oriented offense and who a juvenile court, pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code*, classifies a tier I sex offender/child-victim offender relative to the offense.

(F) "Tier II sex offender/child-victim offender" means any of the following:

(1) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses:

(a) A violation of *section 2907.21, 2907.321 [2907.32.1], or 2907.322 [2907.32.2] of the Revised Code*;

(b) A violation of *section 2907.04 of the Revised Code* when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct, or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to a violation of *section 2907.02, 2907.03, or 2907.04 of the Revised Code* or former *section 2907.12 of the Revised Code*;

(c) A violation of division (A)(4) of *section 2907.05* or of division (A)(1) or (2) of *section 2907.323 [2907.32.3] of the Revised Code*;

(d) A violation of division (A)(1), (2), (3), or (5) of *section 2905.01 of the Revised Code* when the offense is committed with a sexual motivation;

(e) A violation of division (A)(4) of *section 2905.01 of the Revised Code* when the victim of the offense is eighteen years of age or older;

(f) A violation of division (B) of *section 2905.02* or of division (B)(5) of *section 2919.22 of the Revised Code*;

(g) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in division (F)(1)(a), (b), (c), (d), (e), or (f) of this section;

(h) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (F)(1)(a), (b), (c), (d), (e), (f), or (g) of this section;

(i) Any sexually oriented offense that is committed after the sex offender previously has been convicted of, pleaded guilty to, or has been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier I sex offender/child-victim offender.

(2) A child-victim offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any child-victim oriented offense when the child-victim oriented offense is committed after the child-victim offender previously has been convicted of, pleaded guilty to, or

been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier I sex offender/child-victim offender.

(3) A sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court, pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code*, classifies a tier II sex offender/child-victim offender relative to the offense.

(4) A child-victim offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any child-victim oriented offense and whom a juvenile court, pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code*, classifies a tier II sex offender/child-victim offender relative to the current offense.

(5) A sex offender or child-victim offender who is not in any category of tier II sex offender/child-victim offender set forth in division (F)(1), (2), (3), or (4) of this section, who prior to January 1, 2008, was adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense, and who prior to that date was determined to be a habitual sex offender or determined to be a habitual child-victim offender, unless either of the following applies:

(a) The sex offender or child-victim offender is reclassified pursuant to *section 2950.031 [2950.03.1] or 2950.032 [2950.03.2] of the Revised Code* as a tier I sex offender/child-victim offender or a tier III sex offender/child-victim offender relative to the offense.

(b) A juvenile court, pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code*, classifies the child a tier I sex offender/child-victim offender or a tier III sex offender/child-victim offender relative to the offense.

(G) "Tier III sex offender/child-victim offender" means any of the following:

(1) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses:

(a) A violation of *section 2907.02 or 2907.03 of the Revised Code*;

(b) A violation of division (B) of *section 2907.05 of the Revised Code*;

(c) A violation of *section 2903.01, 2903.02, or 2903.11 of the Revised Code* when the violation was committed with a sexual motivation;

(d) A violation of division (A) of *section 2903.04 of the Revised Code* when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;

(e) A violation of division (A)(4) of *section 2905.01 of the Revised Code* when the victim of the offense is under eighteen years of age;

(f) A violation of division (B) of *section 2905.01 of the Revised Code* when the victim of the offense is under eighteen years of age and the offender is not a parent of the victim of the offense;

(g) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States

that is or was substantially equivalent to any offense listed in division (G)(1)(a), (b), (c), (d), (e), or (f) of this section;

(h) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (G)(1)(a), (b), (c), (d), (e), (f), or (g) of this section;

(i) Any sexually oriented offense that is committed after the sex offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier II sex offender/child-victim offender or a tier III sex offender/child-victim offender.

(2) A child-victim offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any child-victim oriented offense when the child-victim oriented offense is committed after the child-victim offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier II sex offender/child-victim offender or a tier III sex offender/child-victim offender.

(3) A sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court, pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code*, classifies a tier III sex offender/child-victim offender relative to the offense.

(4) A child-victim offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any child-victim oriented offense and whom a juvenile court, pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code*, classifies a tier III sex offender/child-victim offender relative to the current offense.

(5) A sex offender or child-victim offender who is not in any category of tier III sex offender/child-victim offender set forth in division (G)(1), (2), (3), or (4) of this section, who prior to January 1, 2008, was convicted of or pleaded guilty to a sexually oriented offense or child-victim oriented offense or was adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense and classified a juvenile offender registrant, and who prior to that date was adjudicated a sexual predator or adjudicated a child-victim predator, unless either of the following applies:

(a) The sex offender or child-victim offender is reclassified pursuant to *section 2950.031 [2950.03.1] or 2950.032 [2950.03.2] of the Revised Code* as a tier I sex offender/child-victim offender or a tier II sex offender/child-victim offender relative to the offense.

(b) The sex offender or child-victim offender is a delinquent child, and a juvenile court, pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code*, classifies the child a tier I sex offender/child-victim offender or a tier II sex offender/child-victim offender relative to the offense.

(6) A sex offender who is convicted of, pleads guilty to, was convicted of, or pleaded guilty to a sexually oriented offense, if the sexually oriented offense and the circumstances in which it was committed are such that division (F) of *section 2971.03 of the Revised Code* automatically classifies the offender as a tier III sex offender/child-victim offender;

(7) A sex offender or child-victim offender who is convicted of, pleads guilty to, was convicted of, pleaded guilty to, is adjudicated a delinquent child for committing, or was adjudicated a

delinquent child for committing a sexually oriented offense or child-victim offense in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States if both of the following apply:

(a) Under the law of the jurisdiction in which the offender was convicted or pleaded guilty or the delinquent child was adjudicated, the offender or delinquent child is in a category substantially equivalent to a category of tier III sex offender/child-victim offender described in division (G)(1), (2), (3), (4), (5), or (6) of this section.

(b) Subsequent to the conviction, plea of guilty, or adjudication in the other jurisdiction, the offender or delinquent child resides, has temporary domicile, attends school or an institution of higher education, is employed, or intends to reside in this state in any manner and for any period of time that subjects the offender or delinquent child to a duty to register or provide notice of intent to reside under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code*.

(H) "Confinement" includes, but is not limited to, a community residential sanction imposed pursuant to *section 2929.16 or 2929.26 of the Revised Code*.

(I) "Prosecutor" has the same meaning as in *section 2935.01 of the Revised Code*.

(J) "Supervised release" means a release of an offender from a prison term, a term of imprisonment, or another type of confinement that satisfies either of the following conditions:

(1) The release is on parole, a conditional pardon, under a community control sanction, under transitional control, or under a post-release control sanction, and it requires the person to report to or be supervised by a parole officer, probation officer, field officer, or another type of supervising officer.

(2) The release is any type of release that is not described in division (J)(1) of this section and that requires the person to report to or be supervised by a probation officer, a parole officer, a field officer, or another type of supervising officer.

(K) "Sexually violent predator specification," "sexually violent predator," "sexually violent offense," "sexual motivation specification," "designated homicide, assault, or kidnapping offense," and "violent sex offense" have the same meanings as in *section 2971.01 of the Revised Code*.

(L) "Post-release control sanction" and "transitional control" have the same meanings as in *section 2967.01 of the Revised Code*.

(M) "Juvenile offender registrant" means a person who is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense or a child-victim oriented offense, who is fourteen years of age or older at the time of committing the offense, and who a juvenile court judge, pursuant to an order issued under *section 2152.82, 2152.83, 2152.84, 2152.85, or 2152.86 of the Revised Code*, classifies a juvenile offender registrant and specifies has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*. "Juvenile offender registrant" includes a person who prior to January 1, 2008, was a "juvenile offender registrant" under the definition of the term in existence prior to January 1, 2008, and a person who prior to July 31, 2003, was a "juvenile sex offender registrant" under the former definition of that former term.

(N) "Public registry-qualified juvenile offender registrant" means a person who is adjudicated a delinquent child and on whom a juvenile court has imposed a serious youthful offender disposi-

tional sentence under *section 2152.13 of the Revised Code* before, on, or after January 1, 2008, and to whom all of the following apply:

(1) The person is adjudicated a delinquent child for committing, attempting to commit, conspiring to commit, or complicity in committing one of the following acts:

(a) A violation of *section 2907.02 of the Revised Code*, division (B) of *section 2907.05 of the Revised Code*, or *section 2907.03 of the Revised Code* if the victim of the violation was less than twelve years of age;

(b) A violation of *section 2903.01, 2903.02, or 2905.01 of the Revised Code* that was committed with a purpose to gratify the sexual needs or desires of the child.

(2) The person was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the act.

(3) A juvenile court judge, pursuant to an order issued under *section 2152.86 of the Revised Code*, classifies the person a juvenile offender registrant, specifies the person has a duty to comply with *sections 2950.04, 2950.05, and 2950.06 of the Revised Code*, and classifies the person a public registry-qualified juvenile offender registrant, and the classification of the person as a public registry-qualified juvenile offender registrant has not been terminated pursuant to division (D) of *section 2152.86 of the Revised Code*.

(O) "Secure facility" means any facility that is designed and operated to ensure that all of its entrances and exits are locked and under the exclusive control of its staff and to ensure that, because of that exclusive control, no person who is institutionalized or confined in the facility may leave the facility without permission or supervision.

(P) "Out-of-state juvenile offender registrant" means a person who is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a sexually oriented offense or a child-victim oriented offense, who on or after January 1, 2002, moves to and resides in this state or temporarily is domiciled in this state for more than five days, and who has a duty under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* to register in this state and the duty to otherwise comply with that applicable section and *sections 2950.05 and 2950.06 of the Revised Code*. "Out-of-state juvenile offender registrant" includes a person who prior to January 1, 2008, was an "out-of-state juvenile offender registrant" under the definition of the term in existence prior to January 1, 2008, and a person who prior to July 31, 2003, was an "out-of-state juvenile sex offender registrant" under the former definition of that former term.

(Q) "Juvenile court judge" includes a magistrate to whom the juvenile court judge confers duties pursuant to division (A)(15) of *section 2151.23 of the Revised Code*.

(R) "Adjudicated a delinquent child for committing a sexually oriented offense" includes a child who receives a serious youthful offender dispositional sentence under *section 2152.13 of the Revised Code* for committing a sexually oriented offense.

(S) "School" and "school premises" have the same meanings as in *section 2925.01 of the Revised Code*.

(T) "Residential premises" means the building in which a residential unit is located and the grounds upon which that building stands, extending to the perimeter of the property. "Residential

premises" includes any type of structure in which a residential unit is located, including, but not limited to, multi-unit buildings and mobile and manufactured homes.

(U) "Residential unit" means a dwelling unit for residential use and occupancy, and includes the structure or part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or two or more persons who maintain a common household. "Residential unit" does not include a halfway house or a community-based correctional facility.

(V) "Multi-unit building" means a building in which is located more than twelve residential units that have entry doors that open directly into the unit from a hallway that is shared with one or more other units. A residential unit is not considered located in a multi-unit building if the unit does not have an entry door that opens directly into the unit from a hallway that is shared with one or more other units or if the unit is in a building that is not a multi-unit building as described in this division.

(W) "Community control sanction" has the same meaning as in *section 2929.01 of the Revised Code*.

(X) "Halfway house" and "community-based correctional facility" have the same meanings as in *section 2929.01 of the Revised Code*.

HISTORY:

146 v H 180 (Eff 1-1-97); 147 v S 111 (Eff 3-17-98); 147 v H 565 (Eff 3-30-99); 148 v H 502 (Eff 3-15-2001); 149 v S 3 (Eff 1-1-2002); 149 v S 175 (Eff 5-7-2002); 149 v H 485 (Eff 6-13-2002); 149 v H 393. Eff 7-5-2002; 149 v H 490, § 1, eff. 1-1-04; 150 v S 5, § 1, eff. 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v S 57, § 1, eff. 1-1-04; 150 v H 473, § 1, eff. 4-29-05; 151 v S 260, § 1, eff. 1-2-07; 152 v S 10, § 1, eff. 1-1-08.

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*** ARCHIVE MATERIAL ***

*** CURRENT THROUGH LEGISLATION PASSED BY THE 126TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH MARCH 6, 2007 ***

*** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2007 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JANUARY 23, 2007 ***

TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2950. SEXUAL PREDATORS, HABITUAL SEX OFFENDERS, SEXUALLY ORIENTED OFFENDERS

ORC Ann. 2950.01 (2006)

§ 2950.01. Definitions

As used in this chapter, unless the context clearly requires otherwise:

(A) "Confinement" includes, but is not limited to, a community residential sanction imposed pursuant to *section 2929.16 or 2929.26 of the Revised Code*.

(B) "Habitual sex offender" means, except when a juvenile judge removes this classification pursuant to division (A)(2) of section 2152.84 or division (C)(2) of *section 2152.85 of the Revised Code*, a person to whom both of the following apply:

(1) The person is convicted of or pleads guilty to a sexually oriented offense that is not a registration-exempt sexually oriented offense, or the person is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense that is not a registration-exempt sexually oriented offense, was fourteen years of age or older at the time of committing the offense, and is classified a juvenile sex offender registrant based on that adjudication.

(2) One of the following applies to the person:

(a) Regarding a person who is an offender, the person previously was convicted of or pleaded guilty to one or more sexually oriented offenses or child-victim oriented offenses or previously was adjudicated a delinquent child for committing one or more sexually oriented offenses or child-victim oriented offenses and was classified a juvenile offender registrant or out-of-state juvenile offender registrant based on one or more of those adjudications, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense.

(b) Regarding a delinquent child, the person previously was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing one or more sexually oriented offenses or child-victim oriented offenses, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense.

(C) "Prosecutor" has the same meaning as in *section 2935.01 of the Revised Code*.

(D) "Sexually oriented offense" means any of the following:

(1) Any of the following violations or offenses committed by a person eighteen years of age or older:

(a) Regardless of the age of the victim of the offense, a violation of *section 2907.02, 2907.03, 2907.05, or 2907.07 of the Revised Code*;

(b) Any of the following offenses involving a minor, in the circumstances specified:

(i) A violation of division (A)(4) of *section 2905.01 or section 2907.04, 2907.06, or 2907.08 of the Revised Code*, when the victim of the offense is under eighteen years of age;

(ii) A violation of *section 2907.21 of the Revised Code* when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under eighteen years of age;

(iii) A violation of division (A)(1) or (3) of *section 2907.321 [2907.32.1] or 2907.322 [2907.32.2] of the Revised Code*;

(iv) A violation of division (A)(1) or (2) of *section 2907.323 [2907.32.3] of the Revised Code*;

(v) A violation of division (B)(5) of *section 2919.22 of the Revised Code* when the child who is involved in the offense is under eighteen years of age;

(vi) A violation of division (A)(1), (2), (3), or (5) of *section 2905.01, of section 2903.211 [2903.21.1], 2905.02, 2905.03, or 2905.05, or of former section 2905.04 of the Revised Code*, when the victim of the offense is under eighteen years of age and the offense is committed with a sexual motivation.

(c) Regardless of the age of the victim of the offense, a violation of *section 2903.01, 2903.02, 2903.11, or 2905.01 of the Revised Code*, or of division (A) of *section 2903.04 of the Revised Code*, that is committed with a sexual motivation;

(d) A violent sex offense, or a designated homicide, assault, or kidnapping offense if the offender also was convicted of or pleaded guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the designated homicide, assault, or kidnapping offense;

(e) A violation of *section 2907.06 or 2907.08 of the Revised Code* when the victim of the offense is eighteen years of age or older, or a violation of *section 2903.211 [2903.21.1] of the Revised Code* when the victim of the offense is eighteen years of age or older and the offense is committed with a sexual motivation;

(f) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in division (D)(1)(a), (b), (c), (d), or (e) of this section;

(g) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (D)(1)(a), (b), (c), (d), (e), or (f) of this section.

(2) An act committed by a person under eighteen years of age that is any of the following:

(a) Subject to division (D)(2)(i) of this section, regardless of the age of the victim of the violation, a violation of *section 2907.02, 2907.03, 2907.05, or 2907.07 of the Revised Code*;

(b) Subject to division (D)(2)(i) of this section, any of the following acts involving a minor in the circumstances specified:

(i) A violation of division (A)(4) of *section 2905.01 or section 2907.06 or 2907.08 of the Revised Code*, when the victim of the violation is under eighteen years of age;

(ii) A violation of *section 2907.21 of the Revised Code* when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under eighteen years of age;

(iii) A violation of division (B)(5) of *section 2919.22 of the Revised Code* when the child who is involved in the violation is under eighteen years of age;

(iv) A violation of division (A)(1), (2), (3), or (5) of *section 2905.01, section 2903.211 [2903.21.1], or former section 2905.04 of the Revised Code*, when the victim of the violation is under eighteen years of age and the offense is committed with a sexual motivation.

(c) Subject to division (D)(2)(i) of this section, any of the following:

(i) Any violent sex offense that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(ii) Any designated homicide, assault, or kidnapping offense if that offense, if committed by an adult, would be a felony of the first, second, third, or fourth degree and if the court determined that, if the child was an adult, the child would be guilty of a sexual motivation specification regarding that offense.

(d) Subject to division (D)(2)(i) of this section, a violation of *section 2903.01, 2903.02, 2903.11, 2905.01, or 2905.02 of the Revised Code*, a violation of division (A) of *section 2903.04 of the Revised Code*, or an attempt to violate any of those sections or that division that is committed with a sexual motivation;

(e) Subject to division (D)(2)(i) of this section, a violation of division (A)(1) or (3) of *section 2907.321 [2907.32.1]*, division (A)(1) or (3) of *section 2907.322 [2907.32.2]*, or division (A)(1) or (2) of *section 2907.323 [2907.32.3] of the Revised Code*, or an attempt to violate any of those divisions, if the person who violates or attempts to violate the division is four or more years older than the minor who is the victim of the violation;

(f) Subject to division (D)(2)(i) of this section, a violation of *section 2907.06* or *2907.08 of the Revised Code* when the victim of the violation is eighteen years of age or older, or a violation of *section 2903.211 [2903.21.1] of the Revised Code* when the victim of the violation is eighteen years of age or older and the offense is committed with a sexual motivation;

(g) Subject to division (D)(2)(i) of this section, any violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in division (D)(2)(a), (b), (c), (d), (e), or (f) of this section and that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(h) Subject to division (D)(2)(i) of this section, any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (D)(2)(a), (b), (c), (d), (e), (f), or (g) of this section;

(i) If the child's case has been transferred for criminal prosecution under *section 2152.12 of the Revised Code*, the act is any violation listed in division (D)(1)(a), (b), (c), (d), (e), (f), or (g) of this section or would be any offense listed in any of those divisions if committed by an adult.

(E) "Sexual predator" means a person to whom either of the following applies:

(1) The person has been convicted of or pleaded guilty to committing a sexually oriented offense that is not a registration-exempt sexually oriented offense and is likely to engage in the future in one or more sexually oriented offenses.

(2) The person has been adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, was fourteen years of age or older at the time of committing the offense, was classified a juvenile offender registrant based on that adjudication, and is likely to engage in the future in one or more sexually oriented offenses.

(F) "Supervised release" means a release of an offender from a prison term, a term of imprisonment, or another type of confinement that satisfies either of the following conditions:

(1) The release is on parole, a conditional pardon, under a community control sanction, under transitional control, or under a post-release control sanction, and it requires the person to report to or be supervised by a parole officer, probation officer, field officer, or another type of supervising officer.

(2) The release is any type of release that is not described in division (F)(1) of this section and that requires the person to report to or be supervised by a probation officer, a parole officer, a field officer, or another type of supervising officer.

(G) An offender or delinquent child is "adjudicated as being a sexual predator" or "adjudicated a sexual predator" if any of the following applies and if, regarding a delinquent child, that status has not been removed pursuant to *section 2152.84, 2152.85, or 2950.09 of the Revised Code*:

(1) The offender is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually oriented offense that is not a registration-exempt sexually oriented offense, and any of the following apply:

(a) The sexually oriented offense is a violent sex offense or a designated homicide, assault, or kidnapping offense, and the offender is adjudicated a sexually violent predator in relation to that offense.

(b) The sexually oriented offense is a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* committed on or after the effective date of this amendment, and either the offender is sentenced under *section 2971.03 of the Revised Code* or a sentence of life without parole is imposed under division (B) of *section 2907.02 of the Revised Code*.

(c) The sexually oriented offense is attempted rape committed on or after the effective date of this amendment, and the offender also was convicted of or pleaded guilty to a specification of the type described in *section 2941.1418 [2941.14.18]*, *2941.1419 [2941.14.19]*, or *2941.1420 [2941.14.20] of the Revised Code*.

(2) Regardless of when the sexually oriented offense was committed, on or after January 1, 1997, the offender is sentenced for a sexually oriented offense that is not a registration-exempt sexually oriented offense, and the sentencing judge determines pursuant to division (B) of *section 2950.09 of the Revised Code* that the offender is a sexual predator.

(3) The delinquent child is adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, was fourteen years of age or older at the time of committing the offense, and has been classified a juvenile offender registrant based on that adjudication, and the adjudicating judge or that judge's successor in office determines pursuant to division (B) of *section 2950.09* or pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code* that the delinquent child is a sexual predator.

(4) Prior to January 1, 1997, the offender was convicted of or pleaded guilty to, and was sentenced for, a sexually oriented offense that is not a registration-exempt sexually oriented offense, the offender is imprisoned in a state correctional institution on or after January 1, 1997, and the court determines pursuant to division (C) of *section 2950.09 of the Revised Code* that the offender is a sexual predator.

(5) Regardless of when the sexually oriented offense was committed, the offender or delinquent child is convicted of or pleads guilty to, has been convicted of or pleaded guilty to, or is adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States, as a result of that conviction, plea of guilty, or adjudication, the offender or delinquent child is required, under the law of the jurisdiction in which the offender was convicted or pleaded guilty or the delinquent child was adjudicated, to register as a sex offender until the offender's or delinquent child's death, and, on or after July 1, 1997, for offenders or January 1, 2002, for delinquent children, the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than five days or the offender is required under *section 2950.04 of the Revised Code* to register a school, institution of higher education, or place of employment address in this state, unless a court of common pleas or juvenile court determines that the offender or delinquent child is not a sexual predator pursuant to division (F) of *section 2950.09 of the Revised Code*.

(H) "Sexually violent predator specification," "sexually violent offense," "sexual motivation specification," "designated homicide, assault, or kidnapping offense," and "violent sex offense" have the same meanings as in *section 2971.01 of the Revised Code*.

(I) "Post-release control sanction" and "transitional control" have the same meanings as in *section 2967.01 of the Revised Code*.

(J) "Juvenile offender registrant" means a person who is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense, who is fourteen years of age or older at the time of committing the offense, and who a juvenile court judge, pursuant to an order issued under *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code*, classifies a juvenile offender registrant and specifies has a duty to comply with *sections 2950.04, 2950.05, and 2950.06 of the Revised Code* if the child committed a sexually oriented offense or with *sections 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* if the child committed a child-victim oriented offense. "Juvenile offender registrant" includes a person who, prior to July 31, 2003, was a "juvenile sex offender registrant" under the former definition of that former term.

(K) "Secure facility" means any facility that is designed and operated to ensure that all of its entrances and exits are locked and under the exclusive control of its staff and to ensure that, because of that exclusive control, no person who is institutionalized or confined in the facility may leave the facility without permission or supervision.

(L) "Out-of-state juvenile offender registrant" means a person who is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense, who on or after January 1, 2002, moves to and resides in this state or temporarily is domiciled in this state for more than five days, and who has a duty under *section 2950.04 of the Revised Code* to register in this state and the duty to otherwise comply with that section and *sections 2950.05 and 2950.06 of the Revised Code* if the child committed a sexually oriented offense or has a duty under *section 2950.041 [2950.04.1] of the Revised Code* to register in this state and the duty to otherwise comply with that section and *sections 2950.05 and 2950.06 of the Revised Code* if the child committed a child-victim oriented offense. "Out-of-state juvenile offender registrant" includes a person who, prior to July 31, 2003, was an "out-of-state juvenile sex offender registrant" under the former definition of that former term.

(M) "Juvenile court judge" includes a magistrate to whom the juvenile court judge confers duties pursuant to division (A)(15) of *section 2151.23 of the Revised Code*.

(N) "Adjudicated a delinquent child for committing a sexually oriented offense" includes a child who receives a serious youthful offender dispositional sentence under *section 2152.13 of the Revised Code* for committing a sexually oriented offense.

(O) "Aggravated sexually oriented offense" means a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* committed on or after June 13, 2002, or a violation of division (A)(2) of that section committed on or after July 31, 2003.

(P) (1) "Presumptive registration-exempt sexually oriented offense" means any of the following sexually oriented offenses described in division (P)(1)(a), (b), (c), (d), or (e) of this section, when the offense is committed by a person who previously has not been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing any sexually oriented offense described in division (P)(1)(a), (b), (c), (d), or (e) of this section, any other sexually oriented offense, or any

child-victim oriented offense and when the victim or intended victim of the offense is eighteen years of age or older:

(a) Any sexually oriented offense listed in division (D)(1)(e) or (D)(2)(f) of this section committed by a person who is eighteen years of age or older or, subject to division (P)(1)(e) of this section, committed by a person who is under eighteen years of age;

(b) Any violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is committed by a person who is eighteen years of age or older and that is or was substantially equivalent to any sexually oriented offense listed in division (P)(1)(a) of this section;

(c) Subject to division (P)(1)(e) of this section, any violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is committed by a person who is under eighteen years of age, that is or was substantially equivalent to any sexually oriented offense listed in division (P)(1)(a) of this section, and that would be a felony of the fourth degree if committed by an adult;

(d) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (P)(1)(a) or (b) of this section if the person is eighteen years of age or older or, subject to division (P)(1)(e) of this section, listed in division (P)(1)(a) or (c) of this section if the person is under eighteen years of age.

(e) Regarding an act committed by a person under eighteen years of age, if the child's case has been transferred for criminal prosecution under *section 2152.12 of the Revised Code*, the act is any sexually oriented offense listed in division (P)(1)(a), (b), or (d) of this section.

(2) "Presumptive registration-exempt sexually oriented offense" does not include any sexually oriented offense described in division (P)(1)(a), (b), (c), (d), or (e) of this section that is committed by a person who previously has been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing any sexually oriented offense described in division (P)(1)(a), (b), (c), (d), or (e) of this section or any other sexually oriented offense.

(Q) (1) "Registration-exempt sexually oriented offense" means any presumptive registration-exempt sexually oriented offense, if a court does not issue an order under *section 2950.021 [2950.02.1] of the Revised Code* that removes the presumptive exemption and subjects the offender who was convicted of or pleaded guilty to the offense to registration under *section 2950.04 of the Revised Code* and all other duties and responsibilities generally imposed under this chapter upon persons who are convicted of or plead guilty to any sexually oriented offense other than a presumptive registration-exempt sexually oriented offense or that removes the presumptive exemption and potentially subjects the child who was adjudicated a delinquent child for committing the offense to classification as a juvenile offender registrant under *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code* and to registration under *section 2950.04 of the Revised Code* and all other duties and responsibilities generally imposed under this chapter upon persons who are adjudicated delinquent children for committing a sexually oriented offense other than a presumptive registration-exempt sexually oriented offense.

(2) "Registration-exempt sexually oriented offense" does not include a presumptive registration-exempt sexually oriented offense if a court issues an order under *section 2950.021 [2950.02.1] of the Revised Code* that removes the presumptive exemption and subjects the offender or potentially subjects the delinquent child to the duties and responsibilities described in division (Q)(1) of this section.

(R) "School" and "school premises" have the same meanings as in *section 2925.01 of the Revised Code*.

(S) (1) "Child-victim oriented offense" means any of the following:

(a) Subject to division (S)(2) of this section, any of the following violations or offenses committed by a person eighteen years of age or older, when the victim of the violation is under eighteen years of age and is not a child of the person who commits the violation:

(i) A violation of division (A)(1), (2), (3), or (5) of section 2905.01, of section 2905.02, 2905.03, or 2905.05, or of former *section 2905.04 of the Revised Code*;

(ii) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in division (S)(1)(a)(i) of this section;

(iii) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (S)(1)(a)(i) or (ii) of this section.

(b) Subject to division (S)(2) of this section, an act committed by a person under eighteen years of age that is any of the following, when the victim of the violation is under eighteen years of age and is not a child of the person who commits the violation:

(i) Subject to division (S)(1)(b)(iv) of this section, a violation of division (A)(1), (2), (3), or (5) of section 2905.01 or of former *section 2905.04 of the Revised Code*;

(ii) Subject to division (S)(1)(b)(iv) of this section, any violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in division (S)(1)(b)(i) of this section and that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(iii) Subject to division (S)(1)(b)(iv) of this section, any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (S)(1)(b)(i) or (ii) of this section;

(iv) If the child's case has been transferred for criminal prosecution under *section 2152.12 of the Revised Code*, the act is any violation listed in division (S)(1)(a)(i), (ii), or (iii) of this section or would be any offense listed in any of those divisions if committed by an adult.

(2) "Child-victim oriented offense" does not include any offense identified in division (S)(1)(a) or (b) of this section that is a sexually violent offense. An offense identified in division (S)(1)(a) or (b) of this section that is a sexually violent offense is within the definition of a sexually oriented offense.

(T) (1) "Habitual child-victim offender" means, except when a juvenile judge removes this classification pursuant to division (A)(2) of section 2152.84 or division (C)(2) of *section 2152.85 of the Revised Code*, a person to whom both of the following apply:

(a) The person is convicted of or pleads guilty to a child-victim oriented offense, or the person is adjudicated a delinquent child for committing on or after January 1, 2002, a child-victim oriented offense, was fourteen years of age or older at the time of committing the offense, and is classified a juvenile offender registrant based on that adjudication.

(b) One of the following applies to the person:

(i) Regarding a person who is an offender, the person previously was convicted of or pleaded guilty to one or more child-victim oriented offenses or previously was adjudicated a delinquent child for committing one or more child-victim oriented offenses and was classified a juvenile offender registrant or out-of-state juvenile offender registrant based on one or more of those adjudications, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense.

(ii) Regarding a delinquent child, the person previously was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing one or more child-victim oriented offenses, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense.

(2) "Habitual child-victim offender" includes a person who has been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing, a child-victim oriented offense and who, on and after July 31, 2003, is automatically classified a habitual child-victim offender pursuant to division (E) of *section 2950.091 [2950.09.1] of the Revised Code*.

(U) "Child-victim predator" means a person to whom either of the following applies:

(1) The person has been convicted of or pleaded guilty to committing a child-victim oriented offense and is likely to engage in the future in one or more child-victim oriented offenses.

(2) The person has been adjudicated a delinquent child for committing a child-victim oriented offense, was fourteen years of age or older at the time of committing the offense, was classified a juvenile offender registrant based on that adjudication, and is likely to engage in the future in one or more child-victim oriented offenses.

(V) An offender or delinquent child is "adjudicated as being a child-victim predator" or "adjudicated a child-victim predator" if any of the following applies and if, regarding a delinquent child, that status has not been removed pursuant to *section 2152.84, 2152.85, or 2950.09 of the Revised Code*:

(1) The offender or delinquent child has been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing, a child-victim oriented offense and, on and after July 31, 2003, is automatically classified a child-victim predator pursuant to division (A) of *section 2950.091 [2950.09.1] of the Revised Code*.

(2) Regardless of when the child-victim oriented offense was committed, on or after July 31, 2003, the offender is sentenced for a child-victim oriented offense, and the sentencing judge determines pursuant to division (B) of *section 2950.091 [2950.09.1] of the Revised Code* that the offender is a child-victim predator.

(3) The delinquent child is adjudicated a delinquent child for committing a child-victim oriented offense, was fourteen years of age or older at the time of committing the offense, and has been classified a juvenile offender registrant based on that adjudication, and the adjudicating judge or that judge's successor in office determines pursuant to division (B) of section 2950.09 or pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code* that the delinquent child is a child-victim predator.

(4) Prior to July 31, 2003, the offender was convicted of or pleaded guilty to a child-victim oriented offense, at the time of the conviction or guilty plea, the offense was considered a sexually oriented offense, on or after July 31, 2003, the offender is serving a term of imprisonment in a state correctional institution, and the court determines pursuant to division (C) of *section 2950.091 [2950.09.1] of the Revised Code* that the offender is a child-victim predator.

(5) Regardless of when the child-victim oriented offense was committed, the offender or delinquent child is convicted, pleads guilty, has been convicted, pleaded guilty, or adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a child-victim oriented offense, as a result of that conviction, plea of guilty, or adjudication, the offender or delinquent child is required under the law of the jurisdiction in which the offender was convicted or pleaded guilty or the delinquent child was adjudicated, to register as a child-victim offender or sex offender until the offender's or delinquent child's death, and, on or after July 1, 1997, for offenders or January 1, 2002, for delinquent children the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than five days or the offender is required under *section 2950.041 [2950.04.1] of the Revised Code* to register a school, institution of higher education, or place of employment address in this state, unless a court of common pleas or juvenile court determines that the offender or delinquent child is not a child-victim predator pursuant to division (F) of *section 2950.091 [2950.09.1] of the Revised Code*.

(W) "Residential premises" means the building in which a residential unit is located and the grounds upon which that building stands, extending to the perimeter of the property. "Residential premises" includes any type of structure in which a residential unit is located, including, but not limited to, multi-unit buildings and mobile and manufactured homes.

(X) "Residential unit" means a dwelling unit for residential use and occupancy, and includes the structure or part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or two or more persons who maintain a common household. "Residential unit" does not include a halfway house or a community-based correctional facility.

(Y) "Multi-unit building" means a building in which is located more than twelve residential units that have entry doors that open directly into the unit from a hallway that is shared with one or more other units. A residential unit is not considered located in a multi-unit building if the unit does not have an entry door that opens directly into the unit from a hallway that is shared with one or more other units or if the unit is in a building that is not a multi-unit building as described in this division.

(Z) "Community control sanction" has the same meaning as in *section 2929.01 of the Revised Code*.

(AA) "Halfway house" and "community-based correctional facility" have the same meanings as in *section 2929.01 of the Revised Code*.

(BB) "Adjudicated a sexually violent predator" has the same meaning as in *section 2929.01 of the Revised Code*, and a person is "adjudicated a sexually violent predator" in the same manner and the same circumstances as are described in that section.

HISTORY:

146 v H 180 (Eff 1-1-97); 147 v S 111 (Eff 3-17-98); 147 v H 565 (Eff 3-30-99); 148 v H 502 (Eff 3-15-2001); 149 v S 3 (Eff 1-1-2002); 149 v S 175 (Eff 5-7-2002); 149 v H 485 (Eff 6-13-2002); 149 v H 393. Eff 7-5-2002; 149 v H 490, § 1, eff. 1-1-04; 150 v S 5, § 1, eff. 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v S 57, § 1, eff. 1-1-04; 150 v H 473, § 1, eff. 4-29-05; 151 v S 260, § 1, eff. 1-2-07.

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*** ARCHIVE MATERIAL ***

*** CURRENT THROUGH LEGISLATION PASSED BY THE 126TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH MARCH 6, 2007 ***
*** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2007 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JANUARY 23, 2007 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEXUAL PREDATORS, HABITUAL SEX OFFENDERS, SEXUALLY ORIENTED OFFENDERS

ORC Ann. 2950.02 (2006)

§ 2950.02. Legislative determinations and intent to provide information to protect public safety

(A) The general assembly hereby determines and declares that it recognizes and finds all of the following:

(1) If the public is provided adequate notice and information about offenders and delinquent children who commit sexually oriented offenses that are not registration-exempt sexually oriented offenses or who commit child-victim oriented offenses, members of the public and communities can develop constructive plans to prepare themselves and their children for the offender's or delinquent child's release from imprisonment, a prison term, or other confinement or detention. This allows members of the public and communities to meet with members of law enforcement agencies to prepare and obtain information about the rights and responsibilities of the public and the communities and to provide education and counseling to their children.

(2) Sex offenders and offenders who commit child-victim oriented offenses pose a risk of engaging in further sexually abusive behavior even after being released from imprisonment, a prison term, or other confinement or detention, and protection of members of the public from sex offenders and offenders who commit child-victim oriented offenses is a paramount governmental interest.

(3) The penal, juvenile, and mental health components of the justice system of this state are largely hidden from public view, and a lack of information from any component may result in the failure of the system to satisfy this paramount governmental interest of public safety described in division (A)(2) of this section.

(4) Overly restrictive confidentiality and liability laws governing the release of information about sex offenders and offenders who commit child-victim oriented offenses have reduced the

willingness to release information that could be appropriately released under the public disclosure laws and have increased risks of public safety.

(5) A person who is found to be a sex offender or to have committed a child-victim oriented offense has a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government.

(6) The release of information about sex offenders and offenders who commit child-victim oriented offenses to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal, juvenile, and mental health systems as long as the information released is rationally related to the furtherance of those goals.

(B) The general assembly hereby declares that, in providing in this chapter for registration regarding offenders and certain delinquent children who have committed sexually oriented offenses that are not registration-exempt sexually oriented offenses or who have committed child-victim oriented offenses and for community notification regarding sexual predators, child-victim predators, habitual sex offenders, and habitual child-victim offenders who are about to be or have been released from imprisonment, a prison term, or other confinement or detention and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood, it is the general assembly's intent to protect the safety and general welfare of the people of this state. The general assembly further declares that it is the policy of this state to require the exchange in accordance with this chapter of relevant information about sex offenders and offenders who commit child-victim oriented offenses among public agencies and officials and to authorize the release in accordance with this chapter of necessary and relevant information about sex offenders and offenders who commit child-victim oriented offenses to members of the general public as a means of assuring public protection and that the exchange or release of that information is not punitive.

HISTORY:

146 v H 180 (Eff 7-1-97); 149 v S 3. Eff 1-1-2002; 150 v S 5, § 1, eff. 7-31-03.

LEXSTAT ORC ANN. 2950.03

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 54 ***

*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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ORC Ann. 2950.03 (2010)

§ 2950.03. Notice to offender or delinquent child of duty to register and update address

(A) Each person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense or a child-victim oriented offense and who has a duty to register pursuant to *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* and each person who is adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and who is classified a juvenile offender registrant based on that adjudication shall be provided notice in accordance with this section of the offender's or delinquent child's duties imposed under *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* and of the offender's duties to similarly register, provide notice of a change, and verify addresses in another state if the offender resides, is temporarily domiciled, attends a school or institution of higher education, or is employed in a state other than this state. The following official shall provide the notice required under this division to the specified person at the following time:

(1) Regardless of when the person committed the sexually oriented offense or child-victim oriented offense, if the person is an offender who is sentenced to a prison term, a term of imprisonment, or any other type of confinement for any offense, and if on or after January 1, 2008, the offender is serving that term or is under that confinement, subject to division (A)(5) of this section, the official in charge of the jail, workhouse, state correctional institution, or other institution in which the offender serves the prison term, term of imprisonment, or confinement, or a designee of that official, shall provide the notice to the offender before the offender is released pursuant to any type of supervised release or before the offender otherwise is released from the prison term, term of imprisonment, or confinement.

(2) Regardless of when the person committed the sexually oriented offense or child-victim oriented offense, if the person is an offender who is sentenced on or after January 1, 2008 for any offense, and if division (A)(1) of this section does not apply, the judge shall provide the notice to the offender at the time of sentencing.

(3) If the person is a delinquent child who is classified a juvenile offender registrant on or after January 1, 2008, the judge shall provide the notice to the delinquent child at the time specified in division (B) of section 2152.82, division (C) of section 2152.83, division (C) of section 2152.84, or division (E) of *section 2152.85 of the Revised Code*, whichever is applicable.

(4) If the person is a delinquent child who is classified as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant on or after January 1, 2008, the judge shall provide the notice to the delinquent child at the time specified in division (B) of *section 2152.86 of the Revised Code*.

(5) If the person is an offender or delinquent child in any of the following categories, the attorney general, department of rehabilitation and correction, or department of youth services shall provide the notice to the offender or delinquent child at the time and in the manner specified in section 2950.031 [2950.03.1] or division (A) or (B) of *section 2950.032 [2950.03.2] of the Revised Code*, whichever is applicable:

(a) An offender or delinquent child who prior to December 1, 2007, has registered a residence, school, institution of higher education, or place of employment address pursuant to *section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code*;

(b) An offender or delinquent child who registers with a sheriff pursuant to *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* on or after December 1, 2007, previously had not registered under either section with that sheriff or any other sheriff, and was convicted of, pleaded guilty to, or was classified a juvenile offender registrant relative to the sexually oriented offense or child-victim oriented offense upon which the registration was based prior to December 1, 2007;

(c) An offender who on December 1, 2007, is serving a prison term in a state correctional institution for a sexually oriented offense or child-victim oriented offense or each delinquent child who has been classified a juvenile offender registrant relative to a sexually oriented offense or child-victim oriented offense and who on that date is confined in an institution of the department of youth services for the sexually oriented offense or child-victim oriented offense;

(d) An offender or delinquent child who on or after December 2, 2007, commences a prison term in a state correctional institution or confinement in an institution of the department of youth services for a sexually oriented offense or child-victim oriented offense and who was convicted of, pleaded guilty to, or was classified a juvenile offender registrant relative to the sexually oriented offense or child-victim oriented offense prior to that date.

(6) If the person is an offender or delinquent child who on or after July 1, 2007, and prior to January 1, 2008, is convicted of or pleads guilty to a sexually oriented offense or a child-victim oriented offense and is not sentenced to a prison term for that offense or is classified a juvenile offender registrant relative to a sexually oriented offense or child-victim oriented offense and is not committed to the custody of the department of youth services for that offense, the sentencing court or juvenile court shall provide the notice to the offender or delinquent child at the time and in the manner specified in division (C) of *section 2950.032 [2950.03.2] of the Revised Code*.

(7) If the person is an offender or delinquent child who has a duty to register in this state pursuant to division (A)(4) of *section 2950.04* or *2950.041 [2950.04.1] of the Revised Code*, the offender or delinquent child is presumed to have knowledge of the law and of the offender's or delinquent child's duties imposed under *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*.

(B) (1) The notice provided under division (A) of this section shall inform the offender or delinquent child of the offender's or delinquent child's duty to register, to provide notice of a change in the offender's or delinquent child's residence address or in the offender's school, institution of higher education, or place of employment address, as applicable, and register the new address, to periodically verify the offender's or delinquent child's residence address or the offender's school, institution of higher education, or place of employment address, as applicable, and, if applicable, to provide notice of the offender's or delinquent child's intent to reside, pursuant to *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*. The notice shall specify that, for an offender, it applies regarding residence addresses or school, institution of higher education, and place of employment addresses and that, for a delinquent child, it applies regarding residence addresses. Additionally, it shall inform the offender of the offender's duties to similarly register, provide notice of a change in, and verify those addresses in states other than this state as described in division (A) of this section. A notice provided under division (A)(1), (2), (3), or (4) of this section shall comport with the following:

(a) If the notice is provided to an offender under division (A)(1) or (2) of this section, the official, official's designee, or judge shall require the offender to read and sign a form stating that the offender's duties to register, to file a notice of intent to reside, if applicable, to register a new residence address or new school, institution of higher education, or place of employment address, and to periodically verify those addresses, and the offender's duties in other states as described in division (A) of this section have been explained to the offender. If the offender is unable to read, the official, official's designee, or judge shall certify on the form that the official, designee, or judge specifically informed the offender of those duties and that the offender indicated an understanding of those duties.

(b) If the notice is provided to a delinquent child under division (A)(3) or (4) of this section, the judge shall require the delinquent child and the delinquent child's parent, guardian, or custodian to read and sign a form stating that the delinquent child's duties to register, to file a notice of intent to reside, if applicable, to register a new residence address, and to periodically verify that address have been explained to the delinquent child and to the delinquent child's parent, guardian, or custodian. If the delinquent child or the delinquent child's parent, guardian, or custodian is unable to read, the judge shall certify on the form that the judge specifically informed the delinquent child or the delinquent child's parent, guardian, or custodian of those duties and that the delinquent child or the delinquent child's parent, guardian, or custodian indicated an understanding of those duties.

(2) The notice provided under divisions (A)(1) to (4) of this section shall be on a form prescribed by the bureau of criminal identification and investigation and shall contain all of the information specified in division (A) of this section and all of the information required by the bureau. The notice provided under divisions (A)(1) to (4) of this section shall include, but is not limited to, all of the following:

(a) For any notice provided under divisions (A)(1) to (4) of this section, an explanation of the offender's periodic residence address or periodic school, institution of higher education, or place

of employment address verification process or of the delinquent child's periodic residence address verification process, an explanation of the frequency with which the offender or delinquent child will be required to verify those addresses under that process, a statement that the offender or delinquent child must verify those addresses at the times specified under that process or face criminal prosecution or a delinquent child proceeding, and an explanation of the offender's duty to similarly register, verify, and reregister those addresses in another state if the offender resides in another state, attends a school or institution of higher education in another state, or is employed in another state.

(b) If the notice is provided under division (A)(3) or (4) of this section, a statement that the delinquent child has been classified by the adjudicating juvenile court judge or the judge's successor in office a juvenile offender registrant and, if applicable, a public-registry qualified juvenile offender registrant and has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*;

(c) If the notice is provided under division (A)(3) or (4) of this section, a statement that, if the delinquent child fails to comply with the requirements of *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*, both of the following apply:

(i) If the delinquent child's failure occurs while the child is under eighteen years of age, the child is subject to proceedings under Chapter 2152. of the Revised Code based on the failure, but if the failure occurs while the child is eighteen years of age or older, the child is subject to criminal prosecution based on the failure.

(ii) If the delinquent child's failure occurs while the child is under eighteen years of age, unless the child is emancipated, as defined in *section 2919.121 [2919.12.1] of the Revised Code*, the failure of the parent, guardian, or custodian to ensure that the child complies with those requirements is a violation of *section 2919.24 of the Revised Code* and may result in the prosecution of the parent, guardian, or custodian for that violation.

(3) (a) After an offender described in division (A)(1) or (2) of this section has signed the form described in divisions (B)(1) and (2) of this section or the official, official's designee, or judge has certified on the form that the form has been explained to the offender and that the offender indicated an understanding of the duties indicated on it, the official, official's designee, or judge shall give one copy of the form to the offender, within three days shall send one copy of the form to the bureau of criminal identification and investigation in accordance with the procedures adopted pursuant to *section 2950.13 of the Revised Code*, shall send one copy of the form to the sheriff of the county in which the offender expects to reside, and shall send one copy of the form to the sheriff of the county in which the offender was convicted or pleaded guilty if the offender has a duty to register pursuant to division (A)(1) of *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code*.

(b) After a delinquent child described in division (A)(3) or (4) of this section and the delinquent child's parent, guardian, or custodian have signed the form described in divisions (B)(1) and (2) of this section or the judge has certified on the form that the form has been explained to the delinquent child or the delinquent child's parent, guardian, or custodian and that the delinquent child or the delinquent child's parent, guardian, or custodian indicated an understanding of the duties and information indicated on the form, the judge shall give a copy of the form to both the delinquent child and to the delinquent child's parent, guardian, or custodian, within three days shall send one copy of the form to the bureau of criminal identification and investigation in accordance with the

procedures adopted pursuant to *section 2950.13 of the Revised Code*, shall send one copy of the form to the sheriff of the county in which the delinquent child expects to reside, and shall send one copy of the form to the sheriff of the county in which the child was adjudicated a delinquent child if the delinquent child has a duty to register pursuant to division (A)(1) of *section 2950.04* or *2950.041 [2950.04.1] of the Revised Code*.

(C) The official, official's designee, judge, chief of police, or sheriff who is required to provide notice to an offender or delinquent child under divisions (A)(1) to (4) of this section shall determine the offender's or delinquent child's name, identifying factors, and expected future residence address in this state or any other state, shall obtain the offender's or delinquent child's criminal and delinquency history, and shall obtain a photograph and the fingerprints of the offender or delinquent child. Regarding an offender, the official, designee, or judge also shall obtain from the offender the offender's current or expected future school, institution of higher education, or place of employment address in this state, if any. If the notice is provided by a judge under division (A)(2), (3), or (4) of this section, the sheriff shall provide the offender's or delinquent child's criminal and delinquency history to the judge. The official, official's designee, or judge shall obtain this information and these items prior to giving the notice, except that a judge may give the notice prior to obtaining the offender's or delinquent child's criminal and delinquency history. Within three days after receiving this information and these items, the official, official's designee, or judge shall forward the information and items to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to *section 2950.13 of the Revised Code*, to the sheriff of the county in which the offender or delinquent child expects to reside and to the sheriff of the county in which the offender or delinquent child was convicted, pleaded guilty, or adjudicated a delinquent child if the offender or delinquent child has a duty to register pursuant to division (A)(1) of *section 2950.04* or *2950.041 [2950.04.1] of the Revised Code*, and, regarding an offender, to the sheriff of the county, if any, in which the offender attends or will attend a school or institution of higher education or is or will be employed. If the notice is provided under division (A)(3) or (4) of this section and if the delinquent child has been committed to the department of youth services or to a secure facility, the judge, in addition to the other information and items described in this division, also shall forward to the bureau and to the sheriff notification that the child has been so committed. If it has not already done so, the bureau of criminal identification and investigation shall forward a copy of the fingerprints and conviction data received under this division to the federal bureau of investigation.

HISTORY:

146 v H 180 (Eff 1-1-97); 147 v H 93 (Eff 12-31-97); 148 v H 502 (Eff 3-15-2001); 149 v S 3 (Eff 1-1-2002); 149 v H 485. Eff 6-13-2002; 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 152 v S 10, § 1, eff. 1-1-08.

LEXSTAT ORC ANN. 2950.031

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL AS-
SEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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ORC Ann. 2950.031 (2010)

§ 2950.031. Attorney general to determine application of new SORN Law to each offender or delinquent child; registered letter to be sent; right to court hearing to contest application

(A) (1) At any time on or after July 1, 2007, and not later than December 1, 2007, the attorney general shall determine for each offender or delinquent child who prior to December 1, 2007, has registered a residence, school, institution of higher education, or place of employment address pursuant to *section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code* the offender's or delinquent child's new classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed, and, regarding a delinquent child, whether the child is a public registry-qualified juvenile offender registrant.

(2) At any time on or after July 1, 2007, and not later than December 1, 2007, the attorney general shall send to each offender or delinquent child who prior to December 1, 2007, has registered a residence, school, institution of higher education, or place of employment address pursuant to *section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code* a registered letter that contains the information described in this division. The registered letter shall be sent return receipt requested to the last reported address of the person and, if the person is a delinquent child, the last reported address of the parents of the delinquent child. The letter sent to an offender or to a delinquent child and the delinquent child's parents pursuant to this division shall notify the offender or the delinquent child and the delinquent child's parents of all of the following:

(a) The changes in Chapter 2950. of the Revised Code that will be implemented on January 1, 2008;

(b) Subject to division (A)(2)(c) of this section, the offender's or delinquent child's new classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed and the duration of those duties, whether the delinquent child is classified a public registry-qualified juvenile offender registrant, and the information specified in division (B) of *section 2950.03 of the Revised Code* to the extent it is relevant to the offender or delinquent child;

(c) The fact that the offender or delinquent child has a right to a hearing as described in division (E) of this section, the procedures for requesting the hearing, and the period of time within which the request for the hearing must be made.

(d) If the offender's or delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to January 1, 2008, a summary of the provisions of *section 2950.033 [2950.03.3] of the Revised Code* and the application of those provisions to the offender or delinquent child, provided that this division applies to a delinquent child only if the child is in a category specified in division (C) of *section 2950.033 [2950.03.3] of the Revised Code*.

(3) The attorney general shall make the determinations described in division (A)(1) of this section for each offender or delinquent child who has registered an address as described in that division, even if the offender's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date or the delinquent child is in a category specified in division (C) of *section 2950.033 [2950.03.3] of the Revised Code* and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date. The attorney general shall send the registered letter described in division (A)(2) of this section to each offender or delinquent child who has registered an address as described in that division even if the offender's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of *section 2950.033 [2950.03.3] of the Revised Code*, and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date. *Section 2950.033 [2950.03.3] of the Revised Code* applies to any offender who has registered an address as described in division (A)(1) or (2) of this section and whose duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of *section 2950.033 [2950.03.3] of the Revised Code*, and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date.

(B) If a sheriff informs the attorney general pursuant to *section 2950.043 [2950.04.3] of the Revised Code* that an offender or delinquent child registered with the sheriff pursuant to *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* on or after December 1, 2007, that the offender or delinquent child previously had not registered under either section with that sheriff or any other sheriff, and that the offender or delinquent child was convicted of, pleaded guilty to, or was classified a juvenile offender registrant relative to the sexually oriented offense or child-victim oriented offense upon which the registration was based prior to December 1, 2007, within fourteen days after being so informed of the registration and receiving the information and material specified in division (D) of that section, the attorney general shall determine for the offender or delinquent child all of the matters specified in division (A)(1) of this section. Upon making the determinations, the attorney general immediately shall send to the offender or to the delinquent child and the delinquent child's parents a registered letter pursuant to division (A)(2) of this section that contains the information specified in that division.

(C) The attorney general shall maintain the return receipts for all offenders, delinquent children, and parents of delinquent children who are sent a registered letter under division (A) or (B) of this section. For each offender, delinquent child, and parents of a delinquent child, the attorney general shall send a copy of the return receipt for the offender, delinquent child, or parents to the sheriff with whom the offender or delinquent child most recently registered a residence address and, if applicable, a school, institution of higher education, or place of employment address and to the prosecutor who handled the case in which the offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the sexually oriented offense or child-victim oriented offense that resulted in the offender's or child's registration duty under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code*. If a return receipt indicates that the offender, delinquent child, or parents of a delinquent child to whom the registered letter was sent does not reside or have temporary domicile at the listed address, the attorney general immediately shall provide notice of that fact to the sheriff with whom the offender or delinquent child registered that residence address.

(D) The attorney general shall mail to each sheriff a list of all offenders and delinquent children who have registered a residence address or a school, institution of higher education, or place of employment address with that sheriff and to whom a registered letter is sent under division (A) or (B) of this section. The list shall specify the offender's or delinquent child's new classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed, and, regarding a delinquent child, whether the child is a public registry-qualified juvenile offender registrant.

(E) An offender or delinquent child who is in a category described in division (A)(2) or (B) of this section may request as a matter of right a court hearing to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. The offender or delinquent child may contest the manner in which the letter sent to the offender or delinquent child pursuant to division (A) or (B) of this section specifies that the new registration requirements apply to the offender or delinquent child or may contest whether those new registration requirements apply at all to the offender or delinquent child. To request the hearing, the offender or delinquent child not later than the date that is sixty days after the offender or delinquent child received the registered

letter sent by the attorney general pursuant to division (A)(2) of this section shall file a petition with the court specified in this division. If the offender or delinquent child resides in or is temporarily domiciled in this state and requests a hearing, the offender or delinquent child shall file the petition with, and the hearing shall be held in, the court of common pleas or, for a delinquent child, the juvenile court of the county in which the offender or delinquent child resides or temporarily is domiciled. If the offender does not reside in and is not temporarily domiciled in this state, the offender or delinquent child shall file the petition with, and the hearing shall be held in, the court of common pleas of the county in which the offender registered a school, institution of higher education, or place of employment address, but if the offender has registered addresses of that nature in more than one county, the offender may file such a petition in the court of only one of those counties.

If the offender or delinquent child requests a hearing by timely filing a petition with the appropriate court, the offender or delinquent child shall serve a copy of the petition on the prosecutor of the county in which the petition is filed. The prosecutor shall represent the interests of the state in the hearing. In any hearing under this division, the Rules of Civil Procedure or, if the hearing is in a juvenile court, the Rules of Juvenile Procedure apply, except to the extent that those Rules would by their nature be clearly inapplicable. The court shall schedule a hearing, and shall provide notice to the offender or delinquent child and prosecutor of the date, time, and place of the hearing.

If an offender or delinquent child requests a hearing in accordance with this division, until the court issues its decision at or subsequent to the hearing, the offender or delinquent child shall comply prior to January 1, 2008, with Chapter 2950. of the Revised Code as it exists prior to that date and shall comply on and after January 1, 2008, with Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on that date. If an offender or delinquent child requests a hearing in accordance with this division, at the hearing, all parties are entitled to be heard, and the court shall consider all relevant information and testimony presented relative to the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. If, at the conclusion of the hearing, the court finds that the offender or delinquent child has proven by clear and convincing evidence that the new registration requirements do not apply to the offender or delinquent child in the manner specified in the letter sent to the offender or delinquent child pursuant to division (A) or (B) of this section, the court shall issue an order that specifies the manner in which the court has determined that the new registration requirements do apply to the offender or delinquent child. If at the conclusion of the hearing the court finds that the offender or delinquent child has proven by clear and convincing evidence that the new registration requirements do not apply to the offender or delinquent child, the court shall issue an order that specifies that the new registration requirements do not apply to the offender or delinquent child. The court promptly shall serve a copy of an order issued under this division upon the sheriff with whom the offender or delinquent child most recently registered under *section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code* and upon the bureau of criminal identification and investigation. The offender or delinquent child and the prosecutor have the right to appeal the decision of the court issued under this division.

If an offender or delinquent child fails to request a hearing in accordance with this division within the applicable sixty-day period specified in this division, the failure constitutes a waiver by the offender or delinquent child of the offender's or delinquent child's right to a hearing under this division, and the offender or delinquent child is bound by the determinations of the attorney general contained in the registered letter sent to the offender or child.

If a juvenile court issues an order under division (A)(2) or (3) of *section 2152.86 of the Revised Code* that classifies a delinquent child a public-registry qualified juvenile offender registrant and if the child's delinquent act was committed prior to January 1, 2008, a challenge to the classification contained in the order shall be made pursuant to division (D) of *section 2152.86 of the Revised Code*.

HISTORY:

152 v S 10, § 1, eff. 7-1-07.

LEXSTAT ORC 2950.032

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
 *** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
 *** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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ORC Ann. 2950.032 (2010)

§ 2950.032. Attorney general to determine tier classification for each offender or delinquent child; notice of provisions implemented on January 1, 2008

(A) (1) At any time on or after July 1, 2007, and not later than December 1, 2007, the attorney general shall do all of the following:

(a) For each offender who on December 1, 2007, will be serving a prison term in a state correctional institution for a sexually oriented offense or child-victim oriented offense, determine the offender's classification relative to that offense as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes in that chapter that will be implemented on January 1, 2008, and the offender's duties under Chapter 2950. of the Revised Code as so changed and provide to the department of rehabilitation and correction a document that describes that classification and those duties;

(b) For each delinquent child who has been classified a juvenile offender registrant relative to a sexually oriented offense or child-victim oriented offense and who on December 1, 2007, will be confined in an institution of the department of youth services for the sexually oriented offense or child-victim oriented offense, determine the delinquent child's classification relative to that offense as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes in that chapter that will be implemented on January 1, 2008, the delinquent child's duties under Chapter 2950. of the Revised Code as so changed, and whether the delinquent child is a public registry-qualified juvenile offender registrant and provide to the department a document that

describes that classification, those duties, and whether the delinquent child is a public registry-qualified juvenile offender registrant.

(c) For each offender and delinquent child described in division (A)(1)(a) or (b) of this section, determine whether the attorney general is required to send a registered letter to that offender or that delinquent child and delinquent child's parents pursuant to *section 2950.031 [2950.03.1] of the Revised Code* relative to the sexually oriented offense or child-victim oriented offense for which the offender or delinquent child is serving the prison term or is confined and, if the attorney general is required to send such a letter to that offender or that delinquent child and delinquent child's parents relative to that offense, include in the document provided to the department of rehabilitation and correction or the department of youth services under division (A)(1)(a) or (b) of this section a conspicuous notice that the attorney general will be sending the offender or delinquent child and delinquent child's parent the registered letter and that the department is not required to provide to the offender or delinquent child the written notice described in division (A)(2) of this section.

(2) At any time on or after July 1, 2007, and not later than December 1, 2007, except as otherwise described in this division, the department of rehabilitation and correction shall provide to each offender described in division (A)(1)(a) of this section and the department of youth services shall provide to each delinquent child described in division (A)(1)(b) of this section and to the delinquent child's parents a written notice that contains the information described in this division. The department of rehabilitation and correction and the department of youth services are not required to provide the written notice to an offender or a delinquent child and the delinquent child's parents if the attorney general included in the document provided to the particular department under division (A)(1)(a) or (b) of this section notice that the attorney general will be sending that offender or that delinquent child and the delinquent child's parents a registered letter and that the department is not required to provide to that offender or that delinquent child and parents the written notice. The written notice provided to an offender or a delinquent child and the delinquent child's parents pursuant to this division shall notify the offender or delinquent child of all of the following:

(a) The changes in Chapter 2950. of the Revised Code that will be implemented on January 1, 2008;

(b) Subject to division (A)(2)(c) of this section, the offender's or delinquent child's classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed and the duration of those duties, whether the delinquent child is classified a public registry-qualified juvenile offender registrant, and the information specified in division (B) of *section 2950.03 of the Revised Code* to the extent it is relevant to the offender or delinquent child;

(c) The fact that the offender or delinquent child has a right to a hearing as described in division (E) of this section, the procedures for requesting the hearing, and the period of time within which the request for the hearing must be made;

(d) If the offender's or delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to January 1, 2008, a summary of the provisions of *section 2950.033 [2950.03.3] of*

the Revised Code and the application of those provisions to the offender or delinquent child, provided that this division applies regarding a delinquent child only if the child is in a category specified in division (A) of *section 2950.033 [2950.03.3] of the Revised Code*.

(3) The attorney general shall make the determinations described in divisions (A)(1)(a) and (b) of this section for each offender or delinquent child who is described in either of those divisions even if the offender's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of *section 2950.033 [2950.03.3] of the Revised Code*, and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date. The department of rehabilitation and correction shall provide to each offender described in division (A)(1)(a) of this section and the department of youth services shall provide to each delinquent child described in division (A)(1)(b) of this section the notice described in division (A)(2) of this section, even if the offender's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of *section 2950.033 [2950.03.3] of the Revised Code*, and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date. *Section 2950.033 [2950.03.3] of the Revised Code* applies regarding any offender described in division (A)(1)(a) or (b) of this section whose duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date and any delinquent child who is in a category specified in division (A) of *section 2950.033 [2950.03.3] of the Revised Code* and whose duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date.

(B) If on or after December 2, 2007, an offender commences a prison term in a state correctional institution or a delinquent child commences confinement in an institution of the department of youth services for a sexually oriented offense or a child-victim oriented offense and if the offender or delinquent child was convicted of, pleaded guilty to, or was classified a juvenile offender registrant relative to the sexually oriented offense or child-victim oriented offense on or before that date, as soon as practicable, the department of rehabilitation and correction or the department of youth services, as applicable, shall contact the attorney general, inform the attorney general of the commencement of the prison term or institutionalization, and forward to the attorney general information and material that identifies the offender or delinquent child and that describes the sexually oriented offense resulting in the prison term or institutionalization, the facts and circumstances of it, and the offender's or delinquent child's criminal or delinquency history. Within fourteen days after being so informed of the commencement of the prison term or institutionalization and receiving the information and material specified in this division, the attorney general shall determine for the offender or delinquent child all of the matters specified in division (A)(1)(a), (b), or (c) of this section and immediately provide to the appropriate department a document that describes the offender's or delinquent child's classification and duties as so determined.

Upon receipt from the attorney general of a document described in this division that pertains to an offender or delinquent child, the department of rehabilitation and correction shall provide to the

offender or the department of youth services shall provide to the delinquent child, as applicable, a written notice that contains the information specified in division (A)(2) of this section.

(C) If, on or after July 1, 2007, and prior to January 1, 2008, an offender is convicted of or pleads guilty to a sexually oriented offense or a child-victim oriented offense and the court does not sentence the offender to a prison term for that offense or if, on or after July 1, 2007, and prior to January 1, 2008, a delinquent child is classified a juvenile offender registrant relative to a sexually oriented offense or a child-victim oriented offense and the juvenile court does not commit the child to the custody of the department of youth services for that offense, the court at the time of sentencing or the juvenile court at the time specified in division (B) of section 2152.82, division (C) of section 2152.83, division (C) of section 2152.84, division (E) of section 2152.85, or division (A) of *section 2152.86 of the Revised Code*, whichever is applicable, shall do all of the following:

(1) Provide the offender or the delinquent child and the delinquent child's parents with the notices required under *section 2950.03 of the Revised Code*, as it exists prior to January 1, 2008, regarding the offender's or delinquent child's duties under this chapter as it exists prior to that date;

(2) Provide the offender or the delinquent child and the delinquent child's parents with a written notice that contains the information specified in divisions (A)(2)(a) and (b) of this section;

(3) Provide the offender or the delinquent child and the delinquent child's parents a written notice that clearly indicates that the offender or delinquent child is required to comply with the duties described in the notice provided under division (C)(1) of this section until January 1, 2008, and will be required to comply with the duties described in the notice provided under division (C)(2) of this section on and after that date.

(D) (1) Except as otherwise provided in this division, the officer or employee of the department of rehabilitation and correction or the department of youth services who provides an offender or a delinquent child and the delinquent child's parents with the notices described in division (A)(2) or (B) of this section shall require the offender or delinquent child to read and sign a form stating that the changes in Chapter 2950. of the Revised Code that will be implemented on January 1, 2008, the offender's or delinquent child's classification as a tier I sex offender, a tier II sex offender, or a tier III sex offender, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed and the duration of those duties, the delinquent child's classification as a public registry-qualified juvenile offender registrant if applicable, the information specified in division (B) of *section 2950.03 of the Revised Code* to the extent it is relevant to the offender or delinquent child, and the right to a hearing, procedures for requesting the hearing, and period of time within which the request for the hearing must be made have been explained to the offender or delinquent child.

Except as otherwise provided in this division, the judge who provides an offender or delinquent child with the notices described in division (C) of this section shall require the offender or delinquent child to read and sign a form stating that all of the information described in divisions (C)(1) to (3) of this section has been explained to the offender or delinquent child.

If the offender or delinquent child is unable to read, the official, employee, or judge shall certify on the form that the official, employee, or judge specifically informed the offender or delinquent child of all of that information and that the offender or delinquent child indicated an understanding of it.

(2) After an offender or delinquent child has signed the form described in division (D)(1) of this section or the official, employee, or judge has certified on the form that the form has been explained to the offender or delinquent child and that the offender or delinquent child indicated an understanding of the specified information, the official, employee, or judge shall give one copy of the form to the offender or delinquent child, within three days shall send one copy of the form to the bureau of criminal identification and investigation in accordance with the procedures adopted pursuant to *section 2950.13 of the Revised Code*, and shall send one copy of the form to the sheriff of the county in which the offender or delinquent child expects to reside and one copy to the prosecutor who handled the case in which the offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the sexually oriented offense or child-victim oriented offense that resulted in the offender's or child's registration duty under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code*.

(E) An offender or delinquent child who is provided a notice under division (A)(2) or (B) of this section may request as a matter of right a court hearing to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. The offender or delinquent child may contest the matters that are identified in division (E) of *section 2950.031 [2950.03.1] of the Revised Code*. To request the hearing, an offender or delinquent child who is provided a notice under division (A)(2) of this section shall file a petition with the appropriate court not later than the date that is sixty days after the offender or delinquent child is provided the notice under that division, and an offender or delinquent child who is provided a notice under division (B) of this section shall file a petition with the appropriate court not later than the date that is sixty days after the offender or delinquent child is provided the notice under that division. The request for the hearing shall be made in the manner and with the court specified in division (E) of *section 2950.031 [2950.03.1] of the Revised Code*, and, except as otherwise provided in this division, the provisions of that division regarding the service of process and notice regarding the hearing, the conduct of the hearing, the determinations to be made at the hearing, and appeals of those determinations also apply to a hearing requested under this division. If a hearing is requested as described in this division, the offender or delinquent child shall appear at the hearing by video conferencing equipment if available and compatible, except that, upon the court's own motion or the motion of the offender or delinquent child or the prosecutor representing the interests of the state and a determination by the court that the interests of justice require that the offender or delinquent child be present, the court may permit the offender or delinquent child to be physically present at the hearing. An appearance by video conferencing equipment pursuant to this division has the same force and effect as if the offender or delinquent child were physically present at the hearing. The provisions of division (E) of *section 2950.031 [2950.03.1] of the Revised Code* regarding the effect of a failure to timely request a hearing also apply to a failure to timely request a hearing under this division.

If a juvenile court issues an order under division (A)(2) or (3) of *section 2152.86 of the Revised Code* that classifies a delinquent child a public-registry qualified juvenile offender registrant and if the child's delinquent act was committed prior to January 1, 2008, a challenge to the classification contained in the order shall be made pursuant to division (D) of *section 2152.86 of the Revised Code*.

HISTORY:

152 v S 10, § 1, eff. 7-1-07.

LEXSTAT ORC ANN. 2950.033

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL AS-
 SEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
 *** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
 *** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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ORC Ann. 2950.033 (2010)

§ 2950.033. Offenders and delinquent children whose SORN Law duties are scheduled to terminate on or after 7-1-07 and prior to 1-1-08

(A) If, on or before July 1, 2007, an offender who has been convicted of or pleaded guilty to a sexually oriented offense or a child-victim oriented offense or a delinquent child in a category specified in division (C) of this section has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* based on that offense and if the offender's or delinquent child's duty to comply with those sections based on that offense is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to January 1, 2008, notwithstanding that scheduled termination of those duties, the offender's or delinquent child's duties under those sections shall not terminate as scheduled and shall remain in effect for the following period of time:

(1) If the offender or delinquent child is in a category described in division (A)(1) of *section 2950.031 [2950.03.1] of the Revised Code*, receives a registered letter from the attorney general pursuant to division (A)(2) of that section, and timely requests a hearing in accordance with division (E) of that section to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, or the tier classification of the offender or delinquent child specified by the attorney general, the offender's or delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* shall continue at least until the court issues its decision at or subsequent to the hearing. The offender's or delinquent child's duty to comply with those sections shall continue in accordance with, and for the duration specified in, the determinations of the attorney general that are specified in the registered letter the offender or delinquent child received from the attorney general, unless the court's decision terminates the of-

fender's or delinquent child's duty to comply with those sections or provides a different duration for which the offender or delinquent child has a duty to comply with them.

(2) If the offender or delinquent child is in a category described in division (A)(1) of *section 2950.031 [2950.03.1] of the Revised Code*, receives a registered letter from the attorney general pursuant to division (A)(2) of that section, and does not timely request a hearing in accordance with division (E) of that section to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, or the tier classification of the offender or delinquent child specified by the attorney general, the offender's or delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* shall continue in accordance with, and for the duration specified in, the determinations of the attorney general that are specified in the registered letter the offender or delinquent child received from the attorney general.

(3) If the offender or delinquent child is in a category described in division (A)(1)(a) or (b) of *section 2950.032 [2950.03.2] of the Revised Code*, receives a notice from the department of rehabilitation and correction or department of youth services pursuant to division (A)(2) of that section, and timely requests a hearing in accordance with division (E) of that section to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, or the tier classification of the delinquent child specified by the attorney general the offender's or delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* shall continue in the same manner and for the same duration as is described in division (A)(1) of this section regarding offenders and delinquent children in a category described in division (A)(1) of *section 2950.031 [2950.03.1] of the Revised Code*, who receive a registered letter from the attorney general pursuant to division (A)(2) of that section, and who timely request a hearing in accordance with division (E) of that section.

(4) If the offender or delinquent child is in a category described in division (A)(1)(a) or (b) of *section 2950.032 [2950.03.2] of the Revised Code*, receives a notice from the department of rehabilitation and correction or department of youth services pursuant to division (A)(2) of that section, and does not timely request a hearing in accordance with division (E) of that section to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, or the tier classification of the delinquent child specified by the attorney general the offender's or delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* shall continue in the same manner and for the same duration as is described in division (A)(2) of this section regarding offenders and delinquent children in a category described in division (A)(1) of *section 2950.031 [2950.03.1] of the Revised Code*, who receive a registered letter from the attorney general pursuant to division (A)(2) of that section, and who do not timely request a hearing in accordance with division (E) of that section.

(5) If the offender or delinquent child is in a category described in division (A)(1) of *section 2950.031 [2950.03.1] of the Revised Code* but does not receive a registered letter from the attorney general pursuant to division (A)(2) of that section, or if the offender or delinquent child is in a category described in division (A)(1)(a) or (b) of *section 2950.032 [2950.03.2] of the Revised Code* but does not receive a notice from the department of rehabilitation and correction or department of

youth services pursuant to division (A)(2) of that section, notwithstanding the failure of the offender or delinquent child to receive the registered letter or the notice, the offender's or delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* shall continue in accordance with, and for the duration specified in, the provisions of Chapter 2950. of the Revised Code as they will exist under the changes to the provisions that will be implemented on January 1, 2008.

(B) An offender or a delinquent child in a category specified in division (C) of this section who, on or before July 1, 2007, has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* based on a conviction of, plea of guilty to, or adjudication as a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and whose duty to comply with those sections is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to January 1, 2008, is presumed to have knowledge of the law, the content of division (A) of this section and its application to the offender or delinquent child, and the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. Any failure of any such offender or delinquent child to receive a registered letter from the attorney general pursuant to division (A)(2) of *section 2950.031 [2950.03.1] of the Revised Code* or to receive a written notice from the department of rehabilitation and correction or department of youth services pursuant to division (A)(2) of *section 2950.032 [2950.03.2] of the Revised Code* does not negate, limit, or modify the presumption specified in this division.

(C) Divisions (A) and (B) of this section apply to a person who is adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense only if the person is so adjudicated prior to January 1, 2008, and, under the version of *section 2950.01 of the Revised Code* that is to take effect on January 1, 2008, will be a public registry-qualified juvenile offender registrant relative to that offense.

HISTORY:

152 v S 10, § 1, eff. 7-1-07.

LEXSTAT ORC ANN. 2950.034

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

Go to the Ohio Code Archive Directory

ORC Ann. 2950.034 (2010)

§ 2950.034. Residing within 1,000 feet of school, preschool, or child day-care center premises prohibited

(A) No person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense or a child-victim oriented offense shall establish a residence or occupy residential premises within one thousand feet of any school premises or preschool or child day-care center premises.

(B) If a person to whom division (A) of this section applies violates division (A) of this section by establishing a residence or occupying residential premises within one thousand feet of any school premises or preschool or child day-care center premises, an owner or lessee of real property that is located within one thousand feet of those school premises or preschool or child day-care center premises, or the prosecuting attorney, village solicitor, city or township director of law, similar chief legal officer of a municipal corporation or township, or official designated as a prosecutor in a municipal corporation that has jurisdiction over the place at which the person establishes the residence or occupies the residential premises in question, has a cause of action for injunctive relief against the person. The plaintiff shall not be required to prove irreparable harm in order to obtain the relief.

(C) As used in this section:

(1) "Child day-care center" has the same meaning as in *section 5104.01 of the Revised Code*.

(2) "Preschool" means any public or private institution or center that provides early childhood instructional or educational services to children who are at least three years of age but less than six years of age and who are not enrolled in or are not eligible to be enrolled in kindergarten, whether or not those services are provided in a child day-care setting. "Preschool" does not include any place

that is the permanent residence of the person who is providing the early childhood instructional or educational services to the children described in this division.

(3) "Preschool or child day-care center premises" means all of the following:

(a) Any building in which any preschool or child day-care center activities are conducted if the building has signage that indicates that the building houses a preschool or child day-care center, is clearly visible and discernable without obstruction, and meets any local zoning ordinances which may apply;

(b) The parcel of real property on which a preschool or child day-care center is situated if the parcel of real property has signage that indicates that a preschool or child day-care center is situated on the parcel, is clearly visible and discernable without obstruction, and meets any local zoning ordinances which may apply;

(c) Any grounds, play areas, and other facilities of a preschool or child day-care center that are regularly used by the children served by the preschool or child day-care center if the grounds, play areas, or other facilities have signage that indicates that they are regularly used by children served by the preschool or child day-care center, is clearly visible and discernable without obstruction, and meets any local zoning ordinances which may apply.

HISTORY:

150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 152 v S 10, § 1, eff. 7-1-07.

LEXSTAT ORC ANN. 2950.04

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL AS-
SEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

Go to the Ohio Code Archive Directory

ORC Ann. 2950.04 (2010)

§ 2950.04. Duty to register and comply with registration requirements

(A) (1) (a) Immediately after a sentencing hearing is held on or after January 1, 2008, for an offender who is convicted of or pleads guilty to a sexually oriented offense and is sentenced to a prison term, a term of imprisonment, or any other type of confinement and before the offender is transferred to the custody of the department of rehabilitation and correction or to the official in charge of the jail, workhouse, state correctional institution, or other institution where the offender will be confined, the offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender was convicted of or pleaded guilty to the sexually oriented offense.

(b) Immediately after a dispositional hearing is held on or after January 1, 2008, for a child who is adjudicated a delinquent child for committing a sexually oriented offense, is classified a juvenile offender registrant based on that adjudication, and is committed to the custody of the department of youth services or to a secure facility that is not operated by the department and before the child is transferred to the custody of the department of youth services or the secure facility to which the delinquent child is committed, the delinquent child shall register personally with the sheriff, or the sheriff's designee, of the county in which the delinquent child was classified a juvenile offender registrant based on that sexually oriented offense.

(c) A law enforcement officer shall be present at the sentencing hearing or dispositional hearing described in division (A)(1)(a) or (b) of this section to immediately transport the offender or delinquent child who is the subject of the hearing to the sheriff, or the sheriff's designee, of the county in which the offender or delinquent child is convicted, pleads guilty, or is adjudicated a delinquent child.

(d) After an offender who has registered pursuant to division (A)(1)(a) of this section is released from a prison term, a term of imprisonment, or any other type of confinement, the offender shall register as provided in division (A)(2) of this section. After a delinquent child who has registered pursuant to division (A)(1)(b) of this section is released from the custody of the department of youth services or from a secure facility that is not operated by the department, the delinquent child shall register as provided in division (A)(3) of this section.

(2) Regardless of when the sexually oriented offense was committed, each offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense shall comply with the following registration requirements described in divisions (A)(2)(a), (b), (c), (d), and (e) of this section:

(a) The offender shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the offender's coming into a county in which the offender resides or temporarily is domiciled for more than three days.

(b) The offender shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state.

(c) The offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(d) The offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state more than three days or for an aggregate period of fourteen or more days in that calendar year.

(e) The offender shall register with the sheriff, or the sheriff's designee, or other appropriate person of the other state immediately upon entering into any state other than this state in which the offender attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than this state for more than three days or for an aggregate period of fourteen or more days in that calendar year regardless of whether the offender resides or has a temporary domicile in this state, the other state, or a different state

(3) (a) Each child who is adjudicated a delinquent child for committing a sexually oriented offense and who is classified a juvenile offender registrant based on that adjudication shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the delinquent child's coming into a county in which the delinquent child resides or temporarily is domiciled for more than three days.

(b) In addition to the registration duty imposed under division (A)(3)(a) of this section, each public registry-qualified juvenile offender registrant shall comply with the following additional registration requirements:

(i) The public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which

the registrant attends a school or institution of higher education on a full-time or part-time basis regardless of whether the registrant resides or has a temporary domicile in this state or another state.

(ii) The public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county in which the registrant is employed if the registrant resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(iii) The public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county in which the registrant then is employed if the registrant does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state more than three days or for an aggregate period of fourteen or more days in that calendar year.

(iv) The public registry-qualified juvenile offender registrant shall register with the sheriff, or the sheriff's designee, or other appropriate person of the other state immediately upon entering into any state other than this state in which the registrant attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than this state for more than three days or for an aggregate period of fourteen or more days in that calendar year regardless of whether the registrant resides or has a temporary domicile in this state, the other state, or a different state.

(c) If the delinquent child is committed for the sexually oriented offense to the department of youth services or to a secure facility that is not operated by the department, this duty begins when the delinquent child is discharged or released in any manner from custody in a department of youth services secure facility or from the secure facility that is not operated by the department if pursuant to the discharge or release the delinquent child is not committed to any other secure facility of the department or any other secure facility.

(4) Regardless of when the sexually oriented offense was committed, each person who is convicted, pleads guilty, or is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a sexually oriented offense shall comply with the following registration requirements if, at the time the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than three days, the offender or public registry-qualified juvenile offender registrant enters this state to attend a school or institution of higher education, or the offender or public registry-qualified juvenile offender registrant is employed in this state for more than the specified period of time, the offender or delinquent child has a duty to register as a sex offender or child-victim offender under the law of that other jurisdiction as a result of the conviction, guilty plea, or adjudication:

(a) Each offender and delinquent child shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the offender's or delinquent child's coming into the county in which the offender or delinquent child resides or temporarily is domiciled for more than three days.

(b) Each offender or public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the offender or public registry-qualified juvenile offender registrant attends a school or institution of higher education on a full-time or part-time basis regardless of whether the

offender or public registry-qualified juvenile offender registrant resides or has a temporary domicile in this state or another state.

(c) Each offender or public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender or public registry-qualified juvenile offender registrant is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen days or more in that calendar year.

(d) Each offender or public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender or public registry-qualified juvenile offender registrant then is employed if the offender or public registry-qualified juvenile offender registrant does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(5) An offender or a delinquent child who is a public registry-qualified juvenile offender registrant is not required to register under division (A)(2), (3), or (4) of this section if a court issues an order terminating the offender's or delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* pursuant to *section 2950.15 of the Revised Code*. A delinquent child who is a juvenile offender registrant but is not a public registry-qualified juvenile offender registrant is not required to register under any of those divisions if a juvenile court issues an order declassifying the delinquent child as a juvenile offender registrant pursuant to *section 2152.84 or 2152.85 of the Revised Code*.

(B) An offender or delinquent child who is required by division (A) of this section to register in this state personally shall obtain from the sheriff or from a designee of the sheriff a registration form that conforms to division (C) of this section, shall complete and sign the form, and shall return the completed form together with the offender's or delinquent child's photograph, copies of travel and immigration documents, and any other required material to the sheriff or the designee. The sheriff or designee shall sign the form and indicate on the form the date on which it is so returned. The registration required under this division is complete when the offender or delinquent child returns the form, containing the requisite information, photograph, other required material, signatures, and date, to the sheriff or designee.

(C) The registration form to be used under divisions (A) and (B) of this section shall include or contain all of the following for the offender or delinquent child who is registering:

(1) The offender's or delinquent child's name and any aliases used by the offender or delinquent child;

(2) The offender's or delinquent child's social security number and date of birth, including any alternate social security numbers or dates of birth that the offender or delinquent child has used or uses;

(3) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(1) of this section, a statement that the offender is serving a prison term, term of imprisonment, or any other type of confinement or a statement that the delinquent child is in the custody of the department of youth services or is confined in a secure facility that is not operated by the department;

(4) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(2), (3), or (4) of this section as a result of the offender or delinquent child residing in this state or temporarily being domiciled in this state for more than three days, the current residence address of the offender or delinquent child who is registering, the name and address of the offender's or delinquent child's employer if the offender or delinquent child is employed at the time of registration or if the offender or delinquent child knows at the time of registration that the offender or delinquent child will be commencing employment with that employer subsequent to registration, any other employment information, such as the general area where the offender or delinquent child is employed, if the offender or delinquent child is employed in many locations, and the name and address of the offender's or public registry-qualified juvenile offender registrant's school or institution of higher education if the offender or public registry-qualified juvenile offender registrant attends one at the time of registration or if the offender or public registry-qualified juvenile offender registrant knows at the time of registration that the offender or public registry-qualified juvenile offender registrant will be commencing attendance at that school or institution subsequent to registration;

(5) Regarding an offender or public registry-qualified juvenile offender registrant who is registering under a duty imposed under division (A)(2), (3), or (4) of this section as a result of the offender or public registry-qualified juvenile offender registrant attending a school or institution of higher education in this state on a full-time or part-time basis or being employed in this state or in a particular county in this state, whichever is applicable, for more than three days or for an aggregate of fourteen or more days in any calendar year, the name and current address of the school, institution of higher education, or place of employment of the offender or public registry-qualified juvenile offender registrant who is registering, including any other employment information, such as the general area where the offender or public registry-qualified juvenile offender registrant is employed, if the offender or public registry-qualified juvenile offender registrant is employed in many locations;

(6) The identification license plate number of each vehicle the offender or delinquent child owns, of each vehicle registered in the offender's or delinquent child's name, of each vehicle the offender or delinquent child operates as a part of employment, and of each other vehicle that is regularly available to be operated by the offender or delinquent child; a description of where each vehicle is habitually parked, stored, docked, or otherwise kept; and, if required by the bureau of criminal identification and investigation, a photograph of each of those vehicles;

(7) If the offender or delinquent child has a driver's or commercial driver's license or permit issued by this state or any other state or a state identification card issued under *section 4507.50 or 4507.51 of the Revised Code* or a comparable identification card issued by another state, the driver's license number, commercial driver's license number, or state identification card number;

(8) If the offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the sexually oriented offense resulting in the registration duty in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States, a DNA specimen, as defined in *section 109.573 [109.57.3] of the Revised Code*, from the offender or delinquent child, a citation for, and the name of, the sexually oriented offense resulting in the registration duty, and a certified copy of a document that describes the text of that sexually oriented offense;

(9) A description of each professional and occupational license, permit, or registration, including those licenses, permits, and registrations issued under Title XLVII of the Revised Code, held by the offender or delinquent child;

(10) Any email addresses, internet identifiers, or telephone numbers registered to or used by the offender or delinquent child;

(11) Any other information required by the bureau of criminal identification and investigation.

(D) After an offender or delinquent child registers with a sheriff, or the sheriff's designee, pursuant to this section, the sheriff, or the sheriff's designee, shall forward the signed, written registration form, photograph, and other material to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to *section 2950.13 of the Revised Code*. If an offender registers a school, institution of higher education, or place of employment address, or provides a school or institution of higher education address under division (C)(4) of this section, the sheriff also shall provide notice to the law enforcement agency with jurisdiction over the premises of the school, institution of higher education, or place of employment of the offender's name and that the offender has registered that address as a place at which the offender attends school or an institution of higher education or at which the offender is employed. The bureau shall include the information and materials forwarded to it under this division in the state registry of sex offenders and child victim offenders established and maintained under *section 2950.13 of the Revised Code*.

(E) No person who is required to register pursuant to divisions (A) and (B) of this section, and no person who is required to send a notice of intent to reside pursuant to division (G) of this section, shall fail to register or send the notice of intent as required in accordance with those divisions or that division.

(F) An offender or delinquent child who is required to register pursuant to divisions (A) and (B) of this section shall register pursuant to this section for the period of time specified in *section 2950.07 of the Revised Code*, with the duty commencing on the date specified in division (A) of that section.

(G) If an offender or delinquent child who is required by division (A) of this section to register is a tier III sex-offender/child-victim offender, the offender or delinquent child also shall send the sheriff, or the sheriff's designee, of the county in which the offender or delinquent child intends to reside written notice of the offender's or delinquent child's intent to reside in the county. The offender or delinquent child shall send the notice of intent to reside at least twenty days prior to the date the offender or delinquent child begins to reside in the county. The notice of intent to reside shall contain the following information:

(1) The offender's or delinquent child's name;

(2) The address or addresses at which the offender or delinquent child intends to reside;

(3) The sexually oriented offense of which the offender was convicted, to which the offender pleaded guilty, or for which the child was adjudicated a delinquent child

(H) If, immediately prior to January 1, 2008, an offender or delinquent child who was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense as those terms were defined in *section 2950.01 of the Revised Code* prior to January 1, 2008, was required by division (A) of this section or *section*

2950.041 [2950.04.1] of the Revised Code to register and if, on or after January 1, 2008, that offense is a sexually oriented offense as that term is defined in *section 2950.01 of the Revised Code* on and after January 1, 2008, the duty to register that is imposed pursuant to this section on and after January 1, 2008, shall be considered, for purposes of *section 2950.07 of the Revised Code* and for all other purposes, to be a continuation of the duty imposed upon the offender or delinquent child prior to January 1, 2008, under this section or *section 2950.041 [2950.04.1] of the Revised Code*.

HISTORY:

146 v H 180 (Eff 7-1-97); 147 v H 565 (Eff 3-30-99); 148 v H 502 (Eff 3-15-2001); 149 v S 3 (Eff 1-1-2002); 149 v S 175 (Eff 5-7-2002); 149 v H 485 (Eff 6-13-2002); 149 v H 393. Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 152 v S 10, § 1, eff. 1-1-08.

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*** ARCHIVE MATERIAL ***

*** CURRENT THROUGH LEGISLATION PASSED BY THE 126TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH MARCH 6, 2007 ***

*** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2007 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JANUARY 23, 2007 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEXUAL PREDATORS, HABITUAL SEX OFFENDERS, SEXUALLY ORIENTED OFFENDERS

ORC Ann. 2950.04 (2006)

§ 2950.04. Duty to register

(A) (1) Each of the following types of offender who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense that is not a registration-exempt sexually oriented offense shall register personally with the sheriff of the county within five days of the offender's coming into a county in which the offender resides or temporarily is domiciled for more than five days, shall register personally with the sheriff of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state, shall register personally with the sheriff of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than fourteen days or for an aggregate period of thirty or more days in that calendar year, shall register personally with the sheriff of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state more than fourteen days or for an aggregate period of thirty or more days in that calendar year, and shall register with the sheriff or other appropriate person of the other state immediately upon entering into any state other than this state in which the offender attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than this state for more than fourteen days or for an aggregate period of thirty or more days in that calendar year regardless of whether the offender resides or has a temporary domicile in this state, the other state, or a different state:

(a) Regardless of when the sexually oriented offense was committed, an offender who is sentenced for the sexually oriented offense to a prison term, a term of imprisonment, or any other

type of confinement and, on or after July 1, 1997, is released in any manner from the prison term, term of imprisonment, or confinement;

(b) Regardless of when the sexually oriented offense was committed, an offender who is sentenced for a sexually oriented offense on or after July 1, 1997, and to whom division (A)(1)(a) of this section does not apply;

(c) If the sexually oriented offense was committed prior to July 1, 1997, and neither division (A)(1)(a) nor division (A)(1)(b) of this section applies, an offender who, immediately prior to July 1, 1997, was a habitual sex offender who was required to register under Chapter 2950. of the Revised Code.

(2) Each child who is adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense and who is classified a juvenile offender registrant based on that adjudication shall register personally with the sheriff of the county within five days of the delinquent child's coming into a county in which the delinquent child resides or temporarily is domiciled for more than five days. If the delinquent child is committed for the sexually oriented offense that is not a registration-exempt sexually oriented offense to the department of youth services or to a secure facility that is not operated by the department, this duty begins when the delinquent child is discharged or released in any manner from custody in a department of youth services secure facility or from the secure facility that is not operated by the department, if pursuant to the discharge or release the delinquent child is not committed to any other secure facility of the department or any other secure facility. The delinquent child does not have a duty to register under this division while the child is in a department of youth services secure facility or in a secure facility that is not operated by the department.

(3) If divisions (A)(1) and (2) of this section do not apply, each following type of offender and each following type of delinquent child shall register personally with the sheriff of the county within five days of the offender's or delinquent child's coming into a county in which the offender or delinquent child resides or temporarily is domiciled for more than five days, and each following type of offender shall register personally with the sheriff of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state, shall register personally with the sheriff of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than fourteen days or for an aggregate period of thirty days or more in that calendar year, and shall register personally with the sheriff of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state for more than fourteen days or for an aggregate period of thirty or more days in that calendar year:

(a) Regardless of when the sexually oriented offense was committed, a person who is convicted, pleads guilty, or adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, if, on or after July 1, 1997, for offenders, or January 1, 2002, for delinquent children, the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than five days, the offender enters this state to attend any school or institution of higher education on a full-time or part-time basis, or the offender is employed in this state for more than fourteen

days or for an aggregate period of thirty or more days in any calendar year, and if, at the time the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than five days, the offender enters this state to attend the school or institution of higher education, or the offender is employed in this state for more than the specified period of time, the offender or delinquent child has a duty to register as a sex offender or child-victim offender under the law of that other jurisdiction as a result of the conviction, guilty plea, or adjudication.

(b) Regardless of when the sexually oriented offense was committed, a person who is convicted of, pleads guilty to, or is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, if, on or after July 1, 1997, for offenders, or January 1, 2002, for delinquent children, the offender or delinquent child is released from imprisonment, confinement, or detention imposed for that offense, and if, on or after July 1, 1997, for offenders, or January 1, 2002, for delinquent children, the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than five days, the offender enters this state to attend any school or institution of higher education on a full-time or part-time basis, or the offender is employed in this state for more than fourteen days or for an aggregate period of thirty or more days in any calendar year. The duty to register as described in this division applies to an offender regardless of whether the offender, at the time of moving to and residing in this state or temporarily being domiciled in this state for more than five days, at the time of entering into this state to attend the school or institution of higher education, or at the time of being employed in this state for the specified period of time, has a duty to register as a sex offender or child-victim offender under the law of the jurisdiction in which the conviction or guilty plea occurred. The duty to register as described in this division applies to a delinquent child only if the delinquent child, at the time of moving to and residing in this state or temporarily being domiciled in this state for more than five days, has a duty to register as a sex offender or child-victim offender under the law of the jurisdiction in which the delinquent child adjudication occurred or if, had the delinquent child adjudication occurred in this state, the adjudicating juvenile court judge would have been required to issue an order classifying the delinquent child as a juvenile offender registrant pursuant to section 2152.82 or division (A) of *section 2152.83 of the Revised Code*.

(4) If neither division (A)(1), (2), nor (3) of this section applies and if the offender is adjudicated a sexual predator under division (C) of *section 2950.09 of the Revised Code*, the offender shall register within five days of the adjudication with the sheriff of the county in which the offender resides or temporarily is domiciled for more than five days, shall register with the sheriff of any county in which the offender subsequently resides or temporarily is domiciled for more than five days within five days of coming into that county, shall register within five days of the adjudication with the sheriff of the county in which the offender attends any school or institution of higher education on a full-time or part-time basis or in which the offender is employed if the offender has been employed in that county for more than fourteen days or for an aggregate period of thirty or more days in that calendar year regardless of whether the offender resides or has temporary domicile in this state or another state, and shall register within five days of the adjudication with the sheriff or other appropriate person of any state other than this state in which the offender attends a school or institution of higher education on a full-time or part-time basis or in which the offender then is employed if the offender has been employed in that state for more than fourteen days or for an aggregate

gate period of thirty or more days in any calendar year regardless of whether the offender resides or has temporary domicile in this state, the other state, or a different state.

(5) A person who is adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense is not required to register under division (A)(2) of this section unless the delinquent child committed the offense on or after January 1, 2002, is classified a juvenile offender registrant by a juvenile court judge pursuant to an order issued under *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code* based on that adjudication, and has a duty to register pursuant to division (A)(2) of this section.

(6) A person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense that is a registration-exempt sexually oriented offense, and a person who is or has been adjudicated a delinquent child for committing a sexually oriented offense that is a registration-exempt sexually oriented offense, does not have any duty to register under this section based on that conviction, guilty plea, or adjudication. The exemption of an offender or delinquent child from registration under this division for a conviction of, plea of guilty to, or delinquent child adjudication for a registration-exempt sexually oriented offense does not limit, affect, or supersede any duties imposed upon the offender or delinquent child under this chapter or *sections 2152.82 to 2152.85 of the Revised Code* for a conviction of, plea of guilty to, or delinquent child adjudication for any other sexually oriented offense or any child-victim oriented offense.

(B) An offender or delinquent child who is required by division (A) of this section to register in this state personally shall obtain from the sheriff or from a designee of the sheriff a registration form that conforms to division (C) of this section, shall complete and sign the form, and shall return the completed form together with the offender's or delinquent child's photograph to the sheriff or the designee. The sheriff or designee shall sign the form and indicate on the form the date on which it is so returned. The registration required under this division is complete when the offender or delinquent child returns the form, containing the requisite information, photograph, signatures, and date, to the sheriff or designee.

(C) The registration form to be used under divisions (A) and (B) of this section shall include the photograph of the offender or delinquent child who is registering and shall contain all of the following:

(1) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(1), (2), (3), or (4) of this section as a result of the offender or delinquent child residing in this state or temporarily being domiciled in this state for more than five days, the current residence address of the offender or delinquent child who is registering, the name and address of the offender's or delinquent child's employer if the offender or delinquent child is employed at the time of registration or if the offender or delinquent child knows at the time of registration that the offender or delinquent child will be commencing employment with that employer subsequent to registration, the name and address of the offender's school or institution of higher education if the offender attends one at the time of registration or if the offender knows at the time of registration that the offender will be commencing attendance at that school or institution subsequent to registration, and any other information required by the bureau of criminal identification and investigation.

(2) Regarding an offender who is registering under a duty imposed under division (A)(1), (3), or (4) of this section as a result of the offender attending a school or institution of higher education in this state on a full-time or part-time basis or being employed in this state or in a particular county

in this state, whichever is applicable, for more than fourteen days or for an aggregate of thirty or more days in any calendar year, the current address of the school, institution of higher education, or place of employment of the offender who is registering and any other information required by the bureau of criminal identification and investigation.

(3) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(1), (2), (3), or (4) of this section for any reason, if the offender has been adjudicated a sexual predator relative to the sexually oriented offense in question, if the delinquent child has been adjudicated a sexual predator relative to the sexually oriented offense in question and the court has not subsequently determined pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is a sexual predator, if the judge determined pursuant to division (C) of *section 2950.09* or pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code* that the offender or delinquent child is a habitual sex offender and the determination has not been removed pursuant to *section 2152.84 or 2152.85 of the Revised Code*, or if the offender has the duty to register as a result of the conviction of or plea of guilty to an aggravated sexually oriented offense, the offender or delinquent child also shall include on the signed, written registration form all of the following information:

(a) A specific declaration that the person has been adjudicated a sexual predator, has been determined to be a habitual sex offender, or was convicted of or pleaded guilty to an aggravated sexually oriented offense, whichever is applicable;

(b) If the offender or delinquent child has been adjudicated a sexual predator, the identification license plate number of each motor vehicle the offender or delinquent child owns and of each motor vehicle registered in the offender's or delinquent child's name.

(D) After an offender or delinquent child registers with a sheriff pursuant to this section, the sheriff shall forward the signed, written registration form and photograph to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to *section 2950.13 of the Revised Code*. If an offender registers a school, institution of higher education, or place of employment address, or provides a school or institution of higher education address under division (C)(1) of this section, the sheriff also shall provide notice to the law enforcement agency with jurisdiction over the premises of the school, institution of higher education, or place of employment of the offender's name and that the offender has registered that address as a place at which the offender attends school or an institution of higher education or at which the offender is employed. The bureau shall include the information and materials forwarded to it under this division in the state registry of sex offenders and child victim offenders established and maintained under *section 2950.13 of the Revised Code*.

(E) No person who is required to register pursuant to divisions (A) and (B) of this section, and no person who is required to send a notice of intent to reside pursuant to division (G) of this section, shall fail to register or send the notice of intent as required in accordance with those divisions or that division.

(F) An offender or delinquent child who is required to register pursuant to divisions (A) and (B) of this section shall register pursuant to this section for the period of time specified in *section 2950.07 of the Revised Code*.

(G) If an offender or delinquent child who is required by division (A) of this section to register is adjudicated a sexual predator or a habitual sexual offender subject to community notification un-

der division (C)(2) or (E) of *section 2950.09 of the Revised Code*, or if an offender who is required by division (A) of this section to register has that duty as a result of a conviction of or plea of guilty to an aggravated sexually oriented offense, the offender or delinquent child also shall send the sheriff of the county in which the offender or delinquent child intends to reside written notice of the offender's or delinquent child's intent to reside in the county. The offender or delinquent child shall send the notice of intent to reside at least twenty days prior to the date the offender or delinquent child begins to reside in the county. The notice of intent to reside shall contain the following information:

- (1) The offender's or delinquent child's name;
- (2) The address or addresses at which the offender or delinquent child intends to reside;
- (3) The sexually oriented offense of which the offender was convicted, to which the offender pleaded guilty, or for which the child was adjudicated a delinquent child;
- (4) A statement that the offender has been adjudicated a sexual predator, a statement that the delinquent child has been adjudicated a sexual predator and that, as of the date of the notice, the court has not entered a determination that the delinquent child no longer is a sexual predator, a statement that the sentencing or reviewing judge has determined that the offender or delinquent child is a habitual sex offender and that, as of the date of the notice, the determination has not been removed pursuant to *section 2152.84 or 2152.85 of the Revised Code*, or a statement that the offender was convicted of or pleaded guilty to an aggravated sexually oriented offense.

(H) If, immediately prior to July 31, 2003, an offender or delinquent child who was convicted of, pleaded guilty to, or adjudicated a delinquent child for committing a sexually oriented offense was required by division (A) of this section to register and if, on or after July 31, 2003, that offense no longer is a sexually oriented offense but instead is designated a child-victim oriented offense, division (A)(1)(c) or (2)(b) of *section 2950.041 [2950.04.1] of the Revised Code* applies regarding the offender or delinquent child and the duty to register that is imposed pursuant to that division shall be considered, for purposes of *section 2950.07 of the Revised Code* and for all other purposes, to be a continuation of the duty imposed upon the offender prior to July 31, 2003, under this section.

HISTORY:

146 v H 180 (Eff 7-1-97); 147 v H 565 (Eff 3-30-99); 148 v H 502 (Eff 3-15-2001); 149 v S 3 (Eff 1-1-2002); 149 v S 175 (Eff 5-7-2002); 149 v H 485 (Eff 6-13-2002); 149 v H 393. Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05.

LEXSTAT ORC ANN. 2950.041

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 54 ***

*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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ORC Ann. 2950.041 (2010)

§ 2950.041. Duty to register resulting from child-victim oriented offense; notice of intent to reside

(A) (1) (a) Immediately after a sentencing hearing is held on or after January 1, 2008, for an offender who is convicted of or pleads guilty to a child-victim oriented offense and is sentenced to a prison term, a term of imprisonment, or any other type of confinement and before the offender is transferred to the custody of the department of rehabilitation and correction or to the official in charge of the jail, workhouse, state correctional institution, or other institution where the offender will be confined, the offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender was convicted of or pleaded guilty to the child-victim offense.

(b) Immediately after a dispositional hearing is held on or after January 1, 2008, for a child who is adjudicated a delinquent child for committing a child-victim oriented offense, is classified a juvenile offender registrant based on that adjudication, and is committed to the custody of the department of youth services or to a secure facility that is not operated by the department and before the child is transferred to the custody of the department of youth services or the secure facility to which the delinquent child is committed, the delinquent child shall register personally with the sheriff, or the sheriff's designee, of the county in which the delinquent child was classified a juvenile offender registrant based on that child-victim oriented offense.

(c) A law enforcement officer shall be present at the sentencing hearing or dispositional hearing described in division (A)(1)(a) or (b) of this section to immediately transport the offender or delinquent child who is the subject of the hearing to the sheriff, or the sheriff's designee, of the county in which the offender or delinquent child is convicted, pleads guilty, or is adjudicated a delinquent child.

(d) After an offender who has registered pursuant to division (A)(1)(a) of this section is released from a prison term, a term of imprisonment, or any other type of confinement, the offender shall register as provided in division (A)(2) of this section. After a delinquent child who has registered pursuant to division (A)(1)(b) of this section is released from the custody of the department of youth services or from a secure facility that is not operated by the department, the delinquent child shall register as provided in division (A)(3) of this section.

(2) Regardless of when the child-victim oriented offense was committed, each offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a child-victim oriented offense shall comply with all of the following registration requirements:

(a) The offender shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the offender's coming into a county in which the offender resides or temporarily is domiciled for more than three days.

(b) The offender shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state.

(c) The offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(d) The offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(e) The offender shall register personally with the sheriff, or the sheriff's designee, or other appropriate person of the other state immediately upon entering into any state other than this state in which the offender attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than this state for more than three days or for an aggregate period of fourteen or more days in that calendar year regardless of whether the offender resides or has a temporary domicile in this state, the other state, or a different state.

(3) Regardless of when the child-victim oriented offense was committed, each child who on or after July 31, 2003, is adjudicated a delinquent child for committing a child-victim oriented offense and who is classified a juvenile offender registrant based on that adjudication shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the delinquent child's coming into a county in which the delinquent child resides or temporarily is domiciled for more than three days. If the delinquent child is committed for the child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department, this duty begins when the delinquent child is discharged or released in any manner from custody in a department of youth services secure facility or from the secure facility that is not operated by the department if pursuant to the discharge or release the delinquent child is not committed to any other secure facility of the department or any other secure facility.

(4) Regardless of when the child-victim oriented offense was committed, each person who is convicted, pleads guilty, or is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a child-victim oriented offense shall comply with all of the following registration requirements if, at the time the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than three days, the offender enters this state to attend the school or institution of higher education, or the offender is employed in this state for more than the specified period of time, the offender or delinquent child has a duty to register as a child-victim offender or sex offender under the law of that other jurisdiction as a result of the conviction, guilty plea, or adjudication:

(a) Each offender and delinquent child shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the offender's or delinquent child's coming into the county in which the offender or delinquent child resides or temporarily is domiciled for more than three days.

(b) Each offender shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state.

(c) Each offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen days or more in that calendar year.

(d) Each offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has not been employed at any location or locations in this state for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(5) An offender is not required to register under division (A)(2), (3), or (4) of this section if a court issues an order terminating the offender's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* pursuant to *section 2950.15 of the Revised Code*. A delinquent child who is a juvenile offender registrant but is not a public registry-qualified juvenile offender registrant is not required to register under any of those divisions if a juvenile court issues an order declassifying the delinquent child as a juvenile offender registrant pursuant to *section 2152.84 or 2152.85 of the Revised Code*.

(B) An offender or delinquent child who is required by division (A) of this section to register in this state personally shall do so in the manner described in division (B) of *section 2950.04 of the Revised Code*, and the registration is complete as described in that division.

(C) The registration form to be used under divisions (A) and (B) of this section shall include or contain all of the following for the offender or delinquent child who is registering:

(1) The offender's or delinquent child's name, any aliases used by the offender or delinquent child, and a photograph of the offender or delinquent child;

(2) The offender's or delinquent child's social security number and date of birth, including any alternate social security numbers or dates of birth that the offender or delinquent child has used or uses;

(3) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(1) of this section, a statement that the offender is serving a prison term, term of imprisonment, or any other type of confinement or a statement that the delinquent child is in the custody of the department of youth services or is confined in a secure facility that is not operated by the department;

(4) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(2), (3), or (4) of this section as a result of the offender or delinquent child residing in this state or temporarily being domiciled in this state for more than three days, all of the information described in division (C)(4) of *section 2950.04 of the Revised Code*;

(5) Regarding an offender who is registering under a duty imposed under division (A)(2) or (4) of this section as a result of the offender attending a school or institution of higher education on a full-time or part-time basis or being employed in this state or in a particular county in this state, whichever is applicable, for more than three days or for an aggregate of fourteen or more days in any calendar year, all of the information described in division (C)(5) of *section 2950.04 of the Revised Code*;

(6) The identification license plate number issued by this state or any other state of each vehicle the offender or delinquent child owns, of each vehicle registered in the offender's or delinquent child's name, of each vehicle the offender or delinquent child operates as a part of employment, and of each other vehicle that is regularly available to be operated by the offender or delinquent child; a description of where each vehicle is habitually parked, stored, docked, or otherwise kept; and, if required by the bureau of criminal identification and investigation, a photograph of each of those vehicles;

(7) If the offender or delinquent child has a driver's or commercial driver's license or permit issued by this state or any other state or a state identification card issued under *section 4507.50 or 4507.51 of the Revised Code* or a comparable identification card issued by another state, the driver's license number, commercial driver's license number, or state identification card number;

(8) If the offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the child-victim oriented offense resulting in the registration duty in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States, a DNA specimen, as defined in *section 109.573 [109.57.3] of the Revised Code*, from the offender or delinquent child, a citation for, and the name of, the child-victim oriented offense resulting in the registration duty, and a certified copy of a document that describes the text of that child-victim oriented offense;

(9) Copies of travel and immigration documents;

(10) A description of each professional and occupational license, permit, or registration, including those licenses, permits, and registrations issued under Title XLVII of the Revised Code, held by the offender or delinquent child;

(11) Any email addresses, internet identifiers, or telephone numbers registered to or used by the offender or delinquent child;

(12) Any other information required by the bureau of criminal identification and investigation.

(D) Division (D) of *section 2950.04 of the Revised Code* applies when an offender or delinquent child registers with a sheriff pursuant to this section.

(E) No person who is required to register pursuant to divisions (A) and (B) of this section, and no person who is required to send a notice of intent to reside pursuant to division (G) of this section, shall fail to register or send the notice as required in accordance with those divisions or that division.

(F) An offender or delinquent child who is required to register pursuant to divisions (A) and (B) of this section shall register pursuant to this section for the period of time specified in *section 2950.07 of the Revised Code*, with the duty commencing on the date specified in division (A) of that section.

(G) If an offender or delinquent child who is required by division (A) of this section to register is a tier III sex offender/child-victim offender, the offender or delinquent child also shall send the sheriff, or the sheriff's designee, of the county in which the offender or delinquent child intends to reside written notice of the offender's or delinquent child's intent to reside in the county. The offender or delinquent child shall send the notice of intent to reside at least twenty days prior to the date the offender or delinquent child begins to reside in the county. The notice of intent to reside shall contain all of the following information:

(1) The information specified in divisions (G)(1) and (2) of *section 2950.04 of the Revised Code*;

(2) The child-victim oriented offense of which the offender was convicted, to which the offender pleaded guilty, or for which the child was adjudicated a delinquent child

(H) If, immediately prior to January 1, 2008, an offender or delinquent child who was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing a child-victim oriented offense or a sexually oriented offense as those terms were defined in *section 2950.01 of the Revised Code* prior to January 1, 2008, was required by division (A) of this section or *section 2950.04 of the Revised Code* to register and if, on or after January 1, 2008, that offense is a child-victim oriented offense as that term is defined in *section 2950.01 of the Revised Code* on and after January 1, 2008, the duty to register that is imposed pursuant to this section on and after January 1, 2008, shall be considered, for purposes of *section 2950.07 of the Revised Code* and for all other purposes, to be a continuation of the duty imposed upon the offender or delinquent child prior to January 1, 2008, under this section or *section 2950.04 of the Revised Code*.

HISTORY:

150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 152 v S 10, § 1, eff. 1-1-08.

LEXSTAT ORC ANN. 2950.05

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 54 ***

*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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ORC Ann. 2950.05 (2010)

§ 2950.05. Notice of change of address; registration of new address; notice of change in vehicle information, email addresses, internet identifiers, or telephone numbers

(A) If an offender or delinquent child is required to register pursuant to division (A)(2), (3), or (4) of *section 2950.04* or *2950.041 [2950.04.1] of the Revised Code*, the delinquent child if not a public registry-qualified juvenile offender registrant shall provide written notice of any change of residence address, and the offender and public registry-qualified juvenile offender registrant shall provide notice of any change of residence, school, institution of higher education, or place of employment address, to the sheriff with whom the offender or delinquent child most recently registered the address under division (A)(2), (3), or (4) of *section 2950.04* or *2950.041 [2950.04.1] of the Revised Code* or under division (B) of this section. A written notice of a change of school, institution of higher education, or place of employment address also shall include the name of the new school, institution of higher education, or place of employment. The delinquent child if not a public registry-qualified juvenile offender registrant shall provide the written notice at least twenty days prior to changing the residence address, and the offender and public registry-qualified juvenile offender registrant shall provide the written notice at least twenty days prior to changing the address of the residence, school, or institution of higher education and not later than three days after changing the address of the place of employment. They shall provide the written notices during the period they are required to register. If a residence address change is not to a fixed address, the offender or delinquent child shall include in that notice a detailed description of the place or places at which the offender or delinquent child intends to stay and, not later than the end of the first business day immediately following the day on which the person obtains a fixed residence address, shall provide that sheriff written notice of that fixed residence address. If a person whose residence address change is not to a fixed address describes in a notice under this division the place or places at which the per-

son intends to stay, for purposes of divisions (C) to (I) of this section, *sections 2950.06 to 2950.13 of the Revised Code*, and *sections 311.171 [311.17.1] and 2919.24 of the Revised Code*, the place or places so described in the notice shall be considered the person's residence address and registered residence address until the person provides the written notice of a fixed residence address as described in this division.

(B) If an offender or public registry-qualified juvenile offender registrant is required to provide notice of a residence, school, institution of higher education, or place of employment address change under division (A) of this section, or a delinquent child who is not a public registry-qualified juvenile offender registrant is required to provide notice of a residence address change under that division, the offender or delinquent child, at least twenty days prior to changing the residence, school, or institution of higher education address and not later than three days after changing the place of employment address, as applicable, also shall register the new address in the manner, and using the form, described in divisions (B) and (C) of *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code*, whichever is applicable, with the sheriff of the county in which the offender's or delinquent child's new address is located, subject to division (C) of this section. If a residence address change is not to a fixed address, the offender or delinquent child shall include in the registration a detailed description of the place or places at which the offender or delinquent child intends to stay and, not later than the end of the first business day immediately following the day on which the person obtains a fixed residence address, shall register with that sheriff that fixed residence address. If a person whose residence address change is not to a fixed address describes in a registration under this division the place or places at which the person intends to stay, for purposes of divisions (C) to (I) of this section, *sections 2950.06 to 2950.13 of the Revised Code*, and *sections 311.171 [311.17.1] and 2919.24 of the Revised Code*, the place or places so described in the registration shall be considered the person's residence address and registered residence address, until the person registers a fixed residence address as described in this division.

(C) Divisions (A) and (B) of this section apply to a person who is required to register pursuant to division (A)(2), (3), or (4) of *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* regardless of whether the new residence, school, institution of higher education, or place of employment address is in this state or in another state. If the new address is in another state, the person shall register with the appropriate law enforcement officials in that state in the manner required under the law of that state and within the earlier of the period of time required under the law of that state or at least seven days prior to changing the address.

(D) If an offender or delinquent child who is a public registry-qualified juvenile offender registrant is required to register pursuant to division (A)(2), (3), or (4) of *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code*, the offender or public registry-qualified juvenile offender registrant shall provide written notice, within three days of the change, of any change in vehicle information, email addresses, internet identifiers, or telephone numbers registered to or used by the offender or registrant to the sheriff with whom the offender or registrant has most recently registered under division (A)(2), (3), or (4) of *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code*.

(E) (1) Upon receiving from an offender or delinquent child pursuant to division (A) of this section notice of a change of the offender's or public registry-qualified juvenile offender registrant's residence, school, institution of higher education, or place of employment address or the residence address of a delinquent child who is not a public registry-qualified juvenile offender registrant, a sheriff promptly shall forward the new address to the bureau of criminal identification and investi-

gation in accordance with the forwarding procedures adopted pursuant to *section 2950.13 of the Revised Code* if the new address is in another state or, if the new address is located in another county in this state, to the sheriff of that county. Upon receiving from an offender or public registry-qualified juvenile offender registrant notice of vehicle and identifier changes pursuant to division (D) of this section, a sheriff promptly shall forward the new information to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to *section 2950.13 of the Revised Code*. The bureau shall include all information forwarded to it under this division in the state registry of sex offenders and child-victim offenders established and maintained under *section 2950.13 of the Revised Code* and shall forward notice of the offender's or delinquent child's new residence, school, institution of higher education, or place of employment address, as applicable, to the appropriate officials in the other state.

(2) When an offender or public registry-qualified juvenile offender registrant registers a new residence, school, institution of higher education, or place of employment address or a delinquent child who is not a public registry-qualified juvenile offender registrant registers a new residence address pursuant to division (B) of this section, the sheriff with whom the offender or delinquent child registers and the bureau of criminal identification and investigation shall comply with division (D) of *section 2950.04* or *2950.041 [2950.04.1]* of the *Revised Code*, whichever is applicable.

(F) (1) No person who is required to notify a sheriff of a change of address pursuant to division (A) of this section or a change in vehicle information or identifiers pursuant to division (D) of this section shall fail to notify the appropriate sheriff in accordance with that division.

(2) No person who is required to register a new residence, school, institution of higher education, or place of employment address with a sheriff or with an official of another state pursuant to divisions (B) and (C) of this section shall fail to register with the appropriate sheriff or official of the other state in accordance with those divisions.

(G) (1) It is an affirmative defense to a charge of a violation of division (F)(1) of this section that it was impossible for the person to provide the written notice to the sheriff as required under division (A) of this section because of a lack of knowledge, on the date specified for the provision of the written notice, of a residence, school, institution of higher education, or place of employment address change, and that the person provided notice of the residence, school, institution of higher education, or place of employment address change to the sheriff specified in division (A) of this section as soon as possible, but not later than the end of the first business day, after learning of the address change by doing either of the following:

(a) The person provided notice of the address change to the sheriff specified in division (A) of this section by telephone immediately upon learning of the address change or, if the person did not have reasonable access to a telephone at that time, as soon as possible, but not later than the end of the first business day, after learning of the address change and having reasonable access to a telephone, and the person, as soon as possible, but not later than the end of the first business day, after providing notice of the address change to the sheriff by telephone, provided written notice of the address change to that sheriff.

(b) The person, as soon as possible, but not later than the end of the first business day, after learning of the address change, provided written notice of the address change to the sheriff specified in division (A) of this section.

(2) It is an affirmative defense to a charge of a violation of division (F)(2) of this section that it was impossible for the person to register the new address with the sheriff or the official of the other state as required under division (B) or (C) of this section because of a lack of knowledge, on the date specified for the registration of the new address, of a residence, school, institution of higher education, or place of employment address change, and that the person registered the new residence, school, institution of higher education, or place of employment address with the sheriff or the official of the other state specified in division (B) or (C) of this section as soon as possible, but not later than the end of the first business day, after learning of the address change by doing either of the following:

(a) The person provided notice of the new address to the sheriff or official specified in division (B) or (C) of this section by telephone immediately upon learning of the new address or, if the person did not have reasonable access to a telephone at that time, as soon as possible, but not later than the end of the first business day, after learning of the new address and having reasonable access to a telephone, and the person, as soon as possible, but not later than the end of the first business day, after providing notice of the new address to the sheriff or official by telephone, registered the new address with that sheriff or official in accordance with division (B) or (C) of this section.

(b) The person, as soon as possible, but not later than the end of the first business day, after learning of the new address, registered the new address with the sheriff or official specified in division (B) or (C) of this section, in accordance with that division.

(H) An offender or delinquent child who is required to comply with divisions (A), (B), and (C) of this section shall do so for the period of time specified in *section 2950.07 of the Revised Code*.

(I) As used in this section, and in all other sections of the Revised Code that refer to the duties imposed on an offender or delinquent child under this section relative to a change in the offender's or delinquent child's residence, school, institution of higher education, or place of employment address, "change in address" includes any circumstance in which the old address for the person in question no longer is accurate, regardless of whether the person in question has a new address.

HISTORY:

146 v H 180 (Eff 7-1-97); 149 v S 3 (Eff 1-1-2002); 149 v S 175. Eff 5-7-2002; 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 152 v S 10, § 1, eff. 1-1-08.

LEXSTAT ORC ANN. 2950.06

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL AS-
SEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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ORC Ann. 2950.06 (2010)

§ 2950.06. Periodic verification of current address

(A) An offender or delinquent child who is required to register a residence address pursuant to division (A)(2), (3), or (4) of *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* shall periodically verify the offender's or delinquent child's current residence address, and an offender or public registry-qualified juvenile offender registrant who is required to register a school, institution of higher education, or place of employment address pursuant to any of those divisions shall periodically verify the address of the offender's or public registry-qualified juvenile offender registrant's current school, institution of higher education, or place of employment, in accordance with this section. The frequency of verification shall be determined in accordance with division (B) of this section, and the manner of verification shall be determined in accordance with division (C) of this section.

(B) The frequency with which an offender or delinquent child must verify the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address pursuant to division (A) of this section shall be determined as follows:

(1) Regardless of when the sexually oriented offense or child-victim oriented offense for which the offender or delinquent child is required to register was committed, if the offender or delinquent child is a tier I sex offender/child-victim offender, the offender shall verify the offender's current residence address or current school, institution of higher education, or place of employment address, and the delinquent child shall verify the delinquent child's current residence address, in accordance with division (C) of this section on each anniversary of the offender's or delinquent child's initial registration date during the period the offender or delinquent child is required to register

(2) Regardless of when the sexually oriented offense or child-victim oriented offense for which the offender or delinquent child is required to register was committed, if the offender or delinquent child is a tier II sex offender/child-victim offender, the offender shall verify the offender's current residence address or current school, institution of higher education, or place of employment address, and the delinquent child shall verify the delinquent child's current residence address, in accordance with division (C) of this section every one hundred eighty days after the offender's or delinquent child's initial registration date during the period the offender or delinquent child is required to register.

(3) Regardless of when the sexually oriented offense or child-victim oriented offense for which the offender or delinquent child is required to register was committed, if the offender or delinquent child is a tier III sex offender/child-victim offender, the offender shall verify the offender's current residence address or current school, institution of higher education, or place of employment address, and the delinquent child shall verify the delinquent child's current residence address and, if the delinquent child is a public registry-qualified juvenile offender registrant, the current school, institution of higher education, or place of employment address, in accordance with division (C) of this section every ninety days after the offender's or delinquent child's initial registration date during the period the offender or delinquent child is required to register.

(4) If, prior to January 1, 2008, an offender or delinquent child registered with a sheriff under a duty imposed under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* as a result of a conviction of, plea of guilty to, or adjudication as a delinquent child for committing a sexually oriented offense or a child-victim oriented offense as those terms were defined in *section 2950.01 of the Revised Code* prior to January 1, 2008, the duty to register that is imposed on the offender or delinquent child pursuant to *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* on and after January 1, 2008, is a continuation of the duty imposed upon the offender prior to January 1, 2008, under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* and, for purposes of divisions (B)(1), (2), and (3) of this section, the offender's initial registration date related to that offense is the date on which the offender initially registered under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code*.

(C) (1) An offender or delinquent child who is required to verify the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address pursuant to division (A) of this section shall verify the address with the sheriff with whom the offender or delinquent child most recently registered the address by personally appearing before the sheriff or a designee of the sheriff, no earlier than ten days before the date on which the verification is required pursuant to division (B) of this section and no later than the date so required for verification, and completing and signing a copy of the verification form prescribed by the bureau of criminal identification and investigation. The sheriff or designee shall sign the completed form and indicate on the form the date on which it is so completed. The verification required under this division is complete when the offender or delinquent child personally appears before the sheriff or designee and completes and signs the form as described in this division.

(2) To facilitate the verification of an offender's or delinquent child's current residence, school, institution of higher education, or place of employment address, as applicable, under division (C)(1) of this section, the sheriff with whom the offender or delinquent child most recently registered the address may mail a nonforwardable verification form prescribed by the bureau of criminal identification and investigation to the offender's or delinquent child's last reported address and to the last

reported address of the parents of the delinquent child, with a notice that conspicuously states that the offender or delinquent child must personally appear before the sheriff or a designee of the sheriff to complete the form and the date by which the form must be so completed. Regardless of whether a sheriff mails a form to an offender or delinquent child and that child's parents, each offender or delinquent child who is required to verify the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address, as applicable, pursuant to division (A) of this section shall personally appear before the sheriff or a designee of the sheriff to verify the address in accordance with division (C)(1) of this section.

(D) The verification form to be used under division (C) of this section shall contain all of the following:

(1) Except as provided in division (D)(2) of this section, the current residence address of the offender or delinquent child, the name and address of the offender's or delinquent child's employer if the offender or delinquent child is employed at the time of verification or if the offender or delinquent child knows at the time of verification that the offender or delinquent child will be commencing employment with that employer subsequent to verification, the name and address of the offender's or public registry-qualified juvenile offender registrant's school or institution of higher education if the offender or public registry-qualified juvenile offender registrant attends one at the time of verification or if the offender or public registry-qualified juvenile offender registrant knows at the time of verification that the offender will be commencing attendance at that school or institution subsequent to verification, and any other information required by the bureau of criminal identification and investigation.

(2) Regarding an offender or public registry-qualified juvenile offender registrant who is verifying a current school, institution of higher education, or place of employment address, the name and current address of the school, institution of higher education, or place of employment of the offender or public registry-qualified juvenile offender registrant and any other information required by the bureau of criminal identification and investigation.

(E) Upon an offender's or delinquent child's personal appearance and completion of a verification form under division (C) of this section, a sheriff promptly shall forward a copy of the verification form to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted by the attorney general pursuant to *section 2950.13 of the Revised Code*. If an offender or public registry-qualified juvenile offender registrant verifies a school, institution of higher education, or place of employment address, or provides a school or institution of higher education address under division (D)(1) of this section, the sheriff also shall provide notice to the law enforcement agency with jurisdiction over the premises of the school, institution of higher education, or place of employment of the offender's or public registry-qualified juvenile offender registrant's name and that the offender or public registry-qualified juvenile offender registrant has verified or provided that address as a place at which the offender or public registry-qualified juvenile offender registrant attends school or an institution of higher education or at which the offender or public registry-qualified juvenile offender registrant is employed. The bureau shall include all information forwarded to it under this division in the state registry of sex offenders and child-victim offenders established and maintained under *section 2950.13 of the Revised Code*.

(F) No person who is required to verify a current residence, school, institution of higher education, or place of employment address, as applicable, pursuant to divisions (A) to (C) of this section shall fail to verify a current residence, school, institution of higher education, or place of employ-

ment address, as applicable, in accordance with those divisions by the date required for the verification as set forth in division (B) of this section, provided that no person shall be prosecuted or subjected to a delinquent child proceeding for a violation of this division, and that no parent, guardian, or custodian of a delinquent child shall be prosecuted for a violation of *section 2919.24 of the Revised Code* based on the delinquent child's violation of this division, prior to the expiration of the period of time specified in division (G) of this section.

(G) (1) If an offender or delinquent child fails to verify a current residence, school, institution of higher education, or place of employment address, as applicable, as required by divisions (A) to (C) of this section by the date required for the verification as set forth in division (B) of this section, the sheriff with whom the offender or delinquent child is required to verify the current address, on the day following that date required for the verification, shall send a written warning to the offender or to the delinquent child and that child's parents, at the offender's or delinquent child's and that child's parents' last known residence, school, institution of higher education, or place of employment address, as applicable, regarding the offender's or delinquent child's duty to verify the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address, as applicable.

The written warning shall do all of the following:

(a) Identify the sheriff who sends it and the date on which it is sent;

(b) State conspicuously that the offender or delinquent child has failed to verify the offender's or public registry-qualified juvenile offender registrant's current residence, school, institution of higher education, or place of employment address or the current residence address of a delinquent child who is not a public registry-qualified juvenile offender registrant by the date required for the verification;

(c) Conspicuously state that the offender or delinquent child has seven days from the date on which the warning is sent to verify the current residence, school, institution of higher education, or place of employment address, as applicable, with the sheriff who sent the warning;

(d) Conspicuously state that a failure to timely verify the specified current address or addresses is a felony offense;

(e) Conspicuously state that, if the offender or public registry-qualified juvenile offender registrant verifies the current residence, school, institution of higher education, or place of employment address or the delinquent child who is not a public registry-qualified juvenile offender registrant verifies the current residence address with that sheriff within that seven-day period, the offender or delinquent child will not be prosecuted or subjected to a delinquent child proceeding for a failure to timely verify a current address and the delinquent child's parent, guardian, or custodian will not be prosecuted based on a failure of the delinquent child to timely verify an address;

(f) Conspicuously state that, if the offender or public registry-qualified juvenile offender registrant does not verify the current residence, school, institution of higher education, or place of employment address or the delinquent child who is not a public registry-qualified juvenile offender registrant does not verify the current residence address with that sheriff within that seven-day period, the offender or delinquent child will be arrested or taken into custody, as appropriate, and prosecuted or subjected to a delinquent child proceeding for a failure to timely verify a current address and the delinquent child's parent, guardian, or custodian may be prosecuted for a violation of

section 2919.24 of the Revised Code based on the delinquent child's failure to timely verify a current residence address.

(2) If an offender or delinquent child fails to verify a current residence, school, institution of higher education, or place of employment address, as applicable, as required by divisions (A) to (C) of this section by the date required for the verification as set forth in division (B) of this section, the offender or delinquent child shall not be prosecuted or subjected to a delinquent child proceeding for a violation of division (F) of this section, and the delinquent child's parent, guardian, or custodian shall not be prosecuted for a violation of *section 2919.24 of the Revised Code* based on the delinquent child's failure to timely verify a current residence address and, if the delinquent child is a public registry-qualified juvenile offender registrant, the current school, institution of higher education, or place of employment address, as applicable, unless the seven-day period subsequent to that date that the offender or delinquent child is provided under division (G)(1) of this section to verify the current address has expired and the offender or delinquent child, prior to the expiration of that seven-day period, has not verified the current address. Upon the expiration of the seven-day period that the offender or delinquent child is provided under division (G)(1) of this section to verify the current address, if the offender or delinquent child has not verified the current address, all of the following apply:

(a) The sheriff with whom the offender or delinquent child is required to verify the current residence, school, institution of higher education, or place of employment address, as applicable, promptly shall notify the bureau of criminal identification and investigation of the failure.

(b) The sheriff with whom the offender or delinquent child is required to verify the current residence, school, institution of higher education, or place of employment address, as applicable, the sheriff of the county in which the offender or delinquent child resides, the sheriff of the county in which is located the offender's or public registry-qualified juvenile offender registrant's school, institution of higher education, or place of employment address that was to be verified, or a deputy of the appropriate sheriff, shall locate the offender or delinquent child, promptly shall seek a warrant for the arrest or taking into custody, as appropriate, of the offender or delinquent child for the violation of division (F) of this section and shall arrest the offender or take the child into custody, as appropriate.

(c) The offender or delinquent child is subject to prosecution or a delinquent child proceeding for the violation of division (F) of this section, and the delinquent child's parent, guardian, or custodian may be subject to prosecution for a violation of *section 2919.24 of the Revised Code* based on the delinquent child's violation of that division.

(H) An offender or public registry-qualified juvenile offender registrant who is required to verify the offender's or public registry-qualified juvenile offender registrant's current residence, school, institution of higher education, or place of employment address pursuant to divisions (A) to (C) of this section and a delinquent child who is not a public registry-qualified juvenile offender registrant who is required to verify the delinquent child's current residence address pursuant to those divisions shall do so for the period of time specified in *section 2950.07 of the Revised Code*.

HISTORY:

146 v H 180 (Eff 7-1-97); 147 v H 565 (Eff 3-30-99); 149 v S 3 (Eff 1-1-2002); 149 v H 485. Eff 6-13-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

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*** ARCHIVE MATERIAL ***

*** CURRENT THROUGH LEGISLATION PASSED BY THE 126TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH MARCH 6, 2007 ***

*** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2007 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JANUARY 23, 2007 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEXUAL PREDATORS, HABITUAL SEX OFFENDERS, SEXUALLY ORIENTED OFFENDERS

ORC Ann. 2950.06 (2006)

§ 2950.06. Periodic verification of current address

(A) An offender or delinquent child who is required to register a residence address pursuant to *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* shall periodically verify the offender's or delinquent child's current residence address, and an offender who is required to register a school, institution of higher education, or place of employment address pursuant to either of those sections shall periodically verify the address of the offender's current school, institution of higher education, or place of employment, in accordance with this section. The frequency of verification shall be determined in accordance with division (B) of this section, and the manner of verification shall be determined in accordance with division (C) of this section.

(B) The frequency with which an offender or delinquent child must verify the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address pursuant to division (A) of this section shall be determined as follows:

(1) Regardless of when the sexually oriented offense or child-victim oriented offense for which the offender or delinquent child is required to register was committed, the offender shall verify the offender's current residence address or current school, institution of higher education, or place of employment address, and the delinquent child shall verify the delinquent child's current residence address, in accordance with division (C) of this section every ninety days after the offender's or delinquent child's initial registration date during the period the offender or delinquent child is required to register if any of the following applies:

(a) The offender or delinquent child is required to register based on a sexually oriented offense, and either the offender has been adjudicated a sexual predator relative to the sexually ori-

ented offense, the delinquent child has been adjudicated a sexual predator relative to the sexually oriented offense and the court has not subsequently entered a determination pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is a sexual predator, or the offender is required to register as a result of an aggravated sexually oriented offense.

(b) The offender or delinquent child is required to register based on a child-victim oriented offense, and either the offender has been adjudicated a child-victim predator relative to the child-victim oriented offense or the delinquent child has been adjudicated a child-victim predator relative to the child-victim oriented offense and the court has not subsequently entered a determination pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is a child-victim predator.

(2) In all circumstances not described in division (B)(1) of this section, the offender shall verify the offender's current residence address or current school, institution of higher education, or place of employment address, and the delinquent child shall verify the delinquent child's current residence address, in accordance with division (C) of this section on each anniversary of the offender's or delinquent child's initial registration date during the period the offender or delinquent child is required to register.

If, prior to the effective date of this amendment, an offender or delinquent child registered with a sheriff under a duty imposed under *section 2950.04 of the Revised Code* as a result of a conviction of, plea of guilty to, or adjudication as a delinquent child for committing a sexually oriented offense and if, on or after the effective date of this amendment, that offense no longer is a sexually oriented offense but instead is a child-victim oriented offense, the duty to register that is imposed on the offender or delinquent child pursuant to *section 2950.041 [2950.04.1] of the Revised Code* is a continuation of the duty imposed upon the offender prior to the effective date of this amendment under *section 2950.04 of the Revised Code* and, for purposes of divisions (B)(1) and (2) of this section, the offender's initial registration date related to that offense is the date on which the offender initially registered under *section 2950.04 of the Revised Code*.

(C) (1) An offender or delinquent child who is required to verify the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address pursuant to division (A) of this section shall verify the address with the sheriff with whom the offender or delinquent child most recently registered the address by personally appearing before the sheriff or a designee of the sheriff, no earlier than ten days before the date on which the verification is required pursuant to division (B) of this section and no later than the date so required for verification, and completing and signing a copy of the verification form prescribed by the bureau of criminal identification and investigation. The sheriff or designee shall sign the completed form and indicate on the form the date on which it is so completed. The verification required under this division is complete when the offender or delinquent child personally appears before the sheriff or designee and completes and signs the form as described in this division.

(2) To facilitate the verification of an offender's or delinquent child's current residence, school, institution of higher education, or place of employment address, as applicable, under division (C)(1) of this section, the sheriff with whom the offender or delinquent child most recently registered the address may mail a nonforwardable verification form prescribed by the bureau of criminal identification and investigation to the offender's or delinquent child's last reported address and to the last reported address of the parents of the delinquent child, with a notice that conspicuously states that the offender or delinquent child must personally appear before the sheriff or a designee of the sher-

iff to complete the form and the date by which the form must be so completed. Regardless of whether a sheriff mails a form to an offender or delinquent child and that child's parents, each offender or delinquent child who is required to verify the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address, as applicable, pursuant to division (A) of this section shall personally appear before the sheriff or a designee of the sheriff to verify the address in accordance with division (C)(1) of this section.

(D) The verification form to be used under division (C) of this section shall contain all of the following:

(1) Except as provided in division (D)(2) of this section, the current residence address of the offender or delinquent child, the name and address of the offender's or delinquent child's employer if the offender or delinquent child is employed at the time of verification or if the offender or delinquent child knows at the time of verification that the offender or delinquent child will be commencing employment with that employer subsequent to verification, the name and address of the offender's school or institution of higher education if the offender attends one at the time of verification or if the offender knows at the time of verification that the offender will be commencing attendance at that school or institution subsequent to verification, and any other information required by the bureau of criminal identification and investigation.

(2) Regarding an offender who is verifying a current school, institution of higher education, or place of employment address, the current address of the school, institution of higher education, or place of employment of the offender and any other information required by the bureau of criminal identification and investigation.

(E) Upon an offender's or delinquent child's personal appearance and completion of a verification form under division (C) of this section, a sheriff promptly shall forward a copy of the verification form to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted by the attorney general pursuant to *section 2950.13 of the Revised Code*. If an offender verifies a school, institution of higher education, or place of employment address, or provides a school or institution of higher education address under division (D)(1) of this section, the sheriff also shall provide notice to the law enforcement agency with jurisdiction over the premises of the school, institution of higher education, or place of employment of the offender's name and that the offender has verified or provided that address as a place at which the offender attends school or an institution of higher education or at which the offender is employed. The bureau shall include all information forwarded to it under this division in the state registry of sex offenders and child-victim offenders established and maintained under *section 2950.13 of the Revised Code*.

(F) No person who is required to verify a current residence, school, institution of higher education, or place of employment address, as applicable, pursuant to divisions (A) to (C) of this section shall fail to verify a current residence, school, institution of higher education, or place of employment address, as applicable, in accordance with those divisions by the date required for the verification as set forth in division (B) of this section, provided that no person shall be prosecuted or subjected to a delinquent child proceeding for a violation of this division, and that no parent, guardian, or custodian of a delinquent child shall be prosecuted for a violation of *section 2919.24 of the Revised Code* based on the delinquent child's violation of this division, prior to the expiration of the period of time specified in division (G) of this section.

(G) (1) If an offender or delinquent child fails to verify a current residence, school, institution of higher education, or place of employment address, as applicable, as required by divisions (A) to (C) of this section by the date required for the verification as set forth in division (B) of this section, the sheriff with whom the offender or delinquent child is required to verify the current address, on the day following that date required for the verification, shall send a written warning to the offender or to the delinquent child and that child's parents, at the offender's or delinquent child's and that child's parents' last known residence, school, institution of higher education, or place of employment address, as applicable, regarding the offender's or delinquent child's duty to verify the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address, as applicable.

The written warning shall do all of the following:

- (a) Identify the sheriff who sends it and the date on which it is sent;
 - (b) State conspicuously that the offender or delinquent child has failed to verify the offender's current residence, school, institution of higher education, or place of employment address or the delinquent child's current residence address by the date required for the verification;
 - (c) Conspicuously state that the offender or delinquent child has seven days from the date on which the warning is sent to verify the current residence, school, institution of higher education, or place of employment address, as applicable, with the sheriff who sent the warning;
 - (d) Conspicuously state that a failure to timely verify the specified current address or addresses is a felony offense;
 - (e) Conspicuously state that, if the offender verifies the current residence, school, institution of higher education, or place of employment address or the delinquent child verifies the current residence address with that sheriff within that seven-day period, the offender or delinquent child will not be prosecuted or subjected to a delinquent child proceeding for a failure to timely verify a current address and the delinquent child's parent, guardian, or custodian will not be prosecuted based on a failure of the delinquent child to timely verify an address;
 - (f) Conspicuously state that, if the offender does not verify the current residence, school, institution of higher education, or place of employment address or the delinquent child verifies the current residence address with that sheriff within that seven-day period, the offender or delinquent child will be arrested or taken into custody, as appropriate, and prosecuted or subjected to a delinquent child proceeding for a failure to timely verify a current address and the delinquent child's parent, guardian, or custodian may be prosecuted for a violation of *section 2919.24 of the Revised Code* based on the delinquent child's failure to timely verify a current residence address.
- (2) If an offender or delinquent child fails to verify a current residence, school, institution of higher education, or place of employment address, as applicable, as required by divisions (A) to (C) of this section by the date required for the verification as set forth in division (B) of this section, the offender or delinquent child shall not be prosecuted or subjected to a delinquent child proceeding for a violation of division (F) of this section, and the delinquent child's parent, guardian, or custodian shall not be prosecuted for a violation of *section 2919.24 of the Revised Code* based on the delinquent child's failure to timely verify a current residence address, as applicable, unless the seven-day period subsequent to that date that the offender or delinquent child is provided under division (G)(1) of this section to verify the current address has expired and the offender or delinquent child,

prior to the expiration of that seven-day period, has not verified the current address. Upon the expiration of the seven-day period that the offender or delinquent child is provided under division (G)(1) of this section to verify the current address, if the offender or delinquent child has not verified the current address, all of the following apply:

(a) The sheriff with whom the offender or delinquent child is required to verify the current residence, school, institution of higher education, or place of employment address, as applicable, promptly shall notify the bureau of criminal identification and investigation of the failure.

(b) The sheriff with whom the offender or delinquent child is required to verify the current residence, school, institution of higher education, or place of employment address, as applicable, the sheriff of the county in which the offender or delinquent child resides, the sheriff of the county in which is located the offender's school, institution of higher education, or place of employment address that was to be verified, or a deputy of the appropriate sheriff, shall locate the offender or delinquent child, promptly shall seek a warrant for the arrest or taking into custody, as appropriate, of the offender or delinquent child for the violation of division (F) of this section and shall arrest the offender or take the child into custody, as appropriate.

(c) The offender or delinquent child is subject to prosecution or a delinquent child proceeding for the violation of division (F) of this section, and the delinquent child's parent, guardian, or custodian may be subject to prosecution for a violation of *section 2919.24 of the Revised Code* based on the delinquent child's violation of that division.

(H) An offender who is required to verify the offender's current residence, school, institution of higher education, or place of employment address pursuant to divisions (A) to (C) of this section and a delinquent child who is required to verify the delinquent child's current residence address pursuant to those divisions shall do so for the period of time specified in *section 2950.07 of the Revised Code*.

HISTORY:

146 v H 180 (Eff 7-1-97); 147 v H 565 (Eff 3-30-99); 149 v S 3 (Eff 1-1-2002); 149 v H 485. Eff 6-13-2002; 150 v S 5, § 1, eff. 7-31-03.

LEXSTAT ORC ANN. 2950.07

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 54 ***

*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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ORC Ann. 2950.07 (2010)

§ 2950.07. Commencement of duty to register; duration

(A) The duty of an offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense and the duty of a delinquent child who is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or who is an out-of-state juvenile offender registrant to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* commences on whichever of the following dates is applicable:

(1) If the offender's duty to register is imposed pursuant to division (A)(1)(a) of section 2950.04 or division (A)(1)(a) of *section 2950.041 [2950.04.1] of the Revised Code*, the offender's duty to comply with those sections commences immediately after the entry of the judgment of conviction.

(2) If the delinquent child's duty to register is imposed pursuant to division (A)(1)(b) of section 2950.04 or division (A)(1)(b) of *section 2950.041 [2950.04.1] of the Revised Code*, the delinquent child's duty to comply with those sections commences immediately after the order of disposition.

(3) If the offender's duty to register is imposed pursuant to division (A)(2) of section 2950.04 or division (A)(2) of *section 2950.041 [2950.04.1] of the Revised Code*, subject to division (A)(7) of this section, the offender's duty to comply with those sections commences on the date of the offender's release from a prison term, a term of imprisonment, or any other type of confinement, or if the offender is not sentenced to a prison term, a term of imprisonment, or any other type of con-

finement, on the date of the entry of the judgment of conviction of the sexually oriented offense or child-victim oriented offense.

(4) If the offender's or delinquent child's duty to register is imposed pursuant to division (A)(4) of section 2950.04 or division (A)(4) of *section 2950.041 [2950.04.1] of the Revised Code*, the offender's duty to comply with those sections commences regarding residence addresses on the date that the offender begins to reside or becomes temporarily domiciled in this state, the offender's duty regarding addresses of schools, institutions of higher education, and places of employment commences on the date the offender begins attending any school or institution of higher education in this state on a full-time or part-time basis or becomes employed in this state, and the delinquent child's duty commences on the date the delinquent child begins to reside or becomes temporarily domiciled in this state.

(5) If the delinquent child's duty to register is imposed pursuant to division (A)(3) of section 2950.04 or division (A)(3) of *section 2950.041 [2950.04.1] of the Revised Code*, if the delinquent child's classification as a juvenile offender registrant is made at the time of the child's disposition for that sexually oriented offense or child-victim oriented offense, whichever is applicable, and if the delinquent child is committed for the sexually oriented offense or child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department, the delinquent child's duty to comply with those sections commences on the date of the delinquent child's discharge or release from custody in the department of youth services secure facility or from the secure facility not operated by the department as described in that division.

(6) If the delinquent child's duty to register is imposed pursuant to division (A)(3) of section 2950.04 or division (A)(3) of *section 2950.041 [2950.04.1] of the Revised Code* and if either the delinquent child's classification as a juvenile offender registrant is made at the time of the child's disposition for that sexually oriented offense or child-victim oriented offense, whichever is applicable, and the delinquent child is not committed for the sexually oriented offense or child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department or the child's classification as a juvenile offender registrant is made pursuant to section 2152.83 or division (A)(2) of *section 2152.86 of the Revised Code*, subject to divisions (A)(7) of this section, the delinquent child's duty to comply with those sections commences on the date of entry of the court's order that classifies the delinquent child a juvenile offender registrant.

(7) If the offender's or delinquent child's duty to register is imposed pursuant to division (A)(2), (3), or (4) of *section 2950.04* or *section 2950.041 [2950.04.1] of the Revised Code* and if the offender or delinquent child prior to January 1, 2008, has registered a residence, school, institution of higher education, or place of employment address pursuant to *section 2950.04*, *2950.041 [2950.04.1]*, or *2950.05 of the Revised Code* as they existed prior to that date, the offender or delinquent child initially shall register in accordance with *section 2950.04* or *2950.041 of the Revised Code*, whichever is applicable, as it exists on and after January 1, 2008, not later than the earlier of the dates specified in divisions (A)(7)(a) and (b) of this section. The offender's or delinquent child's duty to comply thereafter with *sections 2950.04*, *2950.041 [2950.04.1]*, *2950.05*, and *2950.06 of the Revised Code* as they exist on and after January 1, 2008, commences on the date of that initial registration. The offender or delinquent child initially shall register under *section 2950.04* or *2950.041 [2950.04.1] of the Revised Code* as it exists on and after January 1, 2008, not later than the earlier of the following:

(a) The date that is six months after the date on which the offender or delinquent child received a registered letter from the attorney general under division (A)(2) or (B) of *section 2950.031 [2950.03.1] of the Revised Code*;

(b) The earlier of the date on which the offender or delinquent child would be required to verify a previously registered address under *section 2950.06 of the Revised Code* as it exists on and after January 1, 2008, or, if the offender or delinquent child has changed a previously registered address, the date on which the offender or delinquent child would be required to register a new residence, school, institution of higher education, or place of employment address under *section 2950.05 of the Revised Code* as it exists on and after January 1, 2008.

(8) If the offender's or delinquent child's duty to register was imposed pursuant to *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* as they existed prior to January 1, 2008, the offender's or delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* as they exist on and after January 1, 2008, is a continuation of the offender's or delinquent child's former duty to register imposed prior to January 1, 2008, under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* and shall be considered for all purposes as having commenced on the date that the offender's duty under that section commenced.

(B) The duty of an offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense and the duty of a delinquent child who is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or who is an out-of-state juvenile offender registrant to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* continues, after the date of commencement, for whichever of the following periods is applicable:

(1) Except as otherwise provided in this division, if the person is an offender who is a tier III sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, if the person is a delinquent child who is a tier III sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, or if the person is a delinquent child who is a public registry-qualified juvenile offender registrant relative to the sexually oriented offense, the offender's or delinquent child's duty to comply with those sections continues until the offender's or delinquent child's death. Regarding a delinquent child who is a tier III sex offender/child-victim offender relative to the offense but is not a public registry-qualified juvenile offender registrant relative to the offense, if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is a tier III sex offender/child-victim offender, the delinquent child's duty to comply with those sections continues for the period of time that is applicable to the delinquent child under division (B)(2) or (3) of this section, based on the reclassification of the child pursuant to *section 2152.84 or 21562.85 of the Revised Code* as a tier I sex offender/child-victim offender or a tier II sex offender/child-victim offender. In no case shall the lifetime duty to comply that is imposed under this division on an offender who is a tier III sex offender/child-victim offender be removed or terminated. A delinquent child who is a public registry-qualified juvenile offender registrant may have the lifetime duty to register terminated only pursuant to *section 2950.15 of the Revised Code*.

(2) If the person is an offender who is a tier II sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the offender's duty to comply with

those sections continues for twenty-five years. Except as otherwise provided in this division, if the person is a delinquent child who is a tier II sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the delinquent child's duty to comply with those sections continues for twenty years. Regarding a delinquent child who is a tier II sex offender/child-victim offender relative to the offense but is not a public registry-qualified juvenile offender registrant relative to the offense, if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is a tier II sex offender/child-victim offender but remains a juvenile offender registrant, the delinquent child's duty to comply with those sections continues for the period of time that is applicable to the delinquent child under division (B)(3) of this section, based on the reclassification of the child pursuant to *section 2152.84 or 2152.85 of the Revised Code* as a tier I sex offender/child-victim offender.

(3) Except as otherwise provided in this division, if the person is an offender who is a tier I sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the offender's duty to comply with those sections continues for fifteen years. Except as otherwise provided in this division, if the person is a delinquent child who is a tier I sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the delinquent child's duty to comply with those sections continues for ten years. Regarding a delinquent child who is a juvenile offender registrant and a tier I sex offender/child-victim offender but is not a public registry-qualified juvenile offender registrant, if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is to be classified a juvenile offender registrant, the delinquent child's duty to comply with those sections terminates upon the court's entry of the determination. A person who is an offender who is a tier I sex offender/child-victim offender may have the fifteen-year duty to register terminated only pursuant to *section 2950.15 of the Revised Code*.

(C) (1) If an offender has been convicted of or pleaded guilty to a sexually oriented offense and the offender subsequently is convicted of or pleads guilty to another sexually oriented offense or a child-victim oriented offense, if an offender has been convicted of or pleaded guilty to a child-victim oriented offense and the offender subsequently is convicted of or pleads guilty to another child-victim oriented offense or a sexually oriented offense, if a delinquent child has been adjudicated a delinquent child for committing a sexually oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant and the child subsequently is adjudicated a delinquent child for committing another sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant relative to that offense or subsequently is convicted of or pleads guilty to another sexually oriented offense or a child-victim oriented offense, or if a delinquent child has been adjudicated a delinquent child for committing a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant and the child subsequently is adjudicated a delinquent child for committing another child-victim oriented offense or a sexually oriented offense and is classified a juvenile offender registrant relative to that offense or subsequently is convicted of or pleads guilty to another child-victim oriented offense or a sexually oriented offense, the period of time for which the offender or delinquent child must comply with the sections specified in division (A) of this section shall be separately calculated pursuant to divisions (A)(1) to (8) and (B)(1) to (3) of this section for each of the sexually

oriented offenses and child-victim oriented offenses, and the offender or delinquent child shall comply with each separately calculated period of time independently.

If a delinquent child has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense, is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant relative to that offense, and, after attaining eighteen years of age, subsequently is convicted of or pleads guilty to another sexually oriented offense or child-victim oriented offense, the subsequent conviction or guilty plea does not limit, affect, or supersede the duties imposed upon the delinquent child under this chapter relative to the delinquent child's classification as a juvenile offender registrant or as an out-of-state juvenile offender registrant, and the delinquent child shall comply with both those duties and the duties imposed under this chapter relative to the subsequent conviction or guilty plea.

(2) If a delinquent child has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant relative to the offense and if the juvenile judge or the judge's successor in office subsequently reclassifies the offense tier in which the child is classified pursuant to *section 2152.84 or 2152.85 of the Revised Code*, the judge's subsequent determination to reclassify the child does not affect the date of commencement of the delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* as determined under division (A) of this section. The child's duty to comply with those sections after the reclassification is a continuation of the child's duty to comply with the sections that was in effect prior to the reclassification, and the duty shall continue for the period of time specified in division (B)(1), (2), or (3) of this section, whichever is applicable.

If, prior to January 1, 2008, an offender had a duty to comply with the sections specified in division (A) of this section as a result of a conviction of or plea of guilty to a sexually oriented offense or child-victim oriented offense as those terms were defined in *section 2950.01 of the Revised Code* prior to January 1, 2008, or a delinquent child had a duty to comply with those sections as a result of an adjudication as a delinquent child for committing one of those offenses as they were defined prior to January 1, 2008, the period of time specified in division (B)(1), (2), or (3) of this section on and after January 1, 2008, for which a person must comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* applies to the person, automatically replaces the period of time for which the person had to comply with those sections prior to January 1, 2008, and is a continuation of the person's duty to comply with the sections that was in effect prior to the reclassification. If, prior to January 1, 2008, an offender or a delinquent child had a duty to comply with the sections specified in division (A) of this section, the offender's or delinquent child's classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender for purposes of that period of time shall be determined as specified in *section 2950.031 [2950.03.1] or 2950.032 [2950.03.2] of the Revised Code*, as applicable.

(D) The duty of an offender or delinquent child to register under this chapter is tolled for any period during which the offender or delinquent child is returned to confinement in a secure facility for any reason or imprisoned for an offense when the confinement in a secure facility or imprisonment occurs subsequent to the date determined pursuant to division (A) of this section. The offender's or delinquent child's duty to register under this chapter resumes upon the offender's or delinquent child's release from confinement in a secure facility or imprisonment.

(E) An offender or delinquent child who has been or is convicted, has pleaded or pleads guilty, or has been or is adjudicated a delinquent child, in a court in another state, in a federal court, military court, or Indian tribal court, or in a court of any nation other than the United States for committing a sexually oriented offense or a child-victim oriented offense may apply to the sheriff of the county in which the offender or delinquent child resides or temporarily is domiciled, or in which the offender attends a school or institution of higher education or is employed, for credit against the duty to register for the time that the offender or delinquent child has complied with the sex offender or child-victim offender registration requirements of another jurisdiction. The sheriff shall grant the offender or delinquent child credit against the duty to register for time for which the offender or delinquent child provides adequate proof that the offender or delinquent child has complied with the sex offender or child-victim offender registration requirements of another jurisdiction. If the offender or delinquent child disagrees with the determination of the sheriff, the offender or delinquent child may appeal the determination to the court of common pleas of the county in which the offender or delinquent child resides or is temporarily domiciled, or in which the offender attends a school or institution of higher education or is employed.

HISTORY:

146 v H 180 (Eff 7-1-97); 147 v H 565 (Eff 3-30-99); 149 v S 3 (Eff 1-1-2002); 149 v H 485. Eff 6-13-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

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*** ARCHIVE MATERIAL ***

*** CURRENT THROUGH LEGISLATION PASSED BY THE 126TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH MARCH 6, 2007 ***

*** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2007 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JANUARY 23, 2007 ***

TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2950. SEXUAL PREDATORS, HABITUAL SEX OFFENDERS, SEXUALLY ORIENTED OFFENDERS

ORC Ann. 2950.07 (2006)

§ 2950.07. Commencement of duty to register; duration

(A) The duty of an offender who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and the duty of a delinquent child who is adjudicated a delinquent child for committing either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or who is an out-of-state juvenile offender registrant to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* commences on whichever of the following dates is applicable:

(1) If the offender's duty to register is imposed pursuant to division (A)(1)(a) of section 2950.04 or division (A)(1)(a) of *section 2950.041 [2950.04.1] of the Revised Code*, the offender's duty to comply with those sections commences regarding residence addresses on the date of the offender's release from a prison term, a term of imprisonment, or any other type of confinement or on July 1, 1997, for a duty under section 2950.04 or the effective date of this amendment for a duty under *section 2950.041 [2950.04.1] of the Revised Code*, whichever is later, and commences regarding addresses of schools, institutions of higher education, and places of employment on the date of the offender's release from a prison term, term of imprisonment, or any other type of confinement or on the effective date of this amendment, whichever is later.

(2) If the offender's duty to register is imposed pursuant to division (A)(1)(b) of section 2950.04 or division (A)(1)(b) of *section 2950.041 [2950.04.1] of the Revised Code*, the offender's duty to comply with those sections commences regarding residence addresses on the date of entry of

the judgment of conviction of the sexually oriented offense or child-victim oriented offense or on July 1, 1997, for a duty under section 2950.04 or the effective date of this amendment for a duty under *section 2950.041 [2950.04.1] of the Revised Code*, whichever is later, and commences regarding addresses of schools, institutions of higher education, and places of employment on the date of entry of the judgment of conviction of the sexually oriented offense or child-victim oriented offense or on the effective date of this amendment, whichever is later.

(3) If the offender's duty to register is imposed pursuant to division (A)(1)(c) of *section 2950.04 of the Revised Code*, the offender's duty to comply with those sections commences regarding residence addresses fourteen days after July 1, 1997, and commences regarding addresses of schools, institutions of higher education, and places of employment fourteen days after the effective date of this amendment.

(4) If the offender's or delinquent child's duty to register is imposed pursuant to division (A)(3)(a) or (b) of section 2950.04 or division (A)(3)(a) or (b) of *section 2950.041 [2950.04.1] of the Revised Code*, the offender's duty to comply with those sections commences regarding residence addresses on the date that the offender begins to reside or becomes temporarily domiciled in this state or on March 30, 1999, for a duty under *section 2950.04 of the Revised Code* or the effective date of this amendment for a duty under *section 2950.041 of the Revised Code*, whichever is later, the offender's duty regarding addresses of schools, institutions of higher education, and places of employment commences on the effective date of this amendment or on the date the offender begins attending any school or institution of higher education in this state on a full-time or part-time basis or becomes employed in this state, whichever is later, and the delinquent child's duty commences on the date the delinquent child begins to reside or becomes temporarily domiciled in this state or on January 1, 2002, for a duty under *section 2950.04 of the Revised Code* or the effective date of this amendment for a duty under *section 2950.041 [2950.04.1] of the Revised Code*, whichever is later.

(5) If the delinquent child's duty to register is imposed pursuant to division (A)(2) of section 2950.04 or division (A)(2)(a) of *section 2950.041 [2950.04.1] of the Revised Code*, if the delinquent child's classification as a juvenile offender registrant is made at the time of the child's disposition for that sexually oriented offense or child-victim oriented offense, whichever is applicable, and if the delinquent child is committed for the sexually oriented offense or child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department, the delinquent child's duty to comply with those sections commences on the date of the delinquent child's discharge or release from custody in the department of youth services secure facility or from the secure facility not operated by the department as described in that division.

(6) If the delinquent child's duty to register is imposed pursuant to division (A)(2) of section 2950.04 or division (A)(2)(a) of *section 2950.041 [2950.04.1] of the Revised Code* and if either the delinquent child's classification as a juvenile offender registrant is made at the time of the child's disposition for that sexually oriented offense or child-victim oriented offense, whichever is applicable, and the delinquent child is not committed for the sexually oriented offense or child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department or the child's classification as a juvenile offender registrant is made pursuant to *sections 2152.83 of the Revised Code*, the delinquent child's duty to comply with those sections commences on the date of entry of the court's order that classifies the delinquent child a juvenile offender registrant.

(7) If the offender's duty to register is imposed pursuant to division (A)(1)(c) of *section 2950.041 [2950.04.1] of the Revised Code*, the offender's duty to comply with those sections regarding residence addresses is a continuation of the offender's former duty to register regarding residence addresses imposed prior to the effective date of this amendment under *section 2950.04 of the Revised Code* and shall be considered for all purposes as having commenced on the date that the offender's former duty under that section commenced. The offender's duty to comply with those sections commences regarding addresses of schools, institutions of higher education, and places of employment on the effective date of this amendment.

(8) If the delinquent child's duty to register is imposed pursuant to division (A)(2)(b) of *section 2950.041 [2950.04.1] of the Revised Code*, the delinquent child's duty to comply with those sections is a continuation of the delinquent child's former duty to register imposed prior to the effective date of this amendment under *section 2950.04 of the Revised Code* and shall be considered for all purposes as having commenced on the date that the delinquent child's former duty under that section commenced or commences.

(B) The duty of an offender who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and the duty of a delinquent child who is adjudicated a delinquent child for committing either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or who is an out-of-state juvenile offender registrant to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* continues, after the date of commencement, for whichever of the following periods is applicable:

(1) Except as otherwise provided in this division, if the offense is a sexually oriented offense that is not a registration-exempt sexually oriented offense and the offender or delinquent child has been adjudicated a sexual predator relative to the sexually oriented offense, if the offense is a sexually oriented offense and the offender has the duty to register as a result of an aggravated sexually oriented offense, or if the offense is a child-victim oriented offense and the offender or delinquent child has been adjudicated a child-victim predator relative to the child-victim oriented offense, the offender's or delinquent child's duty to comply with those sections continues until the offender's or delinquent child's death. Regarding a delinquent child who has been adjudicated a sexual predator relative to the sexually oriented offense or who has been adjudicated a child-victim predator relative to the child-victim oriented offense, if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is a sexual predator or child-victim predator, the delinquent child's duty to comply with those sections continues for the period of time that otherwise would have been applicable to the delinquent child under division (B)(2) or (3) of this section. In no case shall the lifetime duty to comply that is imposed under this division on an offender who is adjudicated a sexual predator or is adjudicated a child-victim predator or is imposed under this division for an aggravated sexually oriented offense, or the adjudication, classification, or conviction that subjects the offender to this division, be removed or terminated.

(2) If the judge who sentenced the offender or made the disposition for the delinquent child for committing the sexually oriented offense that is not a registration-exempt sexually oriented offense or the child-victim oriented offense, or the successor in office of the juvenile court judge who made the delinquent child disposition, determined pursuant to division (E) of *section 2950.09 or 2950.091*

[2950.09.1] or pursuant to division (B) of *section 2152.83*, *section 2152.84*, or *section 2152.85 of the Revised Code* that the offender or delinquent child is a habitual sex offender or a habitual child-victim offender, or if the offender or delinquent child is automatically classified a habitual child-victim offender pursuant to division (E) of *section 2950.091 [2950.09.1] of the Revised Code*, the offender's duty to comply with those sections continues either until the offender's death or for twenty years, determined as provided in this division, and the delinquent child's duty to comply with those sections continues for twenty years. If a delinquent child is so determined or classified to be a habitual sex offender or a habitual child-victim offender and if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to *section 2152.84* or *2152.85 of the Revised Code* that the delinquent child no longer is a habitual sex offender or habitual child-victim offender but remains a juvenile offender registrant, the delinquent child's duty to comply with those sections continues for the period of time that otherwise would have been applicable to the delinquent child under division (B)(3) of this section. Except as otherwise provided in this division, the offender's duty to comply with those sections continues until the offender's death. If a lifetime duty to comply is imposed under this division on an offender, in no case shall that lifetime duty, or the determination that subjects the offender to this division, be removed or terminated. The offender's duty to comply with those sections continues for twenty years if the offender is a habitual sex offender and both of the following apply:

(a) At least one of the sexually oriented offenses of which the offender has been convicted or to which the offender has pleaded guilty and that are included in the habitual sex offender determination is a violation of division (A)(1) or (5) of *section 2907.06 of the Revised Code* involving a victim who is eighteen years of age or older, a violation of division (A), (B), or (E) of *section 2907.08 of the Revised Code* involving a victim who is eighteen years of age or older, or a violation of *section 2903.211 [2903.21.1] of the Revised Code* that is a misdemeanor;

(b) The total of all the sexually oriented offenses of which the offender has been convicted or to which the offender has pleaded guilty and that are included in the habitual sex offender determination does not include at least two sexually oriented offenses that are not described in division (B)(2)(a) of this section.

(3) If neither division (B)(1) nor (B)(2) of this section applies, the offender's or delinquent child's duty to comply with those sections continues for ten years. If a delinquent child is classified pursuant to *section 2152.82* or *2152.83 of the Revised Code* a juvenile offender registrant and if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to *section 2152.84* or *2152.85 of the Revised Code* that the delinquent child no longer is to be classified a juvenile offender registrant, the delinquent child's duty to comply with those sections terminates upon the court's entry of the determination.

(C) (1) If an offender has been convicted of or pleaded guilty to a sexually oriented offense that is not a registration-exempt sexually oriented offense and the offender subsequently is convicted of or pleads guilty to another sexually oriented offense or a child-victim oriented offense, if an offender has been convicted of or pleaded guilty to a child-victim oriented offense and the offender subsequently is convicted of or pleads guilty to another child-victim oriented offense or a sexually oriented offense, if a delinquent child has been adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant and the child subsequently is adjudicated a delinquent child for committing another sexually oriented offense or a

child-victim oriented offense and is classified a juvenile offender registrant relative to that offense or subsequently is convicted of or pleads guilty to another sexually oriented offense or a child-victim oriented offense, or if a delinquent child has been adjudicated a delinquent child for committing a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant and the child subsequently is adjudicated a delinquent child for committing another child-victim oriented offense or a sexually oriented offense and is classified a juvenile offender registrant relative to that offense or subsequently is convicted of or pleads guilty to another child-victim oriented offense or a sexually oriented offense, the period of time for which the offender or delinquent child must comply with the sections specified in division (A) of this section shall be separately calculated pursuant to divisions (A)(1) to (8) and (B)(1) to (3) of this section for each of the sexually oriented offenses and child-victim oriented offenses, and the separately calculated periods of time shall be complied with independently.

If a delinquent child has been adjudicated a delinquent child for committing either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense, is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant relative to the offense, and, after attaining eighteen years of age, subsequently is convicted of or pleads guilty to another sexually oriented offense or child-victim oriented offense, the subsequent conviction or guilty plea does not limit, affect, or supersede the duties imposed upon the delinquent child under this chapter relative to the delinquent child's classification as a juvenile offender registrant or as an out-of-state juvenile offender registrant, and the delinquent child shall comply with both those duties and the duties imposed under this chapter relative to the subsequent conviction or guilty plea.

(2) If a delinquent child has been adjudicated a delinquent child for committing on or after January 1, 2002, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant relative to the offense, if the order containing the classification also contains a determination by the juvenile judge that the child is a sexual predator or a habitual sex offender or that the child is a child-victim predator or a habitual child-victim offender, and if the juvenile judge or the judge's successor in office subsequently determines pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is a sexual predator or habitual sex offender or no longer is a child-victim predator or habitual child-victim offender, whichever is applicable, the judge's subsequent determination does not affect the date of commencement of the delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* as determined under division (A) of this section.

(D) The duty of an offender or delinquent child to register under this chapter is tolled for any period during which the offender or delinquent child is returned to confinement in a secure facility for any reason or imprisoned for an offense when the confinement in a secure facility or imprisonment occurs subsequent to the date determined pursuant to division (A) of this section. The offender's or delinquent child's duty to register under this chapter resumes upon the offender's or delinquent child's release from confinement in a secure facility or imprisonment.

(E) An offender or delinquent child who has been convicted or pleaded guilty, or has been or is adjudicated a delinquent child, in a court in another state, in a federal court, military court, or Indian tribal court, or in a court of any nation other than the United States for committing either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented

offense may apply to the sheriff of the county in which the offender or delinquent child resides or temporarily is domiciled, or in which the offender attends a school or institution of higher education or is employed, for credit against the duty to register for the time that the offender or delinquent child has complied with the sex offender or child-victim offender registration requirements of another jurisdiction. The sheriff shall grant the offender or delinquent child credit against the duty to register for time for which the offender or delinquent child provides adequate proof that the offender or delinquent child has complied with the sex offender or child-victim offender registration requirements of another jurisdiction. If the offender or delinquent child disagrees with the determination of the sheriff, the offender or delinquent child may appeal the determination to the court of common pleas of the county in which the offender or delinquent child resides or is temporarily domiciled, or in which the offender attends a school or institution of higher education or is employed.

HISTORY:

146 v H 180 (Eff 7-1-97); 147 v H 565 (Eff 3-30-99); 149 v S 3 (Eff 1-1-2002); 149 v H 485. Eff 6-13-2002; 150 v S 5, § 1, eff. 7-31-03.

LEXSTAT ORC ANN. 2950.081

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 54 ***

*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

Go to the Ohio Code Archive Directory

ORC Ann. 2950.081 (2010)

§ 2950.081. Disclosure of sex offender registration information in possession of sheriff; internet database provisions

(A) Any statements, information, photographs, fingerprints, or materials that are required to be provided, and that are provided, by an offender or delinquent child pursuant to *section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code* and that are in the possession of a county sheriff are public records open to public inspection under *section 149.43 of the Revised Code* and shall be included in the internet sex offender and child-victim offender database established and maintained under *section 2950.13 of the Revised Code* to the extent provided in that section.

(B) Except when the child is classified a public registry-qualified juvenile offender registrant, the sheriff shall not cause to be publicly disseminated by means of the internet any statements, information, photographs, fingerprints, or materials that are provided by a delinquent child who sends a notice of intent to reside, registers, provides notice of a change of residence address and registers the new residence address, or provides verification of a current residence address pursuant to this chapter and that are in the possession of a county sheriff.

(C) If a sheriff establishes on the internet a sex offender and child-victim offender database for the public dissemination of some or all of the materials that are described in division (A) of this section, that are not prohibited from inclusion by division (B) of this section, and that pertain to offenders or delinquent children who register in the sheriff's county, in addition to all of the other information and materials included, the sheriff shall include in the database a chart describing which sexually oriented offenses and child-victim oriented offenses are included in the definitions of tier I sex offender/child-victim offender, tier II sex offender/child-victim offender, and tier III sex offender/child-victim offender and for each offender or delinquent child in relation to whom informa-

tion and materials are provided a statement as to whether the offender or delinquent child is a tier I sex offender/child-victim offenders, a tier II sex offender/child-victim offenders, or a tier III sex offender/child-victim offenders.

HISTORY:

149 v S 3. Eff 1-1-2002; 150 v S 5, § 1, Eff 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 126TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH MARCH 6, 2007 ***

*** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2007 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JANUARY 23, 2007 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEXUAL PREDATORS, HABITUAL SEX OFFENDERS, SEXUALLY ORIENTED OFFENDERS

ORC Ann. 2950.081 (2006)

§ 2950.081. Disclosure of sex offender registration information in possession of sheriff

(A) Any statements, information, photographs, or fingerprints that are required to be provided, and that are provided, by an offender or delinquent child pursuant to *section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code* and that are in the possession of a county sheriff are public records open to public inspection under *section 149.43 of the Revised Code* and shall be included in the internet sex offender and child-victim offender database established and maintained under *section 2950.13 of the Revised Code* to the extent provided in that section.

(B) Except when the child is classified a juvenile offender registrant and the act that is the basis of the classification is a violation of, or an attempt to commit a violation of, *section 2903.01, 2903.02, or 2905.01 of the Revised Code* that was committed with a purpose to gratify the sexual needs or desires of the child, a violation of *section 2907.02 of the Revised Code*, or an attempt to commit a violation of that section, the sheriff shall not cause to be publicly disseminated by means of the internet any statements, information, photographs, or fingerprints that are provided by a juvenile offender registrant who sends a notice of intent to reside, registers, provides notice of a change of residence address and registers the new residence address, or provides verification of a current residence address pursuant to this chapter and that are in the possession of a county sheriff.

HISTORY:

149 v S 3. Eff 1-1-2002; 150 v S 5, § 1, Eff 7-31-03.

LEXSTAT ORC ANN. 2950.09

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SEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 54 ***

*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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ORC Ann. 2950.09 (2010)

§ 2950.09. Repealed

Repealed, 152 v S 10, § 2 [146 v H 180 (Eff 1-1-97); 147 v H 565 (Eff 3-30-99); 148 v H 502 (Eff 3-15-2001); 149 v S 3 (Eff 1-1-2002); 149 v S 175 (Eff 5-7-2002); 149 v H 485 (Eff 6-13-2002); 149 v H 393. Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 151 v S 260, § 1, eff. 1-2-07]. Eff 1-1-08.

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 126TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH MARCH 6, 2007 ***
*** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2007 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JANUARY 23, 2007 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEXUAL PREDATORS, HABITUAL SEX OFFENDERS, SEXUALLY ORIENTED OFFENDERS

ORC Ann. 2950.09 (2006)

§ 2950.09. Classification as sexual predator; determination hearing; petition for removal from classification

(A) If a person is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually oriented offense that is not a registration-exempt sexually oriented offense, and if the sexually oriented offense is a violent sex offense or a designated homicide, assault, or kidnapping offense and the offender is adjudicated a sexually violent predator in relation to that offense, the conviction of or plea of guilty to the offense and the adjudication as a sexually violent predator automatically classifies the offender as a sexual predator for purposes of this chapter. If a person is convicted of or pleads guilty to committing on or after the effective date of this amendment a sexually oriented offense that is a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* and if either the person is sentenced under *section 2971.03 of the Revised Code*, or the court imposes upon the offender a sentence of life without parole under division (B) of *section 2907.02 of the Revised Code*, the conviction of or plea of guilty to the offense automatically classifies the offender as a sexual predator for purposes of this chapter. If a person is convicted of or pleads guilty to committing on or after the effective date of this amendment attempted rape and also is convicted of or pleads guilty to a specification of the type described in *section 2941.1418 [2941.14.18]*, *2941.1419 [2941.14.19]*, or *2941.1420 [2941.14.20]* of the *Revised Code*, the conviction of or plea of guilty to the offense and the specification automatically classify the offender as a sexual predator for purposes of this chapter. If a person is convicted, pleads guilty, or is adjudicated a delinquent child, in a court in another state, in a federal court, military court, or Indian tribal court, or in a court of any nation other than the United States for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, and if, as a result of that conviction, plea of guilty, or adjudication,

cation, the person is required, under the law of the jurisdiction in which the person was convicted, pleaded guilty, or was adjudicated, to register as a sex offender until the person's death, that conviction, plea of guilty, or adjudication automatically classifies the person as a sexual predator for the purposes of this chapter, but the person may challenge that classification pursuant to division (F) of this section. In all other cases, a person who is convicted of or pleads guilty to, has been convicted of or pleaded guilty to, or is adjudicated a delinquent child for committing, a sexually oriented offense may be classified as a sexual predator for purposes of this chapter only in accordance with division (B) or (C) of this section or, regarding delinquent children, divisions (B) and (C) of *section 2152.83 of the Revised Code*.

(B) (1) (a) The judge who is to impose sentence on a person who is convicted of or pleads guilty to a sexually oriented offense that is not a registration-exempt sexually oriented offense shall conduct a hearing to determine whether the offender is a sexual predator if any of the following circumstances apply:

(i) Regardless of when the sexually oriented offense was committed, the offender is to be sentenced on or after January 1, 1997, for a sexually oriented offense that is not a registration-exempt sexually oriented offense and that is not a sexually violent offense.

(ii) Regardless of when the sexually oriented offense was committed, the offender is to be sentenced on or after January 1, 1997, for a sexually oriented offense that is not a registration-exempt sexually oriented offense, and that is not a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* committed on or after the effective date of this amendment for which sentence is imposed under *section 2971.03 of the Revised Code* or for which a sentence of life without parole is imposed under division (B) of *section 2907.02 of the Revised Code*, and that is not attempted rape committed on or after the effective date of this amendment when the offender also is convicted of or pleads guilty to a specification of the type described in *section 2941.1418 [2941.14.18]*, *2941.1419 [2941.14.19]*, or *2941.1420 [2941.14.20] of the Revised Code*, and either of the following applies: the sexually oriented offense is a violent sex offense other than a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* committed on or after the effective date of this amendment and other than attempted rape committed on or after that date when the offender also is convicted of or pleads guilty to a specification of the type described in *section 2941.1418 [2941.14.18]*, *2941.1419 [2941.14.19]*, or *2941.1420 [2941.14.20] of the Revised Code*, and a sexually violent predator specification was not included in the indictment, count in the indictment, or information charging the violent sex offense; or the sexually oriented offense is a designated homicide, assault, or kidnapping offense and either a sexual motivation specification or a sexually violent predator specification, or both such specifications, were not included in the indictment, count in the indictment, or information charging the designated homicide, assault, or kidnapping offense.

(iii) Regardless of when the sexually oriented offense was committed, the offender is to be sentenced on or after May 7, 2002, for a sexually oriented offense that is not a registration-exempt sexually oriented offense, and that offender was acquitted of a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging the sexually oriented offense.

(b) The judge who is to impose or has imposed an order of disposition upon a child who is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense that is not a registration-exempt sexually oriented offense shall conduct a hearing as provided

in this division to determine whether the child is to be classified as a sexual predator if either of the following applies:

(i) The judge is required by section 2152.82 or division (A) of *section 2152.83 of the Revised Code* to classify the child a juvenile offender registrant.

(ii) Division (B) of *section 2152.83 of the Revised Code* applies regarding the child, the judge conducts a hearing under that division for the purposes described in that division, and the judge determines at that hearing that the child will be classified a juvenile offender registrant.

(2) Regarding an offender, the judge shall conduct the hearing required by division (B)(1)(a) of this section prior to sentencing and, if the sexually oriented offense for which sentence is to be imposed is a felony and if the hearing is being conducted under division (B)(1)(a) of this section, the judge may conduct it as part of the sentencing hearing required by *section 2929.19 of the Revised Code*. Regarding a delinquent child, the judge may conduct the hearing required by division (B)(1)(b) of this section at the same time as, or separate from, the dispositional hearing, as specified in the applicable provision of *section 2152.82 or 2152.83 of the Revised Code*. The court shall give the offender or delinquent child and the prosecutor who prosecuted the offender or handled the case against the delinquent child for the sexually oriented offense notice of the date, time, and location of the hearing. At the hearing, the offender or delinquent child and the prosecutor shall have an opportunity to testify, present evidence, call and examine witnesses and expert witnesses, and cross-examine witnesses and expert witnesses regarding the determination as to whether the offender or delinquent child is a sexual predator. The offender or delinquent child shall have the right to be represented by counsel and, if indigent, the right to have counsel appointed to represent the offender or delinquent child.

(3) In making a determination under divisions (B)(1) and (4) of this section as to whether an offender or delinquent child is a sexual predator, the judge shall consider all relevant factors, including, but not limited to, all of the following:

(a) The offender's or delinquent child's age;

(b) The offender's or delinquent child's prior criminal or delinquency record regarding all offenses, including, but not limited to, all sexual offenses;

(c) The age of the victim of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made;

(d) Whether the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made involved multiple victims;

(e) Whether the offender or delinquent child used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting;

(f) If the offender or delinquent child previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing an act that if committed by an adult would be, a criminal offense, whether the offender or delinquent child completed any sentence or dispositional order imposed for the prior offense or act and, if the prior offense or act was a sex offense or a sexually oriented offense, whether the offender or delinquent child participated in available programs for sexual offenders;

(g) Any mental illness or mental disability of the offender or delinquent child;

(h) The nature of the offender's or delinquent child's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;

(i) Whether the offender or delinquent child, during the commission of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made, displayed cruelty or made one or more threats of cruelty;

(j) Any additional behavioral characteristics that contribute to the offender's or delinquent child's conduct.

(4) After reviewing all testimony and evidence presented at the hearing conducted under division (B)(1) of this section and the factors specified in division (B)(3) of this section, the court shall determine by clear and convincing evidence whether the subject offender or delinquent child is a sexual predator. If the court determines that the subject offender or delinquent child is not a sexual predator, the court shall specify in the offender's sentence and the judgment of conviction that contains the sentence or in the delinquent child's dispositional order, as appropriate, that the court has determined that the offender or delinquent child is not a sexual predator and the reason or reasons why the court determined that the subject offender or delinquent child is not a sexual predator. If the court determines by clear and convincing evidence that the subject offender or delinquent child is a sexual predator, the court shall specify in the offender's sentence and the judgment of conviction that contains the sentence or in the delinquent child's dispositional order, as appropriate, that the court has determined that the offender or delinquent child is a sexual predator and shall specify that the determination was pursuant to division (B) of this section. In any case in which the sexually oriented offense in question is an aggravated sexually oriented offense, the court shall specify in the offender's sentence and the judgment of conviction that contains the sentence that the offender's offense is an aggravated sexually oriented offense. The offender or delinquent child and the prosecutor who prosecuted the offender or handled the case against the delinquent child for the sexually oriented offense in question may appeal as a matter of right the court's determination under this division as to whether the offender or delinquent child is, or is not, a sexual predator.

(5) A hearing shall not be conducted under division (B) of this section regarding an offender if any of the following applies:

(a) The sexually oriented offense in question is a sexually violent offense, the indictment, count in the indictment, or information charging the offense also included a sexually violent predator specification, and the offender is convicted of or pleads guilty to that sexually violent predator specification.

(b) The sexually oriented offense in question is a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* committed on or after the effective date of this amendment, and either the offender is sentenced under *section 2971.03 of the Revised Code*, or a sentence of life without parole is imposed under division (B) of *section 2907.02 of the Revised Code*.

(c) The sexually oriented offense in question is attempted rape committed on or after the effective date of this amendment, and the offender also was convicted of or pleaded guilty to a specification of the type described in *section 2941.1418 [2941.14.18]*, *2941.1419 [2941.14.19]*, or *2941.1420 [2941.14.20]* of the *Revised Code*.

(C) (1) If a person was convicted of or pleaded guilty to a sexually oriented offense that is not a registration-exempt sexually oriented offense prior to January 1, 1997, if the person was not sentenced for the offense on or after January 1, 1997, and if, on or after January 1, 1997, the offender is serving a term of imprisonment in a state correctional institution, the department of rehabilitation and correction shall do whichever of the following is applicable:

(a) If the sexually oriented offense was an offense described in division (D)(1)(c) of *section 2950.01 of the Revised Code* or was a violent sex offense, the department shall notify the court that sentenced the offender of this fact, and the court shall conduct a hearing to determine whether the offender is a sexual predator.

(b) If division (C)(1)(a) of this section does not apply, the department shall determine whether to recommend that the offender be adjudicated a sexual predator. In making a determination under this division as to whether to recommend that the offender be adjudicated a sexual predator, the department shall consider all relevant factors, including, but not limited to, all of the factors specified in divisions (B)(2) and (3) of this section. If the department determines that it will recommend that the offender be adjudicated a sexual predator, it immediately shall send the recommendation to the court that sentenced the offender. If the department determines that it will not recommend that the offender be adjudicated a sexual predator, it immediately shall send its determination to the court that sentenced the offender. In all cases, the department shall enter its determination and recommendation in the offender's institutional record, and the court shall proceed in accordance with division (C)(2) of this section.

(2) (a) If the department of rehabilitation and correction sends to a court a notice under division (C)(1)(a) of this section, the court shall conduct a hearing to determine whether the subject offender is a sexual predator. If, pursuant to division (C)(1)(b) of this section, the department sends to a court a recommendation that an offender be adjudicated a sexual predator, the court is not bound by the department's recommendation, and the court shall conduct a hearing to determine whether the offender is a sexual predator. In any case, the court shall not make a determination as to whether the offender is, or is not, a sexual predator without a hearing. The court may hold the hearing and make the determination prior to the offender's release from imprisonment or at any time within one year following the offender's release from that imprisonment.

(b) If, pursuant to division (C)(1)(b) of this section, the department sends to the court a determination that it is not recommending that an offender be adjudicated a sexual predator, the court shall not make any determination as to whether the offender is, or is not, a sexual predator but shall determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the department made its determination or previously has been convicted of or pleaded guilty to a child-victim oriented offense.

The court may conduct a hearing to determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense or a child-victim oriented offense but may make the determination without a hearing. However, if the court determines that the offender previously has been convicted of or pleaded guilty to such an offense, it shall not impose a requirement that the offender be subject to the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code* without a hearing. In determining whether to impose the community notification requirement, the court, in the circumstances described in division (E)(2) of this section, shall apply the presumption specified in that division. The court shall include in the offender's institutional record any determination made under this division as to whether the offender

previously has been convicted of or pleaded guilty to a sexually oriented offense or child-victim oriented offense, and, as such, whether the offender is a habitual sex offender.

(c) Upon scheduling a hearing under division (C)(2)(a) or (b) of this section, the court shall give the offender and the prosecutor who prosecuted the offender for the sexually oriented offense, or that prosecutor's successor in office, notice of the date, time, and place of the hearing. If the hearing is scheduled under division (C)(2)(a) of this section to determine whether the offender is a sexual predator, the prosecutor who is given the notice may contact the department of rehabilitation and correction and request that the department provide to the prosecutor all information the department possesses regarding the offender that is relevant and necessary for use in making the determination as to whether the offender is a sexual predator and that is not privileged or confidential under law. If the prosecutor makes a request for that information, the department promptly shall provide to the prosecutor all information the department possesses regarding the offender that is not privileged or confidential under law and that is relevant and necessary for making that determination. A hearing scheduled under division (C)(2)(a) of this section to determine whether the offender is a sexual predator shall be conducted in the manner described in division (B)(1) of this section regarding hearings conducted under that division and, in making a determination under this division as to whether the offender is a sexual predator, the court shall consider all relevant factors, including, but not limited to, all of the factors specified in divisions (B)(2) and (3) of this section. After reviewing all testimony and evidence presented at the sexual predator hearing and the factors specified in divisions (B)(2) and (3) of this section, the court shall determine by clear and convincing evidence whether the offender is a sexual predator. If the court determines at the sexual predator hearing that the offender is not a sexual predator, it also shall determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the hearing is being conducted.

Upon making its determinations at the sexual predator hearing, the court shall proceed as follows:

(i) If the court determines that the offender is not a sexual predator and that the offender previously has not been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the hearing is being conducted and previously has not been convicted of or pleaded guilty to a child-victim oriented offense, it shall include in the offender's institutional record its determinations and the reason or reasons why it determined that the offender is not a sexual predator.

(ii) If the court determines that the offender is not a sexual predator but that the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the hearing is being conducted or previously has been convicted of or pleaded guilty to a child-victim oriented offense, it shall include in the offender's institutional record its determination that the offender is not a sexual predator but is a habitual sex offender and the reason or reasons why it determined that the offender is not a sexual predator, shall attach the determinations and the reason or reasons to the offender's sentence, shall specify that the determinations were pursuant to division (C) of this section, shall provide a copy of the determinations and the reason or reasons to the offender, to the prosecuting attorney, and to the department of rehabilitation and correction, and may impose a requirement that the offender be subject to the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code*. In determining whether to impose the community notification requirements, the court, in the circumstances de-

scribed in division (E)(2) of this section, shall apply the presumption specified in that division. The offender shall not be subject to those community notification provisions relative to the sexually oriented offense in question if the court does not so impose the requirement described in this division. If the court imposes that requirement, the offender may appeal the judge's determination that the offender is a habitual sex offender.

(iii) If the court determines by clear and convincing evidence that the offender is a sexual predator, it shall enter its determination in the offender's institutional record, shall attach the determination to the offender's sentence, shall specify that the determination was pursuant to division (C) of this section, and shall provide a copy of the determination to the offender, to the prosecuting attorney, and to the department of rehabilitation and correction. The offender and the prosecutor may appeal as a matter of right the judge's determination under divisions (C)(2)(a) and (c) of this section as to whether the offender is, or is not, a sexual predator.

If the hearing is scheduled under division (C)(2)(b) of this section to determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense or a child-victim oriented offense or whether to subject the offender to the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code*, upon making the determination, the court shall attach the determination or determinations to the offender's sentence, shall provide a copy to the offender, to the prosecuting attorney, and to the department of rehabilitation and correction and may impose a requirement that the offender be subject to the community notification provisions. In determining whether to impose the community notification requirements, the court, in the circumstances described in division (E)(2) of this section, shall apply the presumption specified in that division. The offender shall not be subject to the community notification provisions relative to the sexually oriented offense in question if the court does not so impose the requirement described in this division. If the court imposes that requirement, the offender may appeal the judge's determination that the offender is a habitual sex offender.

(3) The changes made in divisions (C)(1) and (2) of this section that take effect on July 31, 2003, do not require a court to conduct a new hearing under those divisions for any offender regarding a sexually oriented offense if, prior to July 31, 2003, the court previously conducted a hearing under those divisions regarding that offense to determine whether the offender was a sexual predator. The changes made in divisions (C)(1) and (2) of this section that take effect on July 31, 2003, do not require a court to conduct a hearing under those divisions for any offender regarding a sexually oriented offense if, prior to July 31, 2003, and pursuant to those divisions, the department of rehabilitation and correction recommended that the offender be adjudicated a sexual predator regarding that offense, and the court denied the recommendation and determined that the offender was not a sexual predator without a hearing, provided that this provision does not apply if the sexually oriented offense in question was an offense described in division (D)(1)(c) of *section 2950.01 of the Revised Code*.

(D) (1) Division (D)(1) of this section does not apply to any person who has been convicted of or pleaded guilty to a sexually oriented offense. Division (D) of this section applies only to delinquent children as provided in Chapter 2152. of the Revised Code. A person who has been adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense and who has been classified by a juvenile court judge a juvenile offender registrant or, if applicable, additionally has been determined by a juvenile court judge to be a sexual

predator or habitual sex offender, may petition the adjudicating court for a reclassification or declassification pursuant to *section 2152.85 of the Revised Code*.

A judge who is reviewing a sexual predator determination for a delinquent child under *section 2152.84 or 2152.85 of the Revised Code* shall comply with this section. At the hearing, the judge shall consider all relevant evidence and information, including, but not limited to, the factors set forth in division (B)(3) of this section. The judge shall not enter a determination that the delinquent child no longer is a sexual predator unless the judge determines by clear and convincing evidence that the delinquent child is unlikely to commit a sexually oriented offense in the future. If the judge enters a determination under this division that the delinquent child no longer is a sexual predator, the judge shall notify the bureau of criminal identification and investigation of the determination and shall include in the notice a statement of the reason or reasons why it determined that the delinquent child no longer is a sexual predator. Upon receipt of the notification, the bureau promptly shall notify the sheriff with whom the delinquent child most recently registered under *section 2950.04 or 2950.05 of the Revised Code* of the determination that the delinquent child no longer is a sexual predator.

(2) If an offender who has been convicted of or pleaded guilty to a sexually oriented offense is classified a sexual predator pursuant to division (A) of this section or has been adjudicated a sexual predator relative to the offense as described in division (B) or (C) of this section, subject to division (F) of this section, the classification or adjudication of the offender as a sexual predator is permanent and continues in effect until the offender's death and in no case shall the classification or adjudication be removed or terminated.

(E) (1) If a person is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually oriented offense that is not a registration-exempt sexually oriented offense, the judge who is to impose sentence on the offender shall determine, prior to sentencing, whether the offender previously has been convicted of or pleaded guilty to, or adjudicated a delinquent child for committing, a sexually oriented offense or a child-victim oriented offense and is a habitual sex offender. The judge who is to impose or has imposed an order of disposition upon a child who is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense that is not a registration-exempt sexually oriented offense shall determine, prior to entering the order classifying the delinquent child a juvenile offender registrant, whether the delinquent child previously has been convicted of or pleaded guilty to, or adjudicated a delinquent child for committing, a sexually oriented offense or a child-victim oriented offense and is a habitual sex offender, if either of the following applies:

(a) The judge is required by section 2152.82 or division (A) of *section 2152.83 of the Revised Code* to classify the child a juvenile offender registrant;

(b) Division (B) of *section 2152.83 of the Revised Code* applies regarding the child, the judge conducts a hearing under that division for the purposes described in that division, and the judge determines at that hearing that the child will be classified a juvenile offender registrant.

(2) If, under division (E)(1) of this section, the judge determines that the offender or delinquent child previously has not been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing, a sexually oriented offense or a child-victim oriented offense or that the offender otherwise does not satisfy the criteria for being a habitual sex offender, the judge shall specify in the offender's sentence or in the order classifying the delinquent child a juvenile offender

registrant that the judge has determined that the offender or delinquent child is not a habitual sex offender.

If, under division (E)(1) of this section, the judge determines that the offender or delinquent child previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing, a sexually oriented offense or a child-victim oriented offense and that the offender satisfies all other criteria for being a habitual sex offender, the offender or delinquent child is a habitual sex offender or habitual child-victim offender and the court shall determine whether to impose a requirement that the offender or delinquent child be subject to the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code*. In making the determination regarding the possible imposition of the community notification requirement, if at least two of the sexually oriented offenses or child-victim oriented offenses that are the basis of the habitual sex offender or habitual child-victim offender determination were committed against a victim who was under eighteen years of age, it is presumed that subjecting the offender or delinquent child to the community notification provisions is necessary in order to comply with the determinations, findings, and declarations of the general assembly regarding sex offenders and child-victim offenders that are set forth in *section 2950.02 of the Revised Code*. When a judge determines as described in this division that an offender or delinquent child is a habitual sex offender or a habitual child-victim offender, the judge shall specify in the offender's sentence and the judgment of conviction that contains the sentence or in the order classifying the delinquent child a juvenile offender registrant that the judge has determined that the offender or delinquent child is a habitual sex offender and may impose a requirement in that sentence and judgment of conviction or in that order that the offender or delinquent child be subject to the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code*. Unless the habitual sex offender also has been adjudicated a sexual predator relative to the sexually oriented offense in question or the habitual sex offender was convicted of or pleaded guilty to an aggravated sexually oriented offense, the offender or delinquent child shall be subject to those community notification provisions only if the court imposes the requirement described in this division in the offender's sentence and the judgment of conviction or in the order classifying the delinquent child a juvenile offender registrant. If the court determines pursuant to this division or division (C)(2) of this section that an offender is a habitual sex offender, the determination is permanent and continues in effect until the offender's death, and in no case shall the determination be removed or terminated.

If a court in another state, a federal court, military court, or Indian tribal court, or a court in any nation other than the United States determines a person to be a habitual sex offender in that jurisdiction, the person is considered to be determined to be a habitual sex offender in this state. If the court in the other state, the federal court, military court, or Indian tribal court, or the court in the nation other than the United States subjects the habitual sex offender to community notification regarding the person's place of residence, the person, as much as is practicable, is subject to the community notification provisions regarding the person's place of residence that are contained in *sections 2950.10 and 2950.11 of the Revised Code*, unless the court that so subjected the person to community notification determines that the person no longer is subject to community notification.

(F) (1) An offender or delinquent child classified as a sexual predator may petition the court of common pleas or, for a delinquent child, the juvenile court of the county in which the offender or delinquent child resides or temporarily is domiciled to enter a determination that the offender or delinquent child is not an adjudicated sexual predator in this state for purposes of the registration and

other requirements of this chapter or the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code* if all of the following apply:

(a) The offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing, a sexually oriented offense that is not a registration-exempt sexually oriented offense in another state, in a federal court, a military court, or Indian tribal court, or in a court of any nation other than the United States.

(b) As a result of the conviction, plea of guilty, or adjudication described in division (F)(1)(a) of this section, the offender or delinquent child is required under the law of the jurisdiction under which the offender or delinquent child was convicted, pleaded guilty, or was adjudicated to register as a sex offender until the offender's or delinquent child's death.

(c) The offender or delinquent child was automatically classified a sexual predator under division (A) of this section in relation to the conviction, guilty plea, or adjudication described in division (F)(1)(a) of this section.

(2) The court may enter a determination that the offender or delinquent child filing the petition described in division (F)(1) of this section is not an adjudicated sexual predator in this state for purposes of the registration and other requirements of this chapter or the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code* only if the offender or delinquent child proves by clear and convincing evidence that the requirement of the other jurisdiction that the offender or delinquent child register as a sex offender until the offender's or delinquent child's death is not substantially similar to a classification as a sexual predator for purposes of this chapter. If the court enters a determination that the offender or delinquent child is not an adjudicated sexual predator in this state for those purposes, the court shall include in the determination a statement of the reason or reasons why it so determined.

(G) If, prior to July 31, 2003, an offender or delinquent child was adjudicated a sexual predator or was determined to be a habitual sex offender under this section or *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code* and if, on and after July 31, 2003, the sexually oriented offense upon which the classification or determination was based no longer is considered a sexually oriented offense but instead is a child-victim oriented offense, notwithstanding the redesignation of that offense, on and after July 31, 2003, all of the following apply:

(1) Divisions (A)(1) or (2) or (E)(1) and (2) of *section 2950.091 [2950.09.1] of the Revised Code* apply regarding the offender or child, and the judge's classification or determination made prior to July 31, 2003, shall be considered for all purposes to be a classification or determination that classifies the offender or child as described in those divisions.

(2) The offender's or child's classification or determination under divisions (A)(1) or (2) or (E)(1) and (2) of *section 2950.091 [2950.09.1] of the Revised Code* shall be considered, for purposes of *section 2950.07 of the Revised Code* and for all other purposes, to be a continuation of the classification or determination made prior to July 31, 2003.

(3) The offender's or child's duties under this chapter relative to that classification or determination shall be considered for all purposes to be a continuation of the duties related to that classification or determination as they existed prior to July 31, 2003.

HISTORY:

146 v H 180 (Eff 1-1-97); 147 v H 565 (Eff 3-30-99); 148 v H 502 (Eff 3-15-2001); 149 v S 3 (Eff 1-1-2002); 149 v S 175 (Eff 5-7-2002); 149 v H 485 (Eff 6-13-2002); 149 v H 393. Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 151 v S 260, § 1, eff. 1-2-07.

LEXSTAT ORC 2950.11

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 54 ***

*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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§ 2950.11. Community notification provisions

(A) Regardless of when the sexually oriented offense or child-victim oriented offense was committed, if a person is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense or a person is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, and if the offender or delinquent child is in any category specified in division (F)(1)(a), (b), or (c) of this section, the sheriff with whom the offender or delinquent child has most recently registered under *section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code* and the sheriff to whom the offender or delinquent child most recently sent a notice of intent to reside under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code*, within the period of time specified in division (C) of this section, shall provide a written notice containing the information set forth in division (B) of this section to all of the persons described in divisions (A)(1) to (10) of this section. If the sheriff has sent a notice to the persons described in those divisions as a result of receiving a notice of intent to reside and if the offender or delinquent child registers a residence address that is the same residence address described in the notice of intent to reside, the sheriff is not required to send an additional notice when the offender or delinquent child registers. The sheriff shall provide the notice to all of the following persons:

(1) (a) Any occupant of each residential unit that is located within one thousand feet of the offender's or delinquent child's residential premises, that is located within the county served by the sheriff, and that is not located in a multi-unit building. Division (D)(3) of this section applies regarding notices required under this division.

(b) If the offender or delinquent child resides in a multi-unit building, any occupant of each residential unit that is located in that multi-unit building and that shares a common hallway with the offender or delinquent child. For purposes of this division, an occupant's unit shares a common hallway with the offender or delinquent child if the entrance door into the occupant's unit is located on the same floor and opens into the same hallway as the entrance door to the unit the offender or delinquent child occupies. Division (D)(3) of this section applies regarding notices required under this division.

(c) The building manager, or the person the building owner or condominium unit owners association authorizes to exercise management and control, of each multi-unit building that is located within one thousand feet of the offender's or delinquent child's residential premises, including a multi-unit building in which the offender or delinquent child resides, and that is located within the county served by the sheriff. In addition to notifying the building manager or the person authorized to exercise management and control in the multi-unit building under this division, the sheriff shall post a copy of the notice prominently in each common entryway in the building and any other location in the building the sheriff determines appropriate. The manager or person exercising management and control of the building shall permit the sheriff to post copies of the notice under this division as the sheriff determines appropriate. In lieu of posting copies of the notice as described in this division, a sheriff may provide notice to all occupants of the multi-unit building by mail or personal contact; if the sheriff so notifies all the occupants, the sheriff is not required to post copies of the notice in the common entryways to the building. Division (D)(3) of this section applies regarding notices required under this division.

(d) All additional persons who are within any category of neighbors of the offender or delinquent child that the attorney general by rule adopted under *section 2950.13 of the Revised Code* requires to be provided the notice and who reside within the county served by the sheriff;

(2) The executive director of the public children services agency that has jurisdiction within the specified geographical notification area and that is located within the county served by the sheriff;

(3) (a) The superintendent of each board of education of a school district that has schools within the specified geographical notification area and that is located within the county served by the sheriff;

(b) The principal of the school within the specified geographical notification area and within the county served by the sheriff that the delinquent child attends;

(c) If the delinquent child attends a school outside of the specified geographical notification area or outside of the school district where the delinquent child resides, the superintendent of the board of education of a school district that governs the school that the delinquent child attends and the principal of the school that the delinquent child attends.

(4) (a) The appointing or hiring officer of each chartered nonpublic school located within the specified geographical notification area and within the county served by the sheriff or of each other school located within the specified geographical notification area and within the county served by the sheriff and that is not operated by a board of education described in division (A)(3) of this section;

(b) Regardless of the location of the school, the appointing or hiring officer of a chartered nonpublic school that the delinquent child attends.

(5) The director, head teacher, elementary principal, or site administrator of each preschool program governed by Chapter 3301. of the Revised Code that is located within the specified geographical notification area and within the county served by the sheriff;

(6) The administrator of each child day-care center or type A family day-care home that is located within the specified geographical notification area and within the county served by the sheriff, and the provider of each certified type B family day-care home that is located within the specified geographical notification area and within the county served by the sheriff. As used in this division, "child day-care center," "type A family day-care home," and "certified type B family day-care home" have the same meanings as in *section 5104.01 of the Revised Code*.

(7) The president or other chief administrative officer of each institution of higher education, as defined in *section 2907.03 of the Revised Code*, that is located within the specified geographical notification area and within the county served by the sheriff, and the chief law enforcement officer of the state university law enforcement agency or campus police department established under *section 3345.04 or 1713.50 of the Revised Code*, if any, that serves that institution;

(8) The sheriff of each county that includes any portion of the specified geographical notification area;

(9) If the offender or delinquent child resides within the county served by the sheriff, the chief of police, marshal, or other chief law enforcement officer of the municipal corporation in which the offender or delinquent child resides or, if the offender or delinquent child resides in an unincorporated area, the constable or chief of the police department or police district police force of the township in which the offender or delinquent child resides;

(10) Volunteer organizations in which contact with minors or other vulnerable individuals might occur or any organization, company, or individual who requests notification as provided in division (J) of this section.

(B) The notice required under division (A) of this section shall include all of the following information regarding the subject offender or delinquent child:

(1) The offender's or delinquent child's name;

(2) The address or addresses of the offender's or public registry-qualified juvenile offender registrant's residence, school, institution of higher education, or place of employment, as applicable, or the residence address or addresses of a delinquent child who is not a public registry-qualified juvenile offender registrant;

(3) The sexually oriented offense or child-victim oriented offense of which the offender was convicted, to which the offender pleaded guilty, or for which the child was adjudicated a delinquent child;

(4) A statement that identifies the category specified in division (F)(1)(a), (b), or (c) of this section that includes the offender or delinquent child and that subjects the offender or delinquent child to this section;

(5) The offender's or delinquent child's photograph.

(C) If a sheriff with whom an offender or delinquent child registers under *section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code* or to whom the offender or delinquent child most recently sent a notice of intent to reside under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* is required by division (A) of this section to provide notices regarding an offender or delinquent child and if, pursuant to that requirement, the sheriff provides a notice to a sheriff of one or more other counties in accordance with division (A)(8) of this section, the sheriff of each of the other counties who is provided notice under division (A)(8) of this section shall provide the notices described in divisions (A)(1) to (7) and (A)(9) and (10) of this section to each person or entity identified within those divisions that is located within the specified geographical notification area and within the county served by the sheriff in question.

(D) (1) A sheriff required by division (A) or (C) of this section to provide notices regarding an offender or delinquent child shall provide the notice to the neighbors that are described in division (A)(1) of this section and the notices to law enforcement personnel that are described in divisions (A)(8) and (9) of this section as soon as practicable, but no later than five days after the offender sends the notice of intent to reside to the sheriff and again no later than five days after the offender or delinquent child registers with the sheriff or, if the sheriff is required by division (C) of this section to provide the notices, no later than five days after the sheriff is provided the notice described in division (A)(8) of this section.

A sheriff required by division (A) or (C) of this section to provide notices regarding an offender or delinquent child shall provide the notices to all other specified persons that are described in divisions (A)(2) to (7) and (A)(10) of this section as soon as practicable, but not later than seven days after the offender or delinquent child registers with the sheriff or, if the sheriff is required by division (C) of this section to provide the notices, no later than five days after the sheriff is provided the notice described in division (A)(8) of this section.

(2) If an offender or delinquent child in relation to whom division (A) of this section applies verifies the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address, as applicable, with a sheriff pursuant to *section 2950.06 of the Revised Code*, the sheriff may provide a written notice containing the information set forth in division (B) of this section to the persons identified in divisions (A)(1) to (10) of this section. If a sheriff provides a notice pursuant to this division to the sheriff of one or more other counties in accordance with division (A)(8) of this section, the sheriff of each of the other counties who is provided the notice under division (A)(8) of this section may provide, but is not required to provide, a written notice containing the information set forth in division (B) of this section to the persons identified in divisions (A)(1) to (7) and (A)(9) and (10) of this section.

(3) A sheriff may provide notice under division (A)(1)(a) or (b) of this section, and may provide notice under division (A)(1)(c) of this section to a building manager or person authorized to exercise management and control of a building, by mail, by personal contact, or by leaving the notice at or under the entry door to a residential unit. For purposes of divisions (A)(1)(a) and (b) of this section, and the portion of division (A)(1)(c) of this section relating to the provision of notice to occupants of a multi-unit building by mail or personal contact, the provision of one written notice per unit is deemed as providing notice to all occupants of that unit.

(E) All information that a sheriff possesses regarding an offender or delinquent child who is in a category specified in division (F)(1)(a), (b), or (c) of this section that is described in division (B) of this section and that must be provided in a notice required under division (A) or (C) of this section

or that may be provided in a notice authorized under division (D)(2) of this section is a public record that is open to inspection under *section 149.43 of the Revised Code*.

The sheriff shall not cause to be publicly disseminated by means of the internet any of the information described in this division that is provided by a delinquent child unless that child is in a category specified in division (F)(1)(a), (b), or (c) of this section.

(F) (1) Except as provided in division (F)(2) of this section, the duties to provide the notices described in divisions (A) and (C) of this section apply regarding any offender or delinquent child who is in any of the following categories:

(a) The offender is a tier III sex offender/child-victim offender, or the delinquent child is a public registry-qualified juvenile offender registrant, and a juvenile court has not removed pursuant to *section 2950.15 of the Revised Code* the delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*.

(b) The delinquent child is a tier III sex offender/child-victim offender who is not a public-registry qualified juvenile offender registrant, the delinquent child was subjected to this section prior to the effective date of this amendment as a sexual predator, habitual sex offender, child-victim predator, or habitual child-victim offender, as those terms were defined in *section 2950.01 of the Revised Code* as it existed prior to the effective date of this amendment, and a juvenile court has not removed pursuant to *section 2152.84 or 2152.85 of the Revised Code* the delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*.

(c) The delinquent child is a tier III sex offender/child-victim offender who is not a public registry-qualified juvenile offender registrant, the delinquent child was classified a juvenile offender registrant on or after the effective date of this amendment, the court has imposed a requirement under *section 2152.82, 2152.83, or 2152.84 of the Revised Code* subjecting the delinquent child to this section, and a juvenile court has not removed pursuant to *section 2152.84 or 2152.85 of the Revised Code* the delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*.

(2) The notification provisions of this section do not apply to a person described in division (F)(1)(a), (b), or (c) of this section if a court finds at a hearing after considering the factors described in this division that the person would not be subject to the notification provisions of this section that were in the version of this section that existed immediately prior to the effective date of this amendment. In making the determination of whether a person would have been subject to the notification provisions under prior law as described in this division, the court shall consider the following factors:

(a) The offender's or delinquent child's age;

(b) The offender's or delinquent child's prior criminal or delinquency record regarding all offenses, including, but not limited to, all sexual offenses;

(c) The age of the victim of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made;

(d) Whether the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made involved multiple victims;

(e) Whether the offender or delinquent child used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting;

(f) If the offender or delinquent child previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing an act that if committed by an adult would be, a criminal offense, whether the offender or delinquent child completed any sentence or dispositional order imposed for the prior offense or act and, if the prior offense or act was a sex offense or a sexually oriented offense, whether the offender or delinquent child participated in available programs for sexual offenders;

(g) Any mental illness or mental disability of the offender or delinquent child;

(h) The nature of the offender's or delinquent child's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;

(i) Whether the offender or delinquent child, during the commission of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made, displayed cruelty or made one or more threats of cruelty;

(j) Whether the offender or delinquent child would have been a habitual sex offender or a habitual child victim offender under the definitions of those terms set forth in *section 2950.01 of the Revised Code* as that section existed prior to the effective date of this amendment;

(k) Any additional behavioral characteristics that contribute to the offender's or delinquent child's conduct.

(G) (1) The department of job and family services shall compile, maintain, and update in January and July of each year, a list of all agencies, centers, or homes of a type described in division (A)(2) or (6) of this section that contains the name of each agency, center, or home of that type, the county in which it is located, its address and telephone number, and the name of an administrative officer or employee of the agency, center, or home.

(2) The department of education shall compile, maintain, and update in January and July of each year, a list of all boards of education, schools, or programs of a type described in division (A)(3), (4), or (5) of this section that contains the name of each board of education, school, or program of that type, the county in which it is located, its address and telephone number, the name of the superintendent of the board or of an administrative officer or employee of the school or program, and, in relation to a board of education, the county or counties in which each of its schools is located and the address of each such school.

(3) The Ohio board of regents shall compile, maintain, and update in January and July of each year, a list of all institutions of a type described in division (A)(7) of this section that contains the name of each such institution, the county in which it is located, its address and telephone number, and the name of its president or other chief administrative officer.

(4) A sheriff required by division (A) or (C) of this section, or authorized by division (D)(2) of this section, to provide notices regarding an offender or delinquent child, or a designee of a sheriff of that type, may request the department of job and family services, department of education, or Ohio board of regents, by telephone, in person, or by mail, to provide the sheriff or designee with the names, addresses, and telephone numbers of the appropriate persons and entities to whom the

notices described in divisions (A)(2) to (7) of this section are to be provided. Upon receipt of a request, the department or board shall provide the requesting sheriff or designee with the names, addresses, and telephone numbers of the appropriate persons and entities to whom those notices are to be provided.

(H) (1) Upon the motion of the offender or the prosecuting attorney of the county in which the offender was convicted of or pleaded guilty to the sexually oriented offense or child-victim oriented offense for which the offender is subject to community notification under this section, or upon the motion of the sentencing judge or that judge's successor in office, the judge may schedule a hearing to determine whether the interests of justice would be served by suspending the community notification requirement under this section in relation to the offender. The judge may dismiss the motion without a hearing but may not issue an order suspending the community notification requirement without a hearing. At the hearing, all parties are entitled to be heard, and the judge shall consider all of the factors set forth in division (K) of this section. If, at the conclusion of the hearing, the judge finds that the offender has proven by clear and convincing evidence that the offender is unlikely to commit in the future a sexually oriented offense or a child-victim oriented offense and if the judge finds that suspending the community notification requirement is in the interests of justice, the judge may suspend the application of this section in relation to the offender. The order shall contain both of these findings.

The judge promptly shall serve a copy of the order upon the sheriff with whom the offender most recently registered under *section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code* and upon the bureau of criminal identification and investigation.

An order suspending the community notification requirement does not suspend or otherwise alter an offender's duties to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* and does not suspend the victim notification requirement under *section 2950.10 of the Revised Code*.

(2) A prosecuting attorney, a sentencing judge or that judge's successor in office, and an offender who is subject to the community notification requirement under this section may initially make a motion under division (H)(1) of this section upon the expiration of twenty years after the offender's duty to comply with division (A)(2), (3), or (4) of *section 2950.04, division (A)(2), (3), or (4) of section 2950.041 [2950.04.1] and sections 2950.05 and 2950.06 of the Revised Code* begins in relation to the offense for which the offender is subject to community notification. After the initial making of a motion under division (H)(1) of this section, thereafter, the prosecutor, judge, and offender may make a subsequent motion under that division upon the expiration of five years after the judge has entered an order denying the initial motion or the most recent motion made under that division.

(3) The offender and the prosecuting attorney have the right to appeal an order approving or denying a motion made under division (H)(1) of this section.

(4) Divisions (H)(1) to (3) of this section do not apply to any of the following types of offender:

(a) A person who is convicted of or pleads guilty to a violent sex offense or designated homicide, assault, or kidnapping offense and who, in relation to that offense, is adjudicated a sexually violent predator;

(b) A person who is convicted of or pleads guilty to a sexually oriented offense that is a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* committed on or after January 2, 2007, and either who is sentenced under *section 2971.03 of the Revised Code* or upon whom a sentence of life without parole is imposed under division (B) of *section 2907.02 of the Revised Code*;

(c) A person who is convicted of or pleads guilty to a sexually oriented offense that is attempted rape committed on or after January 2, 2007, and who also is convicted of or pleads guilty to a specification of the type described in *section 2941.1418 [2941.14.18]*, *2941.1419 [2941.14.19]*, or *2941.1420 [2941.14.20]* of the *Revised Code*;

(d) A person who is convicted of or pleads guilty to an offense described in division (B)(3)(a), (b), (c), or (d) of *section 2971.03 of the Revised Code* and who is sentenced for that offense pursuant to that division;

(e) An offender who is in a category specified in division (F)(1)(a), (b), or (c) of this section and who, subsequent to being subjected to community notification, has pleaded guilty to or been convicted of a sexually oriented offense or child-victim oriented offense.

(I) If a person is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense or a person is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, and if the offender or delinquent child is not in any category specified in division (F)(1)(a), (b), or (c) of this section, the sheriff with whom the offender or delinquent child has most recently registered under *section 2950.04, 2950.041 [2950.04.1]*, or *2950.05 of the Revised Code* and the sheriff to whom the offender or delinquent child most recently sent a notice of intent to reside under *section 2950.04 or 2950.041 [2950.04.1]* of the *Revised Code*, within the period of time specified in division (D) of this section, shall provide a written notice containing the information set forth in division (B) of this section to the executive director of the public children services agency that has jurisdiction within the specified geographical notification area and that is located within the county served by the sheriff.

(J) Each sheriff shall allow a volunteer organization or other organization, company, or individual who wishes to receive the notice described in division (A)(10) of this section regarding a specific offender or delinquent child or notice regarding all offenders and delinquent children who are located in the specified geographical notification area to notify the sheriff by electronic mail or through the sheriff's web site of this election. The sheriff shall promptly inform the bureau of criminal identification and investigation of these requests in accordance with the forwarding procedures adopted by the attorney general pursuant to *section 2950.13 of the Revised Code*.

(K) In making a determination under division (H)(1) of this section as to whether to suspend the community notification requirement under this section for an offender, the judge shall consider all relevant factors, including, but not limited to, all of the following:

- (1) The offender's age;
- (2) The offender's prior criminal or delinquency record regarding all offenses, including, but not limited to, all sexually oriented offenses or child-victim oriented offenses;
- (3) The age of the victim of the sexually oriented offense or child-victim oriented offense the offender committed;

(4) Whether the sexually oriented offense or child-victim oriented offense the offender committed involved multiple victims;

(5) Whether the offender used drugs or alcohol to impair the victim of the sexually oriented offense or child-victim oriented the offender committed or to prevent the victim from resisting;

(6) If the offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing an act that if committed by an adult would be a criminal offense, whether the offender completed any sentence or dispositional order imposed for the prior offense or act and, if the prior offense or act was a sexually oriented offense or a child-victim oriented offense, whether the offender or delinquent child participated in available programs for sex offenders or child-victim offenders;

(7) Any mental illness or mental disability of the offender;

(8) The nature of the offender's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense the offender committed or the nature of the offender's interaction in a sexual context with the victim of the child-victim oriented offense the offender committed, whichever is applicable, and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;

(9) Whether the offender, during the commission of the sexually oriented offense or child-victim oriented offense the offender committed, displayed cruelty or made one or more threats of cruelty;

(10) Any additional behavioral characteristics that contribute to the offender's conduct.

(L) As used in this section, "specified geographical notification area" means the geographic area or areas within which the attorney general, by rule adopted under *section 2950.13 of the Revised Code*, requires the notice described in division (B) of this section to be given to the persons identified in divisions (A)(2) to (8) of this section.

HISTORY:

146 v H 180 (Eff 7-1-97); 147 v H 396 (Eff 1-30-98); 147 v H 565 (Eff 3-30-99); 148 v H 471 (Eff 7-1-2000); 149 v S 3 (Eff 1-1-2002); 149 v S 175 (Eff 5-7-2002); 149 v H 485. Eff 6-13-2002; 150 v S 5, § 1, Eff 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 151 v H 15, § 1, eff. 11-23-05; 151 v S 17, § 1, eff. 8-3-06; 151 v S 260, § 1, eff. 1-2-07; 152 v S 10, § 1, eff. 1-1-08.

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*** ARCHIVE MATERIAL ***

*** CURRENT THROUGH LEGISLATION PASSED BY THE 126TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH MARCH 6, 2007 ***
*** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2007 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JANUARY 23, 2007 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEXUAL PREDATORS, HABITUAL SEX OFFENDERS, SEXUALLY ORIENTED OFFENDERS

ORC Ann. 2950.13 (2006)

§ 2950.13. Duties of attorney general

(A) The attorney general shall do all of the following:

(1) No later than July 1, 1997, establish and maintain a state registry of sex offenders and child-victim offenders that is housed at the bureau of criminal identification and investigation and that contains all of the registration, change of residence, school, institution of higher education, or place of employment address, and verification information the bureau receives pursuant to *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* regarding a person who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense or a person who is adjudicated a delinquent child for committing either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, and all of the information the bureau receives pursuant to *section 2950.14 of the Revised Code*. For a person who was convicted of or pleaded guilty to the sexually oriented offense or child-victim related offense, the registry also shall indicate whether the person was convicted of or pleaded guilty to the offense in a criminal prosecution or in a serious youthful offender case.

(2) In consultation with local law enforcement representatives and no later than July 1, 1997, adopt rules that contain guidelines necessary for the implementation of this chapter;

(3) In consultation with local law enforcement representatives, adopt rules for the implementation and administration of the provisions contained in *section 2950.11 of the Revised Code* that per-

tain to the notification of neighbors of an offender or a delinquent child who has committed a sexually oriented offense that is not a registration-exempt sexually oriented offense and has been adjudicated a sexual predator or determined to be a habitual sex offender, an offender who has committed an aggravated sexually oriented offense, or an offender or delinquent child who has committed a child-victim oriented offense and has been adjudicated a child-victim predator or determined to be a habitual child-victim offender, and rules that prescribe a manner in which victims of either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim predator or determined to be a habitual sex offender, an offender who has committed an aggravated sexually oriented offense, or an offender or delinquent child who has committed a child-victim oriented offense and has been adjudicated a child-victim predator or determined to be a habitual child-victim offender may make a request that specifies that the victim would like to be provided the notices described in divisions (A)(1) and (2) of *section 2950.10 of the Revised Code*;

(4) In consultation with local law enforcement representatives and through the bureau of criminal identification and investigation, prescribe the forms to be used by judges and officials pursuant to *section 2950.03 of the Revised Code* to advise offenders and delinquent children of their duties of filing a notice of intent to reside, registration, notification of a change of residence, school, institution of higher education, or place of employment address and registration of the new, school, institution of higher education, or place of employment address, as applicable, and address verification under *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*, and prescribe the forms to be used by sheriffs relative to those duties of filing a notice of intent to reside, registration, change of residence, school, institution of higher education, or place of employment address notification, and address verification;

(5) Make copies of the forms prescribed under division (A)(4) of this section available to judges, officials, and sheriffs;

(6) Through the bureau of criminal identification and investigation, provide the notifications, the information, and the documents that the bureau is required to provide to appropriate law enforcement officials and to the federal bureau of investigation pursuant to *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*;

(7) Through the bureau of criminal identification and investigation, maintain the verification forms returned under the address verification mechanism set forth in *section 2950.06 of the Revised Code*;

(8) In consultation with representatives of the officials, judges, and sheriffs, adopt procedures for officials, judges, and sheriffs to use to forward information, photographs, and fingerprints to the bureau of criminal identification and investigation pursuant to the requirements of *sections 2950.03, 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*;

(9) In consultation with the director of education, the director of job and family services, and the director of rehabilitation and correction, adopt rules that contain guidelines to be followed by boards of education of a school district, chartered nonpublic schools or other schools not operated by a board of education, preschool programs, child day-care centers, type A family day-care homes, certified type B family day-care homes, and institutions of higher education regarding the proper use and administration of information received pursuant to *section 2950.11 of the Revised Code* relative to an offender or delinquent child who has been adjudicated a sexual predator or child-

victim predator or determined to be a habitual sex offender or habitual child-victim offender, or an offender who has committed an aggravated sexually oriented offense;

(10) In consultation with local law enforcement representatives and no later than July 1, 1997, adopt rules that designate a geographic area or areas within which the notice described in division (B) of *section 2950.11 of the Revised Code* must be given to the persons identified in divisions (A)(2) to (8) of that section;

(11) Through the bureau of criminal identification and investigation, not later than January 1, 2004, establish and operate on the internet a sex offender and child-victim offender database that contains information for every offender who has committed either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and who registers in any county in this state pursuant to *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code*. The bureau shall determine the information to be provided on the database for each offender and shall obtain that information from the information contained in the state registry of sex offenders and child-victim offenders described in division (A)(1) of this section, which information, while in the possession of the sheriff who provided it, is a public record open for inspection as described in *section 2950.081 [2950.08.1] of the Revised Code*. The information provided for each offender shall include at least the information set forth in division (B) of *section 2950.11 of the Revised Code*. The database is a public record open for inspection under *section 149.43 of the Revised Code*, and it shall be searchable by offender name, by county, by zip code, and by school district. The database shall provide a link to the web site of each sheriff who has established and operates on the internet a sex offender and child-victim offender database that contains information for offenders who register in that county pursuant to *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code*, with the link being a direct link to the sex offender and child-victim offender database for the sheriff.

(12) Upon the request of any sheriff, provide technical guidance to the requesting sheriff in establishing on the internet a sex offender and child-victim offender database for the public dissemination of some or all of the materials described in division (A) of *section 2950.081 [2950.08.1] of the Revised Code* that are public records under that division and that pertain to offenders who register in that county pursuant to *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* and for the public dissemination of information the sheriff receives pursuant to *section 2950.14 of the Revised Code*;

(13) Through the bureau of criminal identification and investigation, not later than January 1, 2004, establish and operate on the internet a database that enables local law enforcement representatives to remotely search by electronic means the state registry of sex offenders and child-victim offenders described in division (A)(1) of this section and any information the bureau receives pursuant to *sections 2950.04, 2950.041 [2950.04.1], 2950.05, 2950.06, and 2950.14 of the Revised Code*. The database shall enable local law enforcement representatives to obtain detailed information regarding each offender and delinquent child who is included in the registry, including, but not limited to the offender's or delinquent child's name, residence address, place of employment if applicable, motor vehicle license plate number if applicable, victim preference if available, date of most recent release from confinement if applicable, fingerprints, and other identification parameters the bureau considers appropriate. The database is not a public record open for inspection under *section 149.43 of the Revised Code* and shall be available only to law enforcement representatives as described in this division. Information obtained by local law enforcement representatives through use

of this database is not open to inspection by the public or by any person other than a person identified in division (A) of *section 2950.08 of the Revised Code*.

(B) The attorney general in consultation with local law enforcement representatives, may adopt rules that establish one or more categories of neighbors of an offender or delinquent child who, in addition to the occupants of residential premises and other persons specified in division (A)(1) of *section 2950.11 of the Revised Code*, must be given the notice described in division (B) of that section.

(C) No person, other than a local law enforcement representative, shall knowingly do any of the following:

(1) Gain or attempt to gain access to the database established and operated by the attorney general, through the bureau of criminal identification and investigation, pursuant to division (A)(13) of this section.

(2) Permit any person to inspect any information obtained through use of the database described in division (C)(1) of this section, other than as permitted under that division.

(D) As used in this section, "local law enforcement representatives" means representatives of the sheriffs of this state, representatives of the municipal chiefs of police and marshals of this state, and representatives of the township constables and chiefs of police of the township police departments or police district police forces of this state.

HISTORY:

146 v H 180 (Eff 7-1-97); 146 v H 72 (Eff 7-1-97); 148 v H 471 (Eff 7-1-2000); 149 v S 3 (Eff 1-1-2002); 149 v H 485. Eff 6-13-2002; 150 v S 5, § 1, Eff 7-31-03; 151 v S 260, § 1, eff. 1-2-07.

LEXSTAT ORC ANN. 2950.99

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL AS-
 SSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
 *** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
 *** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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ORC Ann. 2950.99 (2010)

§ 2950.99. Penalties

(A) (1) (a) Except as otherwise provided in division (A)(1)(b) of this section, whoever violates a prohibition in *section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code* shall be punished as follows:

(i) If the most serious sexually oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is aggravated murder or murder if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the first degree.

(ii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the first, second, third, or fourth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition, or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition is a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as that offense committed in the other jurisdiction would constitute if committed in this state.

(iii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the fifth degree or a misdemeanor if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the fourth degree.

(b) If the offender previously has been convicted of or pleaded guilty to, or previously has been adjudicated a delinquent child for committing, a violation of a prohibition in *section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code*, whoever violates a prohibition in *section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code* shall be punished as follows:

(i) If the most serious sexually oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is aggravated murder or murder if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the first degree.

(ii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the first, second, or third degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition, or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition is a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as that offense committed in the other jurisdiction would constitute if committed in this state.

(iii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the fourth or fifth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the third degree.

(iv) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a misdemeanor if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the fourth degree.

(2) (a) In addition to any penalty or sanction imposed under division (A)(1) of this section or any other provision of law for a violation of a prohibition in *section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code*, if the offender or delinquent child is subject to a community control sanction, is on parole, is subject to one or more post-release control sanctions, or is subject to any other type of supervised release at the time of the violation, the violation shall constitute

a violation of the terms and conditions of the community control sanction, parole, post-release control sanction, or other type of supervised release.

(b) In addition to any penalty or sanction imposed under division (A)(1)(b)(i), (ii), or (iii) of this section or any other provision of law for a violation of a prohibition in *section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code*, if the offender previously has been convicted of or pleaded guilty to, or previously has been adjudicated a delinquent child for committing, a violation of a prohibition in *section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code* when the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated under the prohibition is a felony if committed by an adult or a comparable category of offense committed in another jurisdiction, the court imposing a sentence upon the offender shall impose a definite prison term of no less than three years. The definite prison term imposed under this section is not restricted by division (B) of *section 2929.14 of the Revised Code* and shall not be reduced to less than three years pursuant to Chapter 2967. or any other provision of the Revised Code.

(3) As used in division (A)(1) of this section, "comparable category of offense committed in another jurisdiction" means a sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated, that is a violation of an existing or former law of another state or the United States, an existing or former law applicable in a military court or in an Indian tribal court, or an existing or former law of any nation other than the United States, and that, if it had been committed in this state, would constitute or would have constituted aggravated murder or murder for purposes of division (A)(1)(a)(i) of this section, a felony of the first, second, third, or fourth degree for purposes of division (A)(1)(a)(ii) of this section, a felony of the fifth degree or a misdemeanor for purposes of division (A)(1)(a)(iii) of this section, aggravated murder or murder for purposes of division (A)(1)(b)(i) of this section, a felony of the first, second, or third degree for purposes of division (A)(1)(b)(ii) of this section, a felony of the fourth or fifth degree for purposes of division (A)(1)(b)(iii) of this section, or a misdemeanor for purposes of division (A)(1)(b)(iv) of this section.

(B) If a person violates a prohibition in *section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code* that applies to the person as a result of the person being adjudicated a delinquent child and being classified a juvenile offender registrant or an out-of-state juvenile offender registrant, both of the following apply:

(1) If the violation occurs while the person is under eighteen years of age, the person is subject to proceedings under Chapter 2152. of the Revised Code based on the violation.

(2) If the violation occurs while the person is eighteen years of age or older, the person is subject to criminal prosecution based on the violation.

(C) Whoever violates division (C) of *section 2950.13 of the Revised Code* is guilty of a misdemeanor of the first degree.

HISTORY:

130 v 671 (Eff 10-4-63); 134 v H 511 (Eff 1-1-74); 146 v S 2 (Eff 7-1-96); 146 v H 180 (Eff 7-1-97); 149 v S 3. Eff 1-1-2002; 149 v H 490, § 1, eff. 1-1-04; 150 v S 5, § 1, Eff 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v H 473, § 1, eff. 4-29-05; 152 v S 97, § 1, eff. 1-1-08.