

ORIGINAL

IN THE SUPREME COURT OF OHIO

IN RE: ADRIAN R., :  
Alleged Delinquent Child : Case No. 2009-0189  
: :  
: : On Appeal from the  
: : Licking County Court of Appeals  
: : Fifth Appellate District  
: :  
: C.A. Case No. 08-CA-17

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**MERIT BRIEF OF APPELLANT ADRIAN R.**

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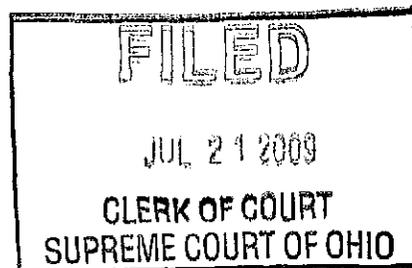


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## STATEMENT OF THE CASE AND FACTS

On December 22, 2005, a complaint was filed in the Licking County Juvenile Court, alleging that then fifteen-year-old Adrian R. was delinquent of two counts of rape, violations of R.C. 2907.02(A)(1)(b), each a felony of the first degree if committed by an adult. On February 8, 2006, Adrian entered an admission to each charge. For disposition, the court ordered that Adrian be committed to the Ohio Department of Youth Services (“DYS”) for a minimum of one year on each count, maximum to the age of twenty-one, with each commitment set to run concurrently with one another. While Adrian was serving his commitment in DYS, the Ohio General Assembly passed Senate Bill 10 (“S.B. 10”), which drastically changed the law governing Ohio’s adult and juvenile sex offender registration and notification statutes.

On January 14, 2008, Adrian was released from DYS and afforded a sex-offender-classification hearing pursuant to R.C. 2152.83(B)(1). The court classified Adrian a Tier III juvenile offender registrant—based solely on his offense—with a duty to comply with registration requirements every 90 days until his death. (Jan. 14, 2008; T.pp. 3-22; S-21). Adrian appealed his classification to the Fifth District Court of Appeals, challenging the constitutionality of S.B. 10. *In re Adrian R.*, 5<sup>th</sup> Dist. No. 08-CA-17, 2008-Ohio-6581, ¶¶8-13. The Fifth District affirmed Adrian’s classification, relying on this Court’s decisions in *State v. Cook*, 83 Ohio St. 3d 404, 1998-Ohio-291, and *State v. Williams*, 88 Ohio St.3d 513, 2000-Ohio-428, and the Third District Court of Appeals decision in *In re Smith*, 3<sup>rd</sup> Dist. No. 1-07-58, 2008-Ohio-3234. *Id.* at ¶36.

Concerning Adrian’s claim that the application of S.B. 10 violated the Due Process Clauses of both the United States and Ohio Constitutions, the Fifth District found that:

[n]o due process violation occurs where ‘the law required an offender to be registered based on the fact of the conviction alone.’ *Doe v. Dann et al.*, (June 9, 2008), N.D. Ohio No. 1:08-CV-00220-PAG, Document 146, 2008 WL 2390778. Moreover, ‘public disclosure of a state’s sex offender registry without a hearing as to whether an offender is ‘currently dangerous’ does not offend due process where the law required an offender to be registered based on the fact of his conviction alone.’ *Id.*, citing *Connecticut Dept. of Public Safety v. Doe* (1003), 538 U.S. 1, 123 S.Ct. 1160. Therefore, we conclude that due process is not implicated by Senate Bill 10.

*Id.* at ¶33. Adrian filed a timely appeal to this Court, asserting three propositions of law. Adrian’s appeal was accepted on May 6, 2009. This Court ordered briefing on Adrian’s first proposition of law, with the second and third propositions of law held for a decision in *In re Smith*, which is pending before this Court as Case No. 2008-1624. Adrian’s merit brief follows.

## INTRODUCTION

### **I. Ohio’s Juvenile Sex Offender Registration and Notification Law.**

Ohio’s sex offender registration statute was enacted in 1963. *Cook*, at 406. However, statutory regulations for classifying juveniles who had been adjudicated delinquent of sexually oriented offenses did not exist until January 1, 2002, when the Ohio General Assembly enacted Am.Sub.S.B. 3 (“S.B. 3”), which created and governed Ohio’s juvenile sex offender registration and notification (“JSORN”) system. *State v. Longnecker*, 4<sup>th</sup> Dist. No. 02CA76, 2003-Ohio-6208, fn5. Similar to the adult sex offender registration and notification provisions (“SORN”) at the time, S.B. 3 classified juvenile offender registrants into three categories: sexually oriented offenders, habitual sexual offenders, and sexual predators. Former 2152.02; 2950.01(B), (E), and (J) (Enacted January 1, 2002; Repealed July 1, 2007).

Under S.B. 3, juvenile sexually oriented offenders were youth who had been adjudicated delinquent of a sexually oriented offense, but who did not fit the description of either a habitual

sex offender or a sexual predator. Former 2950.01(D) (Enacted January 1, 2002; Repealed July 1, 2007). Habitual juvenile sex offenders were youth who had been adjudicated delinquent of a sexually oriented offense and had previously been adjudicated delinquent of one or more sexually oriented offenses. Former 2950.01(B) (Enacted January 1, 2002; Repealed July 1, 2007). The designation of a juvenile offender registrant as a sexual predator was reserved for youth who had been adjudicated delinquent of a sexually oriented offense and who a juvenile court found to be likely to engage in the future in one or more sexually oriented offenses. Former 2950.01(E) (Enacted January 1, 2002; Repealed July 1, 2007). The determination that a juvenile offender registrant was a sexual predator was made only after a full hearing at which the youth had a chance to testify, present evidence, and call and examine witnesses and expert witnesses regarding the determination as to whether the child was a sexual predator. Former R.C. 2950.09(B)(2) (Enacted January 1, 2002; Repealed July 1, 2007).

The frequency and duration of the registration requirements for juvenile sexually oriented offenders under S.B. 3 was annually for ten years. Former R.C. 2950.07(B) (Enacted January 1, 2002; Repealed July 1, 2007). Juveniles classified as habitual offenders were required to comply with registration requirements annually for twenty years. Former R.C. 2950.07(B) (Enacted January 1, 2002; Repealed July 1, 2007). For juveniles classified as sexual predators, registration requirements were to be completed every 90 days until death, or until the youth was no longer a sexual predator. Former R.C. 2950.07(B) (Enacted January 1, 2002; Repealed July 1, 2007).

## **II. The Enactment of Senate Bill 10.**

On July 27, 2006, the United States Congress enacted the Adam Walsh Act (hereinafter referenced as "AWA"), which tightened federal guidelines and requirements for sexually oriented offenders. All 50 states were required to enact similar legislation by July 27, 2009, or

risk losing a portion of a federal law enforcement grant.<sup>1</sup> Office of the Attorney General; The National Guidelines for Sex Offender Registration and Notification; Notice. 73 Fed. Reg. 128 (July 2, 2008) (Codified as 42 U.S.C. 16912). In response to the enactment of AWA, the 127<sup>th</sup> Session of the Ohio General Assembly enacted Ohio's version of AWA—Am.Sub.S.B. 10 (hereinafter referenced as “S.B. 10”)—to comply with the federal guidelines. The amended JSORN provisions took effect on January 1, 2008. *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, fn1.

Senate Bill 10 drastically changed the landscape of Ohio's SORN and JSORN provisions. Most notably was the creation of a three-tiered, offense-based classification scheme, which eliminated the requirement that classification levels be determined after a full hearing. R.C. 2950.01(E), (F), and (G); Former R.C. 2950.09 (Repealed July 1, 2007). S.B. 10 increased the frequency and duration of registration duties, as well as the amount of information that registrants are required to give to local law enforcement officers. R.C. 2950.07; R.C. 2950.041(B) and (C). Further, S.B. 10 requires that all adults and children who were previously registering as sexually oriented offenders, habitual sex offenders, and sexual predators be reclassified into the new tier levels, based solely on their offense. R.C. 2950.031 and 2950.032. Moreover, S.B. 10 has created a new class of juvenile sex offender registrants, known as public registry-qualified juvenile offender registrants (hereinafter referenced as “PRQJOR”). A PRQJOR is a juvenile who has been adjudicated delinquent of a sexually oriented offense, and who was found to be a serious youthful offender in relation to that offense. R.C. 2152.86. For such youth, their classification as a Tier III registrant, community notification, and their

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<sup>1</sup> According the U.S. Dept. of Justice SMART Office, despite the changes to Ohio's sex offender registration and notification provisions, Ohio is still not in compliance with the federal Adam Walsh Act requirements. Letter to the Ohio Attorney General, released January 16, 2009.

inclusion on the Ohio Attorney General's electronic sex offender registration and notification database (hereinafter referenced as "eSORN") is mandatory. R.C. 2152.82 and 2152.86.

An early version of the proposed amendments to Ohio's JSORN provisions initially classified juveniles to the new tier scheme the same way that adults were classified into the new tier scheme:

- (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, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing any of the following sexually oriented offenses: (a) A violation of section 2907.02, or 2907.03 of the Revised Code; [\* \* \*]

See Proposed Amendment to R.C. 2950.01(G)(1)(a) LSC 127 0370-5, 203. Definitions for Tier I and II offenders were similarly stated. Id. at 200-203. However, prior to its enactment, the General Assembly revised that same language in the proposed bill by removing the language "is adjudicated a delinquent child" to state the following:

- (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; [\* \* \*]

See Proposed Amendment to R.C. 2950.01(G)(1)(a) LSC 127 0370-11, 226. Definitions for Tier I and II offenders were similarly stated. Id. at 222-226. That same amended version separated juvenile offenders who met the definition of a Tier III offender in the proposed amendment to R.C. 2950.01(G)(3):

- (3) A sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any offense listed in division (G)(1)(a), (b), (c), (d), (e), (f), (g), (h), or (i) of this section 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 that offense.

Id. at 228. Definitions for Tier I and III juvenile offenders were similarly stated. Id. at 222-226. And, the final amended version, as reported by the Senate Judiciary Criminal Justice Committee, removed juveniles from offense-based classifications altogether when it defined a Tier III juvenile offender registrant as:

(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.

See Proposed Amendment to R.C. 2950.01(G)(1)(a) Sub.S.B.No. 10; 229-230. Tier I and II juvenile offenders were similarly defined. Id. at 212-229.

The language of S.B. 10 has caused confusion throughout Ohio's juvenile courts. Specifically, the definitions in R.C. 2950.01 and other related statutes have contributed to the inconsistent classification of juveniles into the tier levels outlined in S.B. 10's provisions. Because Ohio courts are not applying the law in the same manner to all juveniles who are eligible to be classified as sexually oriented offenders, two distinctly different classification schemes have emerged throughout Ohio's juvenile courts. See *In re Smith*, at ¶31 (S.B. 10 requires juvenile courts to classify eligible into tier levels based solely on offense), and *In re G.E.S.*, 9<sup>th</sup> Dist. No. 24079, 2008-Ohio-4076, ¶37 (juvenile courts retain discretion in determining a juvenile's tier level under S.B. 10).

To date, six appellate districts have issued opinions that discuss whether S.B. 10 requires juveniles to be classified in the same offense-based manner as adults, or whether juvenile courts retain discretion to determine the tier levels of juvenile offender registrants. See *In re A.R.*, 12<sup>th</sup> Dist. No. CA2008-03-036, 2008-Ohio-6566, ¶36 (the Twelfth District adopted the reasoning of the Ninth District in *In re G.E.S.*, and found that juvenile courts have full

discretion in determining tier level);<sup>2</sup> *In re Gant*, 3<sup>rd</sup> Dist. No. 1-08-11, 2008-Ohio-5198, ¶15 (the Third District relied on its decision in *In re Smith*, and found that S.B. 10 leaves little, if any, discretion to the juvenile court, in determining tier level);<sup>3</sup> *In re P.M.*, 5<sup>th</sup> Dist. No. 2008CA00152, 2009-Ohio-1761, ¶14 (the Fifth District followed its decision in *In re Adrian R.*, 5<sup>th</sup> Dist. No. 08-CA017, 2008-Ohio-6581, and held that S.B. 10 amended the provisions of R.C. 2950 “so that classification is no longer based on an individualized analysis, but based on the crime committed”); see, also, *In re P.M.*, 8<sup>th</sup> Dist. No. 91922, 2009-Ohio-1694, ¶5 (the Eighth District adopted the reasoning of the Ninth District in *In re G.E.S.*, and found that, “unlike the classification of an adult sexual offender, which occurs by operation of law and is based solely on the underlying offense, the classification of a juvenile sex offender is left to the sound discretion of the juvenile court”); and *In re C.A.*, 2<sup>nd</sup> Dist. No. 23022, 2009-Ohio-3303, ¶37-38 (the Second District found that “juvenile classification under S.B. 10 is a two-step process – the first of which involves the court determining whether the youth is a JOR, the second in which the court determines the youth’s tier level).

Of particular concern in this appeal is that an offense-based application of S.B. 10 to juveniles effectively treats juvenile offender registrants the same as adult offenders; yet without affording juveniles the same due process rights that their adult counterparts have enjoyed prior to their classifications. Just as is the case in *In re Smith*, the constitutional question presented is paramount to this appeal; however, and perhaps before the constitutional question can be answered, this Court must give guidance as to whether juveniles are to be classified the same way as adults—based solely on their offenses—or whether S.B. 10 vests juvenile courts with discretion to determine tier levels for registration-eligible juvenile offenders.

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<sup>2</sup> *In re A.R.* is currently pending before this Court as Case No. 2009-0223.

<sup>3</sup> *In re Gant* is currently pending before this Court as Case No. 2008-2257.

## ARGUMENT

### PROPOSITION OF LAW

**The retroactive application of Senate Bill 10 to juveniles whose offense was committed prior to the enactment of Senate Bill 10 violates the juvenile's right to Due Process as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution.**

A. Due Process Considerations in Juvenile Court Proceedings.

The guarantees of the Due Process Clause apply to juveniles and adults alike. *Kent v. United States* (1966), 383 U.S. 541, 86 S. Ct. 1045; *In re Gault* (1967), 387 U.S. 1, 87 S. Ct. 1428; *In re Winship* (1970), 397 U.S. 358, 90 S. Ct. 1068. In *Gault*, the Supreme Court of the United States explicitly extended federal constitutional protections to children in juvenile delinquency proceedings. *In re Gault*, at 13-14. The Court also determined that a child's interest in delinquency proceedings is not adequately protected without the adherence to due process principles. *Id.* at 30-31.

Despite the recognition that children enjoy the protections of the Due Process Clause, the standard as to whether due process requirements are met in juvenile proceedings is inexact. *In re D.H.*, 120 Ohio St.3d 540, 2009-Ohio-9, ¶51, citing *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, ¶80; see, also, *Cafeteria Workers v. McElroy* (1961), 367 U.S. 886, 895, 81 S. Ct. 1743. "Due process 'is not a technical conception with a fixed content unrelated to time, place and circumstances'." *In re D.H.*, at ¶52, citing *McElroy*, at 895. "Rather, the phrase expresses the requirement of fundamental fairness, a requirement whose meaning can be as opaque as its importance is lofty." *Id.*, citing *Lassiter v. Dept. of Social Servs. Of Durham Cty., North Carolina* (1981), 452 U.S. 18, 25, 101 S. Ct. 2153; see, also, *McKeiver v. Pennsylvania* (1971), 403 U.S. 528, 543, 91 S. Ct. 1976 (the applicable due process standard in juvenile proceedings, as developed by *Gault* and *Winship*, is fundamental fairness). Thus, applying the Due Process

Clause is an “uncertain enterprise which must discover what fundamental fairness consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake.” *Id.*, citing *Lassiter*, at 25.

In recent years, this Court has spent a considerable amount of time analyzing the implications of due process and determining what constitutes fundamental fairness in juvenile proceedings. Recently, in *In re D.H.*, this Court considered whether Ohio’s juvenile blended-sentencing scheme offended due process. *In re D.H.*, at ¶53. At issue in *In re D.H.* was whether R.C. 2152.13(D)(2)(a)(i), which requires a juvenile judge to consider certain factors before imposing a serious-youthful-offender dispositional sentence, violated the Due Process Clauses of the United States and Ohio Constitutions. *Id.* at paragraph one of the syllabus. This Court was asked to determine whether constitutional jury trial rights, as applied to adult felony sentencing enhancements in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, also applied to children who were subject to Ohio’s serious-youthful-offender statutes. *Id.* at ¶15. It found that, in the context of serious-youthful-offender dispositions, the constitutional right to a jury trial did not apply to children. *Id.* at paragraph two of the syllabus. This Court’s decision rested on the procedures built into R.C. 2152.13 and the determination that the process by which youth become subject to a serious youthful offender disposition is fundamentally fair. *Id.* at ¶54.

In *In re D.H.*, this Court gave several justifications for why it found R.C. 2152.13 to be constitutionally sound. First, it noted that youth who are subject to serious-youthful-offender dispositions have a right to a jury pursuant to R.C. 2152.13(C)(1), and that D.H. had availed himself of that right. *Id.* at ¶3. It highlighted the fact that a jury had found D.H. eligible for a serious-youthful-offender disposition prior to the court imposing a juvenile disposition and adult sentence. *Id.* Second, this Court stressed the fact that when a youth is given a serious-youthful-

offender disposition, the child remains in the juvenile system, with their adult sentence stayed indefinitely, provided the youth is successfully rehabilitated. Id. at ¶18; R.C. 2152.13(D)(2)(a)(iii). Third, this Court examined the rights afforded a youth who is in danger of having his or her adult sentence imposed – emphasizing that the youth has a right to counsel which cannot be waived, and has the right to present evidence on his own behalf. Id. at ¶37.

This Court compared the purposes of juvenile dispositions and adult felony sentencing, and found that the protections imbedded in the procedures enumerated in R.C. 2152.13 enable juvenile courts to fulfill the mission of the juvenile justice system within the bounds of fundamental fairness. Id. at ¶54. Specifically it found that:

[t]he jury plays an important role in the adjudicative portion of Ohio’s serious-youthful-offender disposition statutory scheme. Only the jury’s factual determination makes the juvenile defendant eligible for a disposition that might include an adult stayed sentence.

Id. at ¶54. It concluded that juvenile courts do not need to be transformed into “full-blown adult trials” and dispositions in order to preserve a juvenile’s due process rights, for “if the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence.” Id. at ¶60, citing to *McKeiver*, at 551.

The United States Supreme Court has framed questions of due process around three considerations: 1) the private interest affected by the government’s official action; 2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and 3) the government’s interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirement would entail. *Mathews v. Eldridge* (1976), 424 U.S. 319, 96 S. Ct. 893. And while there is no constitutional right to be treated like a juvenile, Adrian submits that it is well established that youth in Ohio do have an interest in not being prosecuted as adults or in

receiving adult penalties and sanctions without having access to the same rights that adults facing criminal prosecution have had.

This Court must now consider whether an offense-based application of Ohio's JSORN provisions under S.B. 10 meets the standard of fundamental fairness that due process requires. *In re D.H.*, at ¶53. In making this determination, this Court should examine the provisions of S.B. 10 in the framework of the history of juvenile jurisprudence.

B. The Unique Role of the Juvenile Justice System.

This Court has long recognized that juvenile courts "occupy a unique place in our legal system." *In re C.S.*, at ¶65. The philosophy driving juvenile justice has been rooted in social welfare, rather than in the body of the law. *Id.* at ¶66, citing *Kent*, at 554. The objective of the juvenile court, from its inception, has been that courts would protect a wayward child from evil influences, save him from criminal prosecution, and provide him social and rehabilitative services. *In re T.R.* (1990), 52 Ohio St.3d 6, 15, 556 N.E.2d 439; *Children's Home of Marion City v. Fetter* (1914), 90 Ohio St. 110, 127, 106 N.E. 761, 11.

This Court has found that,

[t]he Juvenile Court stands as a monument to the enlightened conviction that wayward boys may become good men and that society should make every effort to avoid their being attained as criminal before growing to the full measure of adult responsibility. Its existence, together with the substantive provisions of the Juvenile Code, reflects the considered opinion of society that childish pranks and other youthful indiscretions, as well as graver offenses, should seldom warrant adult sanctions and that the decided emphasis should be upon individual, corrective treatment.

*State v. Agler* (1969), 19 Ohio St.2d 70, 71, 249 N.E.2d 808. Still today, juvenile courts are to remain centrally concerned with the care, protection, development, treatment, and rehabilitation of youthful offenders who remain in the juvenile justice system. *In re Caldwell*, 76 Ohio St. 3d 156, 157 1996-Ohio-410; *In re Kirby*, 101 Ohio St.3d 312, 2004-Ohio-970. Thus, it is firmly

established that a child is not a criminal by reason of any juvenile court adjudication; and civil disabilities, ordinarily following convictions, do not attach to children. *Agler*, at 73; R.C. 2151.357(H). The very purpose of the juvenile code was to avoid treating children as criminals and insulating them from the reputation and answerability of criminals. *Id.* at 80. Under current precedent, the law is clear: “juvenile court proceedings are civil, rather than criminal, in nature.” *In re Anderson*, 92 Ohio St.3d 63, 2001-Ohio-131.

While juvenile court proceedings have not been held to be “criminal prosecutions,” such proceedings also have not been regarded as devoid of criminal aspects merely because they are given a civil label. *Kent*, at 554; *In re Winship*, at 365-66. See, also, *In re Gault*, at 17 (noting that the term “delinquent” offers only slightly less stigma than the term “criminal” and that a “commitment” is an incarceration regardless of what it is labeled). Juvenile delinquency laws feature inherently criminal aspects and the state’s goals in prosecuting a criminal action and in adjudicating a juvenile delinquency case are the same: to vindicate a vital interest in the enforcement of *criminal* laws. *In re C.S.*, at ¶76, citing *State v. Walls*, 96 Ohio St.3d 437, 2002-Ohio-5059, ¶26. (Emphasis sic). In truth, the modern version of the juvenile court imposes penalties that have serious implications on a child’s personal liberty. *Id.* at ¶66. With the imposition of significant penalties by juvenile courts has come “increasing recognition of due process rights and constitutional scrutiny of police action.” *Id.* at ¶69.

The purpose of R.C. 2950 was purported to be to “promote public safety and bolster the public’s confidence in Ohio’s criminal and mental health systems.” *Cook*, at 417. Under former R.C. 2152.83(B)(2)(b), if a juvenile court found that a child who had been adjudicated delinquent of a sex offense was to be classified as a juvenile offender registrant, the court then determined whether that juvenile was also a sexual predator or a habitual sex offender. The court would

conduct a hearing, wherein it considered a number of factors relevant for making such a determination, including: 1) the nature of the sexually oriented offense; 2) whether the child has shown any genuine remorse; 3) public interest and safety; 4) the factors set forth in division (B)(3) of R.C. 2950.09 or 2950.12; 5) the factors set forth in divisions (B) and (C) of R.C. 2929.12 as applicable to delinquent children, the offense, and the victim; and 6) the results of any treatment provided to the child and any follow-up professional assessment of the child. Former R.C. 2152.83(E)(1)-(5). The determination that a juvenile offender registrant was also a sexual predator or habitual offender could only be made with the support of clear and convincing evidence. Former R.C. 2152.83(C).

The procedures set forth in former R.C. 2152.83 provided juvenile sex offenders with protections that ensured their classification would be determined on a case-by-case basis, in which the court would take into consideration their youth and what effect treatment had on their future likelihood to reoffend. However, by applying S.B. 10 to children based solely on their offense, a juvenile court no longer makes specific case-by-case determinations of a juvenile offender's dangerousness or likelihood to reoffend; rather, the court simply notes the offense committed and assigns the child to the corresponding registration tier. R.C. 2152.83(B)(2)(b), 2152.02(Y), and 2950.01(E),(F), and (G). Like many juvenile courts throughout Ohio, once the Licking County Juvenile Court determined that Adrian was a juvenile offender registrant, the court believed it had no discretion in determining which classification level Adrian was subject. R.C. 2152.83(B)(2)(b), 2152.02(Y), and 2950.01(E),(F), and (G). Because of this offense-based application of S.B.10, there now exists little distinction between juvenile offenders and adult offenders who have been convicted or adjudicated of the same offense. And unlike the

procedures outlined in R.C. 2152.13, there is no procedure that makes an offense-based classification fundamentally fair for children.

In *In re D.H.*, this Court found that, “despite the jury’s role in the adjudicative phase, removing the jury from the dispositional phase does not violate due process.” *In re D.H.*, at ¶55. In so holding, it highlighted the role of the juvenile court in determining the disposition for a delinquent child. *Id.* at ¶55. Specifically, this Court stated that,

[t]he [juvenile] court’s dispositional role is at the heart of the remaining differences between juvenile and adult courts. It is there that the expertise of a juvenile judge is necessary. The judge, given the factors set forth in R.C. 2152.13(D)(2)(a)(i), must assess the strengths and weaknesses of the juvenile system vis-à-vis a particular child to determine how this particular juvenile fits within the system and whether the system is equipped to deal with the child successfully. That assessment requires as much familiarity with the juvenile justice system as it does a familiarity with the facts of the case. To leave that determination to an expert, given the juvenile system’s goal of rehabilitation, does not offend fundamental fairness, especially since the adult portion of the blended sentence that the judge imposes upon a jury verdict is not immediately, and may never be enforced.

*Id.* at ¶59. This Court found that juvenile court discretion was vital in determining dispositions for youth who were eligible for serious youthful offender dispositions. Yet, an offense-based application of S.B. 10 removes that discretion, subverting one of the “remaining differences between juvenile and adult courts.” *Id.*

The offense-based application of S.B. 10 has effectively placed children into the same categories as adults who are convicted of sexually oriented offenders, without those children having received the same due process rights that similarly situated adults have been afforded prior to being subject to automatic classification. Unlike children who have a right to a jury prior to being eligible for a serious-youthful-offender disposition, non-PRQJOR youth who are subject to classification under S.B. 10 do not have that right. And unlike adults, who have a

constitutional right to a trial by jury prior to being convicted and sentenced, youth who are subject to classification as juvenile offender registrants, do not have that right.

These new registration requirements, which are indiscriminately applicable to juveniles, have imposed criminal punishments on members of society who have historically been shielded from criminal prosecution.

C. The Evolution of Ohio's SORN and JSORN Laws From a Civil to a Criminal Penalty.

The criminal aspects of juvenile delinquency have been highlighted with the advent of S.B. 10, which has drastically changed the penalties associated with delinquency adjudications for sexually oriented juvenile offenders in Ohio. S.B. 10 imposes on defendants and juvenile offenders, burdens that have historically been regarded as punishment and operate as affirmative disabilities and restraints. While registering as a sex offender may have adverse consequences to a defendant or juvenile offender, "running from mild personal embarrassment to social ostracism," the notification of where that individual lives causes Senate Bill 10 to resemble colonial punishments of "public shaming, humiliation, and banishment." *Smith v. Doe* (2003), 538 U.S. 84, 98, 123 S. Ct. 1140.

For example, for non public-registry-qualified-juvenile-offender-Tier III registrants, a judge may subject a juvenile offender registrant to the community and victim notification provisions in R.C. 2950.10 and 2950.11. R.C. 2152.83(C)(2). This would include forwarding the information to neighbors, school superintendents and principals; preschools; daycares; and all volunteer organizations where contact with minors may occur. R.C. 2950.11(A)-(F). All of the various organizations in turn are authorized to disseminate the information, and the information is available to any member of the public upon request. R.C. 2950.11(A)-(F).

This dissemination of information resembles shaming punishments, which are intended to inflict public disgrace. R.C. 2950.04(B); 2950.04(C). See 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.”). See, also, 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”).

Senate Bill 10 also furthers the traditional aims of punishment: retribution and deterrence. *Smith v. Doe*, at 102. By placing a juvenile offender into a tier that is based on the offense that he or she committed, and without determining whether the youth is likely to commit another sexual offense in the future, the General Assembly is attempting to prospectively deter the commission of sexually oriented offenses. See *Roper v. Simmons* (2005), 543 U.S. 551, 571-572, 125 S. Ct. 1183 (found that the “penalogical justifications” for criminal sanctions do not apply to juveniles since juvenile offenders are less culpable than adult defendants and therefore are not amenable to retribution and deterrence). The automatic placement of an offender into a tier without determining whether he or she is likely to reoffend is also a form of retribution. *Tison v. Arizona* (1987), 481 U.S. 137, 180-181, 107 S. Ct. 1676 (“Retribution...has as its core logic the crude proportionality of “an eye for an eye.”).

Senate Bill 10 can no longer be seen as a purely civil remedy with no criminal implications. As Justice Lanzinger pointed out when she compared the then current version of the sex offender law to the one at issue in *Cook*, the current sex offender registration laws are more complicated and restrictive than those at issue in *Williams* and *Cook*. *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, at ¶¶ 45 (internal citations omitted and emphasis added)

(Donovan and O'Connor, JJ, concurring). Justice Lanzinger noted that, "while protection of the public is the avowed goal of R.C. Chapter 2950, we cannot deny that sever obligations are imposed upon these classified as sex offenders." Id. at ¶46. Now sexual predators and habitual offenders must register their residences and employment for the rest of their lives, with this information being available to all. Id. Thus, the stigma attached to sex offenders is significant and the potential for ostracism and harassment exists. Id. Justice Lanzinger concluded that, "I do not believe that we can continue to label these proceedings as civil in nature. These 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." Id.

If juvenile sex offender classification and registration is truly civil, then a juvenile cannot receive any of the civil disabilities ordinarily imposed by conviction of a crime. R.C. 2151.357(H). But if the effects of juvenile sex offender registration are punitive, then a juvenile cannot receive a punitive sanction unless he is transferred to the adult criminal system. See R.C. 2152.12.

D. Why Juveniles Should Not Be Subject to Adult Sanctions.

The United States Supreme Court has explained how the fundamental differences between adult and juvenile offenders begs for greater protection of juveniles when it comes to the penalties associated with that youth's actions. *Thompson v. Oklahoma* (1988), 487 U.S. 815, 835, 108 S. Ct. 2687. Juvenile justice jurisprudence is replete with the recognition that there are real distinctions between the rights and duties of juveniles as compared with those of adults. *Thompson*, at 823. The age-based restrictions that control when a child may lawfully vote, drive, sit on a jury, marry without parental consent, and purchase tobacco and alcohol have clearly illustrated the value in lawmakers taking into consideration the mental capacity of a child to

handle these responsibilities. *Id.* The reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult. *Roper*, at 561-562, citing *Thompson*, at 835.

And, as it is generally agreed that punishment should be directly related to the personal culpability of a criminal defendant, since adolescents are less mature and responsible than adults, less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult. *Thompson*, at 834-835, citing *California v. Brown* (1987), 479 U.S. 538, 545, 107 S. Ct. 837.

In *Roper*, the Supreme Court recognized that, “[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.” *Roper*, at 570. For example, a juvenile’s susceptibility to immature and irresponsible behavior means “their irresponsible conduct is not as morally reprehensible as that of an adult.” *Roper*, at 553 (citing *Thompson*, at 853). A juvenile’s vulnerability and comparative lack of control over his or her immediate surroundings mean that juveniles have a greater claim than adults, to be forgiven for failing to escape negative influences in their whole environment. *Roper*, at 553. “The reality that juveniles still struggle to define their identity means that it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.” *Id.* In addition, “[r]etribution is not proportional if the law’s most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.” *Id.* at 571. The fact that juveniles are categorically less culpable than adults highlights the unfairness of automatic and lifetime registration and illustrates the devastating consequences that result when the law is used to secure an adult consequence against a youthful defendant.

The Supreme Court's acknowledgment of the unique characteristics of juveniles came when the Court abolished the death penalty for all juvenile offenders under the age of eighteen. *Roper*, at 570-571. See, also, *Brief of the American Medical Association, et. al. as Amici Curiae* for Respondent Simmons, (which argued adolescent offenders at sixteen and seventeen do not have adult levels of judgment, impulse control, or ability to assess risks).<sup>4</sup> And in *Thompson*, the Court found that the reduced culpability of juvenile offenders, coupled with the fact that the application of the death penalty did not measurably contribute to the essential purposes underlying its enforcement, supported the conclusion that the imposition of the death penalty to persons under the age of sixteen violates the Eighth Amendment's prohibition against cruel and unusual punishments. *Thompson*, at 835. Although *Roper* and *Thompson* were both death penalty cases, the scientific and developmental research supporting those decisions applies to the circumstances in this case as well. Given the Supreme Court's understanding of juvenile development, there is no rational justification for juveniles to be automatically subjected to the highest level of registration and classification.

The Supreme Court in *Roper* recognized that, as capital punishment was to be reserved for a narrow category of the most serious crimes, and imposed against only those who were the most deserving of execution, juveniles could not be reliably classified among the worst offenders. *Roper*, at 569. Furthermore, the Court found that the penological justifications for the death penalty—namely retribution and deterrence—apply to children with less force than to adults. *Id.* at 571. The Court in *Roper* found that retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished by reason of youth and immaturity. *Id.* Likewise, it is unclear that deterrence is a proper justification for

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<sup>4</sup> *Roper v. Simmons Amici Briefs* available at <http://www.abanet.org/crimjust/juvjus/simmons/simmonsamicus/>

punishing a juvenile offender, because the likelihood that a teenage offender has made the type of cost-benefit analysis that attaches the weight to the possibility of the death penalty is so remote as to be virtually nonexistent. *Id.* at 572. Moreover, according to the Ohio Association of County Behavioral Health Authorities, the recidivism rates for Ohio juveniles who commit a sexual offense, with treatment, supervision, and support, are lower than any other group of offenders, at 4% - 10%.<sup>5</sup> That means 90-96% of the juvenile offenders who are receiving appropriate treatment are not a danger to the public. This makes an offense-based application of S.B. 10 to juveniles all the more egregious.

E. How an Offense-Based Classification Affects Adrian.

At the time of his offense, the only way Adrian could have been classified as a sexual predator was if the juvenile court made certain factual findings, on the record, determining that he was likely to reoffend in the future. Former R.C. 2950.09(B)(2). And he could not have been classified as a habitual offender because he had not previously committed a sexually oriented offense. Former R.C. 2950.01(B). In fact, given his success in sex offender treatment at the Ohio Department of Youth Services, the record in this case would have supported a finding that if Adrian were to be classified at all, he would have been classified as a sexually oriented offender, with a duty to comply with registration requirements annually for ten years. However, because the Licking County Juvenile Court believed it had no discretion in determining Adrian's tier level, he is now registering as a Tier III juvenile offender registrant, every 90 days in the counties where he lives, works, and goes to school. And because reclassification or declassification is not guaranteed, Adrian may be registering as a Tier III juvenile offender registrant for the rest of his life—not because he was found to be a dangerous member of society,

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<sup>5</sup> Ohio Association of Behavioral Health Authorities *Juvenile Sex Offenders*, BEHAVIORAL HEALTH: DEVELOPING A BETTER UNDERSTANDING, 3;1 (2006).

who was likely to commit future sexually oriented offenses—but because the juvenile court classified him as though he were an adult offender.

Ohio has created a system of juvenile justice in which adult treatment and sentencing is reserved for exceptional circumstances, and in which procedural rights are afforded to similarly situated juveniles. R.C. 2152.12 and 2152.13. However, an offense-based application of S.B. 10 to juveniles does not provide a youth with those same procedural rights. In fact, it goes against the principles of juvenile jurisprudence, set forth by this Court's long-established history of effectively applying Ohio's criminal statutes to juvenile offenders in a way that still treats children as children. See, generally, *Agler*, at 71; *In re Caldwell*, 157. By requiring that juvenile offenders be placed on the same tier structure as adult offenders in the same manner as adult offenders, S.B. 10 erases the line between juvenile and criminal offenders. S.B. 10 violates due process because it eliminates the requirement that the court make a determination as to what classification category an offender belongs in, if any, and by imposing punitive sanctions upon juveniles who have never committed a "criminal" offense. The offense-based application of S.B. 10 has effectively placed children into the same categories as adults who are convicted of sexually oriented offences, without those children having received the same due process rights that similarly situated adults have been afforded prior to being subject to automatic classification.

### CONCLUSION

Adrian was classified as a Tier III juvenile sex offender registrant under S.B.10, based solely on his offense, in part because the Licking County Juvenile Court was under the impression that S.B. 10 removed its discretion to determine what level Adrian should be classified, if at all. This offense-based application of Ohio's new JSORN law violates Due

Process Clause of both the United States and Ohio Constitutions. Therefore, Adrian asks this Court to find S.B. 10 unconstitutional. However, if this Court adopts the reasoning and holding of the Ninth District Court of Appeals in *In re G.E.S.*, which has been followed by the Twelfth, Second, Ninth, and Eighth District Courts of Appeals, this Court may find that S.B. 10's provisions are constitutional as applied to juveniles, as they preserve a juvenile court's ability to use discretion in determining to what tier level a juvenile offender registrant should be subject. If this Court finds S.B. 10 unconstitutional, or that juvenile courts retain discretion in determining a juvenile offender registrant's tier level, Adrian's classification must be vacated and his case remanded so that the Licking County Juvenile Court may issue a valid order in his case. Moreover, since many juvenile courts throughout Ohio have been classifying youth under this same offense-based application of S.B. 10, Adrian also asks that this Court issue a directive to Ohio's lower courts, that youth who were classified under this offense-based application of S.B. 10 should receive new classification hearings.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



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ADRIAN R.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was forwarded by regular U.S. Mail this 21<sup>st</sup> day of July, 2009 has been sent by regular U.S. mail, postage prepaid, to the office of Alice R. Bond, Assistant Licking County Prosecuting Attorney, Licking County Prosecutor's Office, Licking County Admin. Bldg., 20 South Second Street, 4<sup>th</sup> Floor, Newark, Ohio 43055.



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COUNSEL FOR MINOR CHILD-  
APPELLANT, ADRIAN R.

IN THE SUPREME COURT OF OHIO

IN RE: ADRIAN R.,  
Alleged Delinquent Child

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Case No. 2009-0189

On Appeal from the  
Licking County Court of Appeals  
Fifth Appellate District

C.A. Case No. 08-CA-17

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**APPENDIX TO MERIT BRIEF OF APPELLANT ADRIAN R.**

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IN THE SUPREME COURT OF OHIO

IN THE MATTER OF:

ADRIAN R.,

Appellant.

Case No. **09-0189**

On Appeal from the Licking  
County Court of Appeals  
Fifth Appellate District

C.A. Case No. 08-CA-17

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**NOTICE OF APPEAL OF MINOR CHILD-APPELLANT ADRIAN R.**

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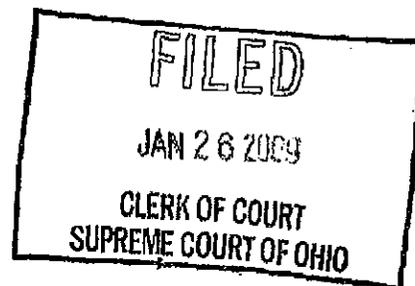
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**NOTICE OF APPEAL OF MINOR CHILD-APPELLANT D.S.**

Appellant Adrian R. hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Licking County Court of Appeals, Fifth Appellate District, entered in Court of Appeals Case No. 08-CA-17 on December 11, 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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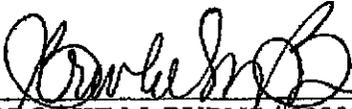
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing NOTICE OF APPEAL was forwarded by regular U.S. Mail to Chris Reamer, Assistant Licking County Prosecuting Attorney, Licking County Prosecutor's Office, 20 South Second Street, Newark, Ohio, 43055, this 26<sup>th</sup> day of January, 2009.

  
\_\_\_\_\_  
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COURT OF APPEALS  
LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

CLERK OF COURT  
LICKING COUNTY, OHIO

IN RE: ADRIAN R.  
DELINQUENT CHILD

JUDGES:

Hon. John W. Wise, P.J.  
Hon. Julie A. Edwards  
Hon. Patricia A. Delaney

Case No. 08-CA-17

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Licking County Juvenile  
Court Case No. A2005-0984

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

APPEARANCES:

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*Delaney, J.*

{¶1} Appellant Adrian R. appeals the January 14, 2008, Judgment Entry of the Licking County Court of Common Pleas, Juvenile Division, which adjudicated him a Tier III sexual offender subject to statutory registration requirements. The State of Ohio is the Plaintiff-Appellee.

#### STATEMENT OF THE CASE AND FACTS

{¶2} On December 22, 2005, Appellant, a juvenile, was charged with two counts of rape, in violation of R.C. 2907.02(A)(1)(b), both felonies of the first degree if committed by an adult. In Counts 1 and 2 of the complaint, he was charged with engaging in sexual conduct with K.R., who was eight years old at the time of the offenses in 2004. On February 6, 2006, Appellant admitted to both counts of the complaint. The court continued disposition and ordered a PSI and sex offender assessment. Following the dispositional hearing on April 6, 2006, the court committed Appellant to the Department of Youth Services for a minimum of two years and a maximum not to exceed Appellant's twenty-first birthday.

{¶3} On January 14, 2008, Appellant again appeared in court, prior to being released from the custody of the Department of Youth Services, for a sex offender classification hearing. At that hearing, the court determined that, based on Senate Bill 10, which went into effect on July 1, 2007, Appellant was a Tier III sex offender who was not subject to community notification provisions.

{¶4} Senate Bill 10 was passed as a result of the federal Adam Walsh Act, and it reorganized Ohio's sex offender classification and registration scheme. Instead of having three levels of offenders classified as "sexually oriented offenders," "habitual sex

offenders," and "sexual predators," the new law assigns offenders to a classification based on a tier system that relies on the offense of conviction and/or the number of convictions. See R.C. 2950.01 (E, F. and G).

{¶15} Effective January 1, 2008, Tier I offenders were required to register for fifteen years and must verify their residence with the sheriff on an annual basis. R.C. 2950.05(B)(3); R.C. 2950.06(B)(1). Tier II offenders must register for twenty-five years and periodically verify every 180 days. R.C. 2950.05(B)(2); R.C. 2950.06(B)(2). Tier III offenders must register for the rest of their life and periodically verify every 90 days. R.C. 2950.05(B)(1); R.C. 2950.06(B)(3). Adult Tier III offenders are also subject to automatic community notification, under which the sheriff is required to notify the offender's neighbors and certain other persons in the community of, the offender's residence, offense, and Tier III status.

{¶16} Revised Code 2152.83(B)(1) subjects juvenile sex offenders to registration requirements if a child is adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense on or after January 1, 2002, and if the child offender is fourteen or fifteen years of age at the time of the offense. After conducting a hearing, the court may determine that the offender is a Tier I, II, or III offender and has the discretion to impose community notification provisions on the offender if the offender meets certain requirements. Rape is classified as a Tier III offense pursuant to R.C. 2950.01. The trial court memorialized its ruling classifying Appellant as a Tier III sex offender in a Judgment Entry filed on January 15, 2008.

{¶17} It is from this judgment entry Appellant appeals, raising the following six assignments of error:

{118} "I. THE TRIAL COURT ERRED WHEN IT CLASSIFIED ADRIAN R. AS A SEX OFFENDER REGISTRANT, WHEN THE RECORD ILLUSTRATES THAT NEITHER THE COURT NOR THE PARTIES WERE CLEAR ON THE SPECIFICS OF THE LAW GOVERNING THE CLASSIFICATION OF JUVENILES UNDER SENATE BILL 10."

{119} "II. ADRIAN R. WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN THE TRIAL COUNSEL FAILED TO EDUCATE HIMSELF ABOUT RELEVANT JUVENILE OFFENDER CLASSIFICATION PROCEDURES AND FAILED TO PRESENT TO THE COURT WITH AN ACCURATE STATEMENT OF LAW REGARDING HIS CLIENT'S DUTY TO REGISTER UNDER R.C. 2152.83, WHICH LEAD TO THE COURT TO CLASSIFY ADRIAN AS A TIER III JUVENILE OFFENDER REGISTRANT, UNDER THE MISTAKEN BELIEF THAT ADRIAN WAS A MANDATORY REGISTRANT AND THAT THE ONLY ISSUE WITHIN THE COURT'S DISCRETION WAS WHETHER ADRIAN WAS SUBJECT TO COMMUNITY NOTIFICATION."

{110} "III. THE TRIAL COURT ERRED WHEN IT APPLIED SENATE BILL 10 TO ADRIAN R., AS THE APPLICATION OF SENATE BILL TO ADRIAN VIOLATES HIS RIGHTS TO DUE PROCESS AS GUARANTTED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION." [SIC]

{111} "IV. THE TRIAL COURT ERRED WHEN IT APPLIED SENATE BILL 10 TO ADRIAN R., AS THE RETROACTIVE APPLICATION OF SENATE BILL 10 TO ADRIAN R., VIOLATES THE EX POST FACTO CLAUSE OF THE UNITED STATES

CONSTITUTION AND THE RETROACTIVITY CLAUSE OF OHIO CONSTITUTION."

[SIC]

{¶12} "V. THE TRIAL COURT ERRED WHEN IT APPLIED SENATE BILL 10 TO ADRIAN R., AS THE APPLICATION OF SENATE BILL 10 TO ADRIAN VIOLATES THE SEPARATION OF POWERS DOCTRINE THAT IS INHERENT IN OHIO CONSTITUTION."

{¶13} "VI. THE TRIAL COURT ERRED WHEN IT APPLIED SENATE BILL 10 TO ADRIAN R., AS THE APPLICATION OF SENATE BILL 10 TO ADRIAN VIOLATES THE UNITED STATES CONSITUTION'S PROHBITION AGAINST CRUEL AND UNUSAL PUNISHMENTS. EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION." [SIC]

{¶14} In Appellant's first assignment of error, he contends that the trial court erred in classifying him as a juvenile sex offender because the parties and judge believed that Appellant was subject to mandatory classification. We find the record does not support this contention.

{¶15} When reviewing claims of whether a trial court erred in classifying a sex offender, Appellant suggests that we should apply a de novo standard of review. However, in his issue presented, he asks whether the trial court abused its discretion when it informed Appellant that he was a Tier III registrant. Appellee argues that the proper standard of review is an abuse of discretion standard. We agree with Appellee.

{¶16} A de novo standard of review is applied when an appellate court reviews the interpretation and application of a statute. *State v. Sufronko* (1995), 105 Ohio App.3d 504, 506, 664 N.E.2d 596, 597. No such review is warranted in this case.

{¶17} An abuse of discretion standard, on the other hand, is applied when an appellate court must give deference to a trial court's application of guidelines to facts. See *Buford v. U.S.* (2001), 532 U.S. 59, 121 S. Ct. 1276. Under R.C. 2152.83, a trial court is given discretion to determine whether to classify a juvenile offender as a Tier I, II, or III sex offender. Moreover, the trial court is given discretion to determine whether a juvenile sex offender should be subject to community notification requirements. The trial court is able to listen to the defendant's statement, should he choose to make one, listen to victim impact statements, listen to the evaluation of the Department of Youth Services and Parole representatives, and review other factual matters in making its determinations as to registration and classification. Because the trial court is in a position to weigh and evaluate these considerations, deference should be given to the trial court's decision and that decision should not be overturned absent an abuse of discretion.

{¶18} It cannot be said that the factual determinations made by the trial court in the present case did not guide the trial court's determination in this case. The victim in this case was eight years old at the time of the offenses and that fact alone supports the judge's finding that Appellant is a Tier III offender. Moreover, the court was aware that his determination was discretionary. While initially there appeared to be some confusion over the mandatory or discretionary nature of the classification, both parties clarified that the classification was in fact discretionary and the court recognized that

understanding. Additionally, the court, in addressing the concerns regarding community notification, was well aware of the standards related to that issue and did not subject Appellant to community notification. The court spent an extensive amount of time discussing with Appellant the requirements placed upon him by classification and advised Appellant of the consequences of failing to meet those requirements. Accordingly, we cannot say that the trial court was unaware of the nature of the proceedings and abused its discretion. Therefore, Appellant's first assignment of error is overruled.

## II

{¶19} In Appellant's second assignment of error, he argues that trial counsel was ineffective for failing to educate himself about relevant juvenile offender classification procedures and failed to present the court with an accurate statement of the law as it related to Appellant's duty to register under R.C. 2152.83. We disagree.

{¶20} To succeed on a claim of ineffectiveness, a defendant must satisfy a two-prong test. Initially, a defendant must show that his trial counsel acted incompetently. *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052. In assessing such claims, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* at 689, quoting *Michel v. Louisiana* (1955), 350 U.S. 91, 101, 76 S.Ct. 158, 164.

{¶21} "There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in

the same way." *Strickland*, 466 U.S. at 689. The question is whether counsel acted "outside the wide range of professionally competent assistance." *Id.* at 690.

{¶22} Even if a defendant shows that his counsel was incompetent, the defendant must then satisfy the second prong of the *Strickland* test. Under this "actual prejudice" prong, the defendant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694.

{¶23} When counsel's alleged ineffectiveness involves the failure to pursue a motion or legal defense, this actual prejudice prong of *Strickland* breaks down into two components. First, the defendant must show that the motion or defense "is meritorious," and, second, the defendant must show that there is a reasonable probability that the outcome would have been different if the motion had been granted or the defense pursued. See *Kimmelman v. Morrison* (1986), 477 U.S. 365, 375, 106 S.Ct. 2574, 2583; see, also, *State v. Santana* (2001), 90 Ohio St.3d 513, 739 N.E.2d 798 citing *State v. Lott* (1990), 51 Ohio St.3d 160, 555 N.E.2d 293.

{¶24} Appellant argues that counsel was ineffective because counsel did not know about the offender classification procedures and failed to present the court with an accurate statement of the law regarding Appellant's duty to register. While trial counsel initially stated that he believed the registration provision to be mandatory, he did clarify during the hearing that the classification was discretionary. Counsel went on to advocate zealously for his client, informing the court of Appellant's accomplishments while in the custody of the Department of Youth Services, including graduating from high school with a 4.0 grade point average, being a mentor to other youths in DYS, and

completing sex offender programming and demonstrating remorse for his actions. Moreover, even if we concluded that counsel's representation was outside the wide range of professionally competent assistance, which we do not, given the fact that the trial court was aware of the discretionary nature of the proceedings, Appellant suffered no prejudice. Appellant's second assignment of error is therefore overruled.

III, IV, V, VI

{¶25} In Appellant's third through sixth assignments of error, he challenges the constitutionality of Senate Bill 10, claiming that Senate Bill 10 violates the Due Process clause, the Ex Post Facto clause, and violates the Eighth Amendment of the United States Constitution, as well as the Separation of Powers doctrine. Appellant did not raise these issues in the trial court, and raises them for the first time on appeal.

{¶26} "Failure to raise at the trial court level the issue of the constitutionality of a statute or its application, which issue is 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, 489 N.E.2d 277. The waiver doctrine announced in *Awan* is discretionary. *In re M.D.* (1988), 38 Ohio St.3d 149, 151, 527 N.E.2d 286, 288. See also *State v. Longpre*, Ross Co. App. No. 08CA3017, 2008-Ohio-3832 (applying waiver doctrine to Senate Bill 10).

{¶27} Because Appellant failed to raise these issues in the trial court, he has waived his right to raise them on appeal. We will, however, address his claims under a plain error standard of review. A reviewing court may review claims of defects affecting

substantial rights even if they were not brought to the attention of the court. Ohio Crim. R. 52(B).

{¶28} Generally, an enactment of the General Assembly is presumed to be constitutional absent proof beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible. *State v. Cook* (1998), 83 Ohio St.3d 404, 409, 700 N.E.2d 570, 1998-Ohio-291 quoting *State ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St.2d 142, paragraph one of the syllabus. "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." *Id.* at 147.

{¶29} The Supreme Court of the United States has already stated, "[t]he State's determination to legislate with respect to convicted sex offenders as a class, rather than require individual determination of their dangerousness, does not make the statute a punishment [.]" *Smith v. Doe* (2003), 538 U.S. 84, 104, 123 S.Ct. 1140, 1153. In *Smith v. Doe*, Alaska's system of lifetime, quarterly registration and its internet registry were upheld as valid non-punitive measures to protect the public. Community notification also constitutes a valid non-punitive measure, as found by the Ohio Supreme Court. *Cook*, supra; *State v. Williams* (2000), 88 Ohio St.3d 513, 728 N.E.2d 342, 2000-Ohio-428. In *State v. Williams*, the Court further held that R.C. 2950 did not violate double jeopardy or equal protection provisions of the United States Constitution.

{¶30} Moreover, in *State v. Cook* (1998), 83 Ohio St.3d 404, supra, the Ohio Supreme Court found the former version of R.C. 2950 constitutional. Senate Bill 10 amended R.C. 2950 so that classification is no longer based on an individualized

analysis. Instead, classification is now based on the type of crime committed. In addition, Senate Bill 10 increased the reporting requirements.

{¶31} In *Cook*, the Ohio Supreme Court determined that the old system effective in 1997 was "retroactive" because it looked to the prior conviction as a starting point for regulation. *Cook*, 83 Ohio St.3d at 410. Even so, the Court upheld the old system because it had a valid remedial and non-punitive purpose. The *Cook* court determined that Ohio's sex offender statutes did not violate the Ex Post Facto clause of the United States Constitution, finding:

R.C. Chapter 2950 serves the solely remedial purpose of protecting the public. Thus, there is no clear proof that R.C. Chapter 2950 is punitive in its effect. We do not deny that the notification requirements may be a detriment to registrants, but the sting of public censure does not convert a remedial statute into a punitive one. *Kurth Ranch*, 511 U.S. at 777, 114 S.Ct. at 1945, 128 L.Ed.2d at 777, fn. 14. Accordingly, we find that the registration and notification provisions of R.C. Chapter 2950 do not violate the Ex Post Facto Clause because its provisions serve the remedial purpose of protecting the public.

*Cook*, 83 Ohio St.3d at 423.

{¶32} Moreover, in *Williams*, the Court determined that Ohio's sex offender statutes did not violate the Double Jeopardy Clause, stating:

The Double Jeopardy Clause states that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." Fifth Amendment to the United States Constitution; see, also, Section 10, Article I, Ohio Constitution. 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. See *Kansas v. Hendricks*, 521 U.S. at 369, 117 S.Ct. at 2085, 138 L.Ed.2d at 519; *Witte v. United States* (1995), 515 U.S. 389, 396, 115 S.Ct. 2199, 2204, 132

L.Ed.2d 351, 361. The threshold question in a double jeopardy analysis, therefore, is whether the government's conduct involves criminal punishment. *Hudson v. United States* (1997), 522 U.S. 93, 101, 118 S.Ct. 488, 494, 139 L.Ed.2d 450, 460.

This court, in *Cook*, addressed whether R.C. Chapter 2950 is a "criminal" statute, and whether the registration and notification provisions involved "punishment." Because *Cook* held that R.C. Chapter 2950 is neither "criminal," nor a statute that inflicts punishment, R.C. Chapter 2950 does not violate the Double Jeopardy Clauses of the United States and Ohio Constitutions. We dispose of the defendants' argument here with the holding and rationale stated in *Cook*.

*Williams*, 88 Ohio St.3d at 527-528.

{¶33} Furthermore, the court in *Williams* stated that "stigma" or "favorable reputation" are not liberty or property interests protected by due process. *Williams*, 88 Ohio St.3d at 527, citing *Paul v. Davis* (1976), 424 U.S. 693, 96 S.Ct. 1155. An allegation that defamation has caused or will cause anguish or stigma "does not in itself state a cause of action for violating a constitutional right." *Id.* at 527, quoting *Cook*, 83 Ohio St.3d at 413. No due process violation occurs where "the law required an offender to be registered based on the fact of the conviction alone." *Doe I v. Dann et al.*, (June 9, 2008), N.D. Ohio No. 1:08-CV-00220-PAG, Document 146, 2008 WL 2390778. Moreover, "public disclosure of a state's sex offender registry without a hearing as to whether an offender is 'currently dangerous' does not offend due process where the law required an offender to be registered based on the fact of his conviction alone." *Doe I v. Dann et al.*, citing *Connecticut Dept. of Public Safety v. Doe* (2003), 538 U.S. 1, 123 S.Ct. 1160. Therefore, we conclude that due process is not implicated by Senate Bill 10.

{¶34} As to whether Senate Bill 10 violates the Separation of Powers doctrine, we hold that it does not. As the Third District recently stated in *In Re Smith*, in striking down a similar challenge:

[W]e note that the classification of sex offenders into categories has always been a legislative mandate, not an inherent power of the courts. *Slagle v. State*, 145 Ohio Misc.2d 98, 884 N.E.2d 109, 2008-Ohio-593. Without the legislature's creation of sex offender classifications, no such classification would be warranted. Therefore, with respect to this argument, 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.

*In Re Smith*, Allen App. No. 1-07-58, 2008-Ohio-3234, ¶39.

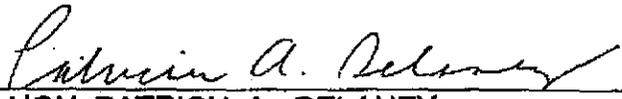
{¶35} We also find that Senate Bill 10 does not amount to cruel and unusual punishment. In *Cook*, supra, the Supreme Court concluded that sexual offender notification and registration requirements are not punitive in nature; rather, they are remedial measures designed to protect the public. Therefore, such measures do not implicate the protections against cruel and unusual punishment. *Cook*, at 423. See also, *State v. Keibler*, Auglaize App. No. 2-99-51, 2000-Ohio-1666.

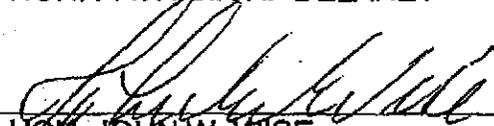
{¶36} For the foregoing reasons, we overrule Appellant's third, fourth, fifth, and sixth assignments of error and affirm the January 14, 2008, Judgment Entry of the trial court finding Appellant to be a Tier III sex offender.

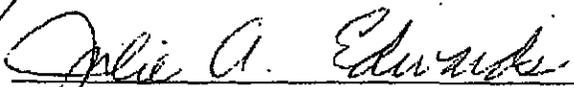
By: Delaney, J.

Wise, P.J. and

Edwards, J. concur.

  
\_\_\_\_\_  
HON. PATRICIA A. DELANEY

  
\_\_\_\_\_  
HON. JOHN W. WISE

  
\_\_\_\_\_  
HON. JULIE A. EDWARDS

PAD:kgb

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

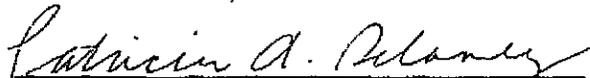
CLERK OF COURT  
LICKING COUNTY, OHIO

IN RE: ADRIAN R.  
DELINQUENT CHILD

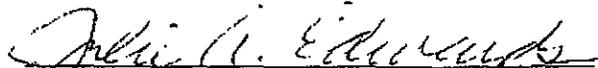
JUDGMENT ENTRY

Case No. 08-CA-17

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Licking County Court of Common Pleas is affirmed. Costs assessed to appellant.

  
HON. PATRICIA A. DELANEY

  
HON. JOHN W. WISE

  
HON. JULIE A. EDWARDS

FILED

IN THE COMMON PLEAS COURT OF LICKING COUNTY, JUVENILE DIVISION

2008 JAN 15 AM 9:39

Unruly

J.T.O.

Delinquent

Name Adrian S. Rhodeback

Age 19

Date of Birth 10/14/88

School Graduated

Attorney John O'Connell

Case No. A2005-0484

JUDGMENT ENTRY

RAPE

Juv. Ser. Offender  
Registration Hearing

Date: 1-14-08 PERSONS PRESENT:

Child and

Father

Mother

Stepfather

Stepmother

Other  Ass't. G.

ATTORNEY - Waived in Writing

Waived in Open Court

Present

Pros. Chris Reamer

Continuance granted until \_\_\_\_\_

Reason:  To consult attorney  Other: \_\_\_\_\_

Conditions:  House arrest  Other: \_\_\_\_\_

Detention ordered because \_\_\_\_\_

Danale O'Connell  
Wife of John  
(DYS)

Detention is in the best interests of child. Reasonable efforts have been made to prevent child's removal from home.

PLEA:

Count I  Deny  Admit  Unruly  Delinquency  JTO

Count II  Deny  Admit  Unruly  Delinquency  JTO

Motion to Revoke  Deny  Admit

Motion for further hearing  Deny  Admit

Set for hearing \_\_\_\_\_

Interim Conditions:  House Arrest  Other: \_\_\_\_\_

CHANGE OF PLEA:

FACTUAL BASIS FOR ACCEPTING PLEA OR MAKING ADJUDICATION:

- The Court considered the written report(s) filed by the law enforcement agency and/or the complaining witness. These reports are incorporated by reference as a part of the herein Entry.
- The Court considered the oral statements of the juvenile which were made in open court, and which were tape recorded. These oral statements/admissions are incorporated by reference.

THE YOUTH STATES: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

HCB  
38-37 ✓

THE COURT'S FINDINGS AND ORDERS ARE AS FOLLOWS:

FINDINGS:

Adjudicated

Count I  Dismissed  Unruly  Delinquent  JTO

Count II  Dismissed  Unruly  Delinquent  JTO

Count III  Dismissed  Unruly  Delinquent  JTO

Motion to Revoke  Dismissed  Probation Violator

Motion for further hearing Sustained  Denied

TEMPORARY ORDERS:

Final disposition of this case is continued for a period of not more than \_\_\_\_\_; until final disposition, child is to comply with certain rules that will be established by the corrections department.

Cont'd for PSI  House Arrest  Place in Detention

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DISPOSITION: ~~Place on probation; child is ordered to comply with the standard rules of probation as well as the following special rules:~~

- hours of community service in the Court's Youth Responsibility Project
- restitution to the victim(s) in an amount established by the Restitution Department
- letter of apology to the victim/ \_\_\_\_\_ ; copy of letter & proof of delivery to Court
- prison tour
- word essay on the topic \_\_\_\_\_
- counseling at Family Intervention Services
- attend and complete at own expense the Licking County Alcoholism Prevention Program
- Youth shall submit to a drug screen test (urinalysis)
- Youth shall be subject to electronic home detention; expense assessed as costs

Fine of: \_\_\_\_\_

Other: BY SEPARATE DOCUMENT, THE COURT CLASSIFIES YOUTH AS A TIER III JUV. SEX OFFENDER REGISTRAR (no public PRQ JOR; not subject to community notification)  Costs

Other: THE COURT APPROVES THE PROPOSED RULES OF PAROLE by separate document

This is A Final Appealable Order 11/14/2008

Judge Robert H. Hoover

Date

IN COMPLIANCE WITH CIVIL RULE 58, IT IS VERIFIED THAT COPIES HAVE BEEN SENT TO THE PARTIES AND/OR THEIR ATTORNEY OF RECORD IN A MANNER PRESCRIBED BY CIVIL RULE 58(B) ON THIS 15 DAY OF Nov, 2008

cc, John Obama  
 SUV + Parent  
 Mike Urban  
 Chris Reamer  
 Kandy Hump  
 Anthony Wedes  
 Pat Brett

m Obama's fees are taxed as

Explanation of Duties to Register as a Juvenile Offender Registrant or Child Victim Offender  
Duties commencing on or after January 1, 2008 (ORC 2950.04 or 2950.041)

DYS # 212380 e-SORN # \_\_\_\_\_ SSN [REDACTED] Court Case Number A 2005-0984  
 County of Adjudication Licking Adjudication R. Case(s) RC 2907.02(A)(1)(5)  
 Name RHODEBACK ADRIAN SPENCER  
 (Last) (First) (Middle)  
 Expected Residence Address 4460 N. Country Line Rd. Phone 740-965-1189  
 (Street) (City/State) (Zip)

1. You have been adjudicated delinquent for committing a sexually oriented offense or child-victim offense as defined in ORC 2950.01 and you are one of the following (CHECK BOX, CIRCLE EITHER SEX OFFENDER OR CHILD VICTIM OFFENDER):

- TIER I Sex Offender/Child Victim Offender Registrant
- TIER II Sex Offender/Child Victim Offender Registrant
- Subject to Community Notification (applies to registrants previously subject to requirement)
- TIER III Sex Offender/Child Victim Offender Registrant
- not a Public Registry Qualified Juvenile Offender Registrant, not subject to community notification provisions
- not a Public Registry Qualified Juvenile Offender Registrant, but subject to community notification provisions
- Public Registry Qualified Juvenile Offender Registrant, subject to community notification provisions

2. You are required to register, in person, with the sheriff of the county in which you establish residency within 3 days of coming into that county or if temporarily domiciled for more than 3 days. If you change residence address, you shall provide written notice of that residence change to the sheriff with whom you most recently registered, and to the sheriff in the county in which you intend to reside at least 20 days prior to any change of residence address. If the residence address change is not to a fixed address, you shall include a detailed description of the place or places you intend to stay and no later than the end of the first business immediately following the day you obtain a fixed address, you must register with the sheriff that fixed address.
3. You are required to provide to the sheriff temporary lodging information, including address and length of stay, if your absence will be for 7 days or more.
4. If you are a Public Registry Qualified Juvenile Offender Registrant, you are also required to register in person, with the sheriff of the county in which you establish a place of education immediately upon coming into that county. If you establish a place of education in another state but maintain a residence or temporary domicile here, you are also required to register, in person, with the sheriff or other appropriate official in that other state immediately upon coming into that state. You are also required to register, in person, with the sheriff of the county in which you establish a place of employment if you have been employed for more than 3 days or for an aggregate of 14 days in a calendar year. If you establish a place of employment in another state but maintain a residence or temporary domicile here, you are also required to register, in person, with the sheriff or other appropriate official in that other state if you have been employed for more than 3 days or for an aggregate of 14 days in a calendar year. Employment includes volunteer services. As a Public Registry Qualified Juvenile Offender Registrant, you also shall provide written notice of a change of address for your place of employment and/or place of education at least 20 days prior to any change and no later than 3 days after the change in employment. If you are a Public Registry Qualified Juvenile Offender Registrant, you shall provide written notice, within 3 days, of any change in vehicle information, email addresses, internet identifiers or telephone numbers registered to or used by you, to the sheriff with whom you have most recently registered.
5. After the date of initial registration, you are required to periodically verify, in person, your residence address, and if you are a Public Registry Qualified Juvenile Offender Registrant, your place of employment and/or place of education, at the county sheriff's office no earlier than 10 days prior to your verification date.

6. DEPENDING UPON YOUR DESIGNATION, YOU ARE REQUIRED TO COMPLY WITH ALL OF THE ABOVE-DESCRIBED REQUIREMENTS FOR THE FOLLOWING PERIOD OF TIME AND FREQUENCY (CHECK ONE):

- TIER I- requirements for a period of 10 years with in-person verification annually.
- TIER II- for a period of 20 years with in-person verification every 180 days.
- TIER III -for your lifetime with in-person verification every 90 days.

7. Since your expected residence address as stated above is located in Licking County you shall register in person no later than 2:30pm, 1-17-08 (Date) (3 days after release) with that County Sheriff's Office located at:  
LCSO 155 E Main St., Newark, OH 43055  
 (Street Address) (City/State) (Zip)

8. Failure to register, failure to verify residence at the specified times or failure to provide notice of a change in residence address or other required information, as described above, will result in criminal prosecution. If the failure occurs while you are under 18 years of age, you will be subject to proceedings under Ohio Revised Code Chapter 2152 and your parent(s), guardian(s), or custodian(s) may be subject to prosecution for a violation of Ohio Revised Code section 2919.24. Your attainment of 18 or 21 years of age does not affect or terminate this order.

9. I acknowledge that the above requirements have been explained to me and that I must abide by all of the provisions of the Ohio Revised Code Chapter 2950.  
Adrian Rhodeback 1-14-08 Wendy R. Rhoads 1-14-08  
 Juvenile's Signature Date Parent/Guardian/Custodian's Signature Date

10. I certify that I specifically informed the juvenile and the juvenile's parent, guardian and custodian of their duties as set forth above and they indicated to me an understanding of those duties.  
Robert H. Hoover Juvenile Ct Judge 1/14/08  
 Signature of Official Title & Agency Date  
ROBERT H. HOOPER A of Licking County  
 Print Official's Name Print Title & Agency

2008 JAN 14 PM 3:11  
 LICKING COUNTY SHERIFF'S OFFICE  
 FILED

408  
363

**AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES**

**AMENDMENT VIII**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## 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

### § 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.

*HISTORY: 1912 constitutional convention, am. eff. 1-1-13*

*1851 constitutional convention, adopted eff. 9-1-1851*

LEXSTAT ORC 2151.357

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 21. COURTS -- PROBATE -- JUVENILE

CHAPTER 2151. JUVENILE COURT

SEALING AND EXPUNGEMENT OF RECORDS CONCERNING DELINQUENT AND UNRULY CHILDREN AND JUVENILE TRAFFIC OFFENDERS

**Go to the Ohio Code Archive Directory**

*ORC Ann. 2151.357 (2009)*

§ 2151.357. Effects of order sealing records; index of sealed records; inspection of sealed records

(A) If the court orders the records of a person sealed pursuant to *section 2151.356 [2151.35.6] of the Revised Code*, the person who is subject of the order properly may, and the court shall, reply that no record exists with respect to the person upon any inquiry in the matter, and the court, except as provided in division (D) of this section, shall do all of the following:

(1) Order that the proceedings in a case described in divisions (B) and (C) of *section 2151.356 [2151.35.6] of the Revised Code* be deemed never to have occurred;

(2) Except as provided in division (C) of this section, delete all index references to the case and the person so that the references are permanently irretrievable;

(3) Order that all original records of the case maintained by any public office or agency, except fingerprints held by a law enforcement agency, DNA specimens collected pursuant to *section 2152.74 of the Revised Code*, and DNA records derived from DNA specimens pursuant to *section 109.573 [109.57.3] of the Revised Code*, be delivered to the court;

(4) Order each public office or agency, upon the delivering of records to the court under division (A)(3) of this section, to expunge remaining records of the case that are the subject of the sealing order that are maintained by that public office or agency, except fingerprints, DNA specimens, and DNA records described under division (A)(3) of this section;

(5) Send notice of the order to seal to any public office or agency that the court has reason to believe may have a record of the sealed record;

(6) Seal all of the records delivered to the court under division (A)(3) of this section, in a separate file in which only sealed records are maintained.

(B) Except as provided in division (D) of this section, an order to seal under *section 2151.356 [2151.35.6] of the Revised Code* applies to every public office or agency that has a record relating

to the case, regardless of whether it receives notice of the hearing on the sealing of the record or a copy of the order. Except as provided in division (D) of this section, upon the written request of a person whose record has been sealed and the presentation of a copy of the order and compliance with division (A)(3) of this section, a public office or agency shall expunge its record relating to the case, except a record of the adjudication or arrest or taking into custody that is maintained for compiling statistical data and that does not contain any reference to the person who is the subject of the order.

(C) The court that maintains sealed records pursuant to this section may maintain a manual or computerized index of the sealed records and shall make the index available only for the purposes set forth in division (E) of this section.

(1) Each entry regarding a sealed record in the index of sealed records shall contain all of the following:

- (a) The name of the person who is the subject of the sealed record;
- (b) An alphanumeric identifier relating to the person who is the subject of the sealed record;
- (c) The word "sealed";
- (d) The name of the court that has custody of the sealed record.

(2) Any entry regarding a sealed record in the index of sealed records shall not contain either of the following:

- (a) The social security number of the person who is subject of the sealed record;
- (b) The name or a description of the act committed.

(D) Notwithstanding any provision of this section that requires otherwise, a board of education of a city, local, exempted village, or joint vocational school district that maintains records of an individual who has been permanently excluded under *sections 3301.121 [3301.12.1] and 3313.662*

[3313.66.2] of the Revised Code is permitted to maintain records regarding an adjudication that the individual is a delinquent child that was used as the basis for the individual's permanent exclusion, regardless of a court order to seal the record. An order issued under *section 2151.356 [2151.35.6] of the Revised Code* to seal the record of an adjudication that an individual is a delinquent child does not revoke the adjudication order of the superintendent of public instruction to permanently exclude the individual who is the subject of the sealing order. An order to seal the record of an adjudication that an individual is a delinquent child may be presented to a district superintendent as evidence to support the contention that the superintendent should recommend that the permanent exclusion of the individual who is the subject of the sealing order be revoked. Except as otherwise authorized by this division and *sections 3301.121 [3301.12.1] and 3313.662 [3313.66.2] of the Revised Code*, any school employee in possession of or having access to the sealed adjudication records of an individual that were the basis of a permanent exclusion of the individual is subject to division (F) of this section.

(E) Inspection of records that have been ordered sealed under *section 2151.356 [2151.35.6] of the Revised Code* may be made only by the following persons or for the following purposes:

(1) By the court;

(2) If the records in question pertain to an act that would be an offense of violence that would be a felony if committed by an adult, by any law enforcement officer or any prosecutor, or the assistants of a law enforcement officer or prosecutor, for any valid law enforcement or prosecutorial purpose;

(3) Upon application by the person who is the subject of the sealed records, by the person that is named in that application;

(4) If the records in question pertain to an alleged violation of division (E)(1) of *section 4301.69 of the Revised Code*, by any law enforcement officer or any prosecutor, or the assistants of a law enforcement officer or prosecutor, for the purpose of determining whether the person is eligible for diversion under division (E)(2) of *section 4301.69 of the Revised Code*;

(5) At the request of a party in a civil action that is based on a case the records for which are the subject of a sealing order issued under *section 2151.356 [2151.35.6] of the Revised Code*, as needed for the civil action. The party also may copy the records as needed for the civil action. The sealed records shall be used solely in the civil action and are otherwise confidential and subject to the provisions of this section;

(6) By the attorney general or an authorized employee of the attorney general or the court for purposes of determining whether a child is a public registry-qualified juvenile offender registrant, as defined in *section 2950.01 of the Revised Code*, for purposes of Chapter 2950. of the Revised Code.

(F) No officer or employee of the state or any of its political subdivisions shall knowingly release, disseminate, or make available for any purpose involving employment, bonding, licensing, or education to any person or to any department, agency, or other instrumentality of the state or of any of its political subdivisions any information or other data concerning any arrest, taking into custody, complaint, indictment, information, trial, hearing, adjudication, or correctional supervision, the records of which have been sealed pursuant to *section 2151.356 [2151.35.6] of the Revised Code* and the release, dissemination, or making available of which is not expressly permitted by this section. Whoever violates this division is guilty of divulging confidential information, a misdemeanor of the fourth degree.

(G) In any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, a person may not be questioned with respect to any arrest or taking

into custody for which the records were sealed. If an inquiry is made in violation of this division, the person may respond as if the sealed arrest or taking into custody did not occur, and the person shall not be subject to any adverse action because of the arrest or taking into custody or the response.

(H) The judgment rendered by the court under this chapter shall not impose any of the civil disabilities ordinarily imposed by conviction of a crime in that the child is not a criminal by reason of the adjudication, and no child shall be charged with or convicted of a crime in any court except as provided by this chapter. The disposition of a child under the judgment rendered or any evidence given in court shall not operate to disqualify a child in any future civil service examination, appointment, or application. Evidence of a judgment rendered and the disposition of a child under the judgment is not admissible to impeach the credibility of the child in any action or proceeding. Otherwise, the disposition of a child under the judgment rendered or any evidence given in court is admissible as evidence for or against the child in any action or proceeding in any court in accordance with the Rules of Evidence and also may be considered by any court as to the matter of sentence or to the granting of probation, and a court may consider the judgment rendered and the disposition of a child under that judgment for purposes of determining whether the child, for a future criminal conviction or guilty plea, is a repeat violent offender, as defined in *section 2929.01 of the Revised Code*.

**HISTORY:**

151 v H 137, § 1, eff. 10-12-06; 152 v S 10, § 1, eff. 7-1-07.

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\*\*\* ARCHIVE MATERIAL \*\*\*

\* CURRENT THROUGH LEGISLATION PASSED BY THE 126TH OHIO GENERAL ASSEMBLY \*

\* AND FILED WITH THE SECRETARY OF STATE THROUGH DECEMBER 18, 2005 \*

\* ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2005 \*

TITLE 21. COURTS -- PROBATE -- JUVENILE

CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

*ORC Ann. 2152.02 (2005)*

§ 2152.02. Definitions

As used in this chapter:

(A) "Act charged" means the act that is identified in a complaint, indictment, or information alleging that a child is a delinquent child.

(B) "Admitted to a department of youth services facility" includes admission to a facility operated, or contracted for, by the department and admission to a comparable facility outside this state by another state or the United States.

(C) (1) "Child" means a person who is under eighteen years of age, except as otherwise provided in divisions (C)(2) to (6) of this section.

(2) Subject to division (C)(3) of this section, any person who violates a federal or state law or a municipal ordinance prior to attaining eighteen years of age shall be deemed a "child" irrespective of that person's age at the time the complaint with respect to that violation is filed or the hearing on the complaint is held.

(3) Any person who, while under eighteen years of age, commits an act that would be a felony if committed by an adult and who is not taken into custody or apprehended for that act until after the person attains twenty-one years of age is not a child in relation to that act.

(4) Any person whose case is transferred for criminal prosecution pursuant to *section 2152.12 of the Revised Code* shall be deemed after the transfer not to be a child in the transferred case.

(5) Any person whose case is transferred for criminal prosecution pursuant to *section 2152.12 of the Revised Code* and who subsequently is convicted of or pleads guilty to a felony in that case, and any person who is adjudicated a delinquent child for the commission of an act, who has a serious youthful offender dispositional sentence imposed for the act pursuant to *section 2152.13 of the Revised Code*, and whose adult portion of the dispositional sentence is invoked pur-

suant to *section 2152.14 of the Revised Code*, shall be deemed after the transfer or invocation not to be a child in any case in which a complaint is filed against the person.

(6) The juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, a person who is so adjudicated a delinquent child or juvenile traffic offender shall be deemed a "child" until the person attains twenty-one years of age.

(D) "Chronic truant" means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for seven or more consecutive school days, ten or more school days in one school month, or fifteen or more school days in a school year.

(E) "Community corrections facility," "public safety beds," "release authority," and "supervised release" have the same meanings as in *section 5139.01 of the Revised Code*.

(F) "Delinquent child" includes any of the following:

(1) Any child, except a juvenile traffic offender, who violates any law of this state or the United States, or any ordinance of a political subdivision of the state, that would be an offense if committed by an adult;

(2) Any child who violates any lawful order of the court made under this chapter or under Chapter 2151. of the Revised Code other than an order issued under *section 2151.87 of the Revised Code*;

(3) Any child who violates division (A) of *section 2923.211 of the Revised Code*;

(4) Any child who is a habitual truant and who previously has been adjudicated an unruly child for being a habitual truant;

(5) Any child who is a chronic truant.

(G) "Discretionary serious youthful offender" means a person who is eligible for a discretionary SYO and who is not transferred to adult court under a mandatory or discretionary transfer.

(H) "Discretionary SYO" means a case in which the juvenile court, in the juvenile court's discretion, may impose a serious youthful offender disposition under *section 2152.13 of the Revised Code*.

(I) "Discretionary transfer" means that the juvenile court has discretion to transfer a case for criminal prosecution under division (B) of *section 2152.12 of the Revised Code*.

(J) "Drug abuse offense," "felony drug abuse offense," and "minor drug possession offense" have the same meanings as in *section 2925.01 of the Revised Code*.

(K) "Electronic monitoring" and "electronic monitoring device" have the same meanings as in *section 2929.01 of the Revised Code*.

(L) "Economic loss" means any economic detriment suffered by a victim of a delinquent act or juvenile traffic offense as a direct and proximate result of the delinquent act or juvenile traffic 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 delinquent act or juvenile traffic offense. "Economic loss" does not include non-economic loss or any punitive or exemplary damages.

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

(N) "Juvenile traffic offender" means any child who violates any traffic law, traffic ordinance, or traffic regulation of this state, the United States, or any political subdivision of this state, other than a resolution, ordinance, or regulation of a political subdivision of this state the violation of

which is required to be handled by a parking violations bureau or a joint parking violations bureau pursuant to Chapter 4521. of the Revised Code.

(O) A "legitimate excuse for absence from the public school the child is supposed to attend" has the same meaning as in *section 2151.011 [2151.01.1] of the Revised Code*.

(P) "Mandatory serious youthful offender" means a person who is eligible for a mandatory SYO and who is not transferred to adult court under a mandatory or discretionary transfer.

(Q) "Mandatory SYO" means a case in which the juvenile court is required to impose a mandatory serious youthful offender disposition under *section 2152.13 of the Revised Code*.

(R) "Mandatory transfer" means that a case is required to be transferred for criminal prosecution under division (A) of *section 2152.12 of the Revised Code*.

(S) "Mental illness" has the same meaning as in *section 5122.01 of the Revised Code*.

(T) "Mentally retarded person" has the same meaning as in *section 5123.01 of the Revised Code*.

(U) "Monitored time" and "repeat violent offender" have the same meanings as in *section 2929.01 of the Revised Code*.

(V) "Of compulsory school age" has the same meaning as in *section 3321.01 of the Revised Code*.

(W) "Public record" has the same meaning as in *section 149.43 of the Revised Code*.

(X) "Serious youthful offender" means a person who is eligible for a mandatory SYO or discretionary SYO but who is not transferred to adult court under a mandatory or discretionary transfer.

(Y) "Sexually oriented offense," "habitual sex offender," "juvenile offender registrant," "sexual predator," "presumptive registration-exempt sexually oriented offense," "registration-exempt

sexually oriented offense," "child-victim oriented offense," "habitual child-victim offender," and "child-victim predator" have the same meanings as in *section 2950.01 of the Revised Code*.

(Z) "Traditional juvenile" means a case that is not transferred to adult court under a mandatory or discretionary transfer, that is eligible for a disposition under *sections 2152.16, 2152.17, 2152.19, and 2152.20 of the Revised Code*, and that is not eligible for a disposition under *section 2152.13 of the Revised Code*.

(AA) "Transfer" means the transfer for criminal prosecution of a case involving the alleged commission by a child of an act that would be an offense if committed by an adult from the juvenile court to the appropriate court that has jurisdiction of the offense.

(BB) "Category one offense" means any of the following:

- (1) A violation of *section 2903.01 or 2903.02 of the Revised Code*;
- (2) A violation of *section 2923.02 of the Revised Code* involving an attempt to commit aggravated murder or murder.

(CC) "Category two offense" means any of the following:

- (1) A violation of *section 2903.03, 2905.01, 2907.02, 2909.02, 2911.01, or 2911.11 of the Revised Code*;
- (2) A violation of *section 2903.04 of the Revised Code* that is a felony of the first degree;
- (3) A violation of *section 2907.12 of the Revised Code* as it existed prior to September 3, 1996.

(DD) "Non-economic loss" means nonpecuniary harm suffered by a victim of a delinquent act or juvenile traffic offense as a result of or related to the delinquent act or juvenile traffic 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.

**HISTORY:** 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 3 (Eff 1-1-2002); 149 v H 400. Eff 4-3-2003; 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 52, § 1, eff. 6-1-04.

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TITLE 21. COURTS -- PROBATE -- JUVENILE

CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

**Go to the Ohio Code Archive Directory**

*ORC Ann. 2152.02 (2009)*

§ 2152.02. Definitions

As used in this chapter:

(A) "Act charged" means the act that is identified in a complaint, indictment, or information alleging that a child is a delinquent child.

(B) "Admitted to a department of youth services facility" includes admission to a facility operated, or contracted for, by the department and admission to a comparable facility outside this state by another state or the United States.

(C) (1) "Child" means a person who is under eighteen years of age, except as otherwise provided in divisions (C)(2) to (6) of this section.

(2) Subject to division (C)(3) of this section, any person who violates a federal or state law or a municipal ordinance prior to attaining eighteen years of age shall be deemed a "child" irrespective of that person's age at the time the complaint with respect to that violation is filed or the hearing on the complaint is held.

(3) Any person who, while under eighteen years of age, commits an act that would be a felony if committed by an adult and who is not taken into custody or apprehended for that act until after the person attains twenty-one years of age is not a child in relation to that act.

(4) Any person whose case is transferred for criminal prosecution pursuant to *section 2152.12 of the Revised Code* shall be deemed after the transfer not to be a child in the transferred case.

(5) Any person whose case is transferred for criminal prosecution pursuant to *section 2152.12 of the Revised Code* and who subsequently is convicted of or pleads guilty to a felony in that case, and any person who is adjudicated a delinquent child for the commission of an act, who has a serious youthful offender dispositional sentence imposed for the act pursuant to *section*

2152.13 of the Revised Code, and whose adult portion of the dispositional sentence is invoked pursuant to section 2152.14 of the Revised Code, shall be deemed after the transfer or invocation not to be a child in any case in which a complaint is filed against the person.

(6) The juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, a person who is so adjudicated a delinquent child or juvenile traffic offender shall be deemed a "child" until the person attains twenty-one years of age.

(D) "Chronic truant" means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for seven or more consecutive school days, ten or more school days in one school month, or fifteen or more school days in a school year.

(E) "Community corrections facility," "public safety beds," "release authority," and "supervised release" have the same meanings as in section 5139.01 of the Revised Code.

(F) "Delinquent child" includes any of the following:

(1) Any child, except a juvenile traffic offender, who violates any law of this state or the United States, or any ordinance of a political subdivision of the state, that would be an offense if committed by an adult;

(2) Any child who violates any lawful order of the court made under this chapter or under Chapter 2151. of the Revised Code other than an order issued under section 2151.87 of the Revised Code;

(3) Any child who violates division (C) of section 2907.39, division (A) of section 2923.211 [2923.21.1], or division (C)(1) or (D) of section 2925.55 of the Revised Code;

(4) Any child who is a habitual truant and who previously has been adjudicated an unruly child for being a habitual truant;

(5) Any child who is a chronic truant.

(G) "Discretionary serious youthful offender" means a person who is eligible for a discretionary SYO and who is not transferred to adult court under a mandatory or discretionary transfer.

(H) "Discretionary SYO" means a case in which the juvenile court, in the juvenile court's discretion, may impose a serious youthful offender disposition under *section 2152.13 of the Revised Code*.

(I) "Discretionary transfer" means that the juvenile court has discretion to transfer a case for criminal prosecution under division (B) of *section 2152.12 of the Revised Code*.

(J) "Drug abuse offense," "felony drug abuse offense," and "minor drug possession offense" have the same meanings as in *section 2925.01 of the Revised Code*.

(K) "Electronic monitoring" and "electronic monitoring device" have the same meanings as in *section 2929.01 of the Revised Code*.

(L) "Economic loss" means any economic detriment suffered by a victim of a delinquent act or juvenile traffic offense as a direct and proximate result of the delinquent act or juvenile traffic 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 delinquent act or juvenile traffic offense. "Economic loss" does not include non-economic loss or any punitive or exemplary damages.

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

(N) "Juvenile traffic offender" means any child who violates any traffic law, traffic ordinance, or traffic regulation of this state, the United States, or any political subdivision of this state, other

than a resolution, ordinance, or regulation of a political subdivision of this state the violation of which is required to be handled by a parking violations bureau or a joint parking violations bureau pursuant to Chapter 4521. of the Revised Code.

(O) A "legitimate excuse for absence from the public school the child is supposed to attend" has the same meaning as in *section 2151.011 [2151.01.1] of the Revised Code*.

(P) "Mandatory serious youthful offender" means a person who is eligible for a mandatory SYO and who is not transferred to adult court under a mandatory or discretionary transfer.

(Q) "Mandatory SYO" means a case in which the juvenile court is required to impose a mandatory serious youthful offender disposition under *section 2152.13 of the Revised Code*.

(R) "Mandatory transfer" means that a case is required to be transferred for criminal prosecution under division (A) of *section 2152.12 of the Revised Code*.

(S) "Mental illness" has the same meaning as in *section 5122.01 of the Revised Code*.

(T) "Mentally retarded person" has the same meaning as in *section 5123.01 of the Revised Code*.

(U) "Monitored time" and "repeat violent offender" have the same meanings as in *section 2929.01 of the Revised Code*.

(V) "Of compulsory school age" has the same meaning as in *section 3321.01 of the Revised Code*.

(W) "Public record" has the same meaning as in *section 149.43 of the Revised Code*.

(X) "Serious youthful offender" means a person who is eligible for a mandatory SYO or discretionary SYO but who is not transferred to adult court under a mandatory or discretionary transfer.

(Y) "Sexually oriented offense," "juvenile offender registrant," "child-victim oriented offense," "tier I sex offender/child-victim offender," "tier II sex offender/child-victim offender," "tier III sex offender/child-victim offender," and "public registry-qualified juvenile offender registrant" have the same meanings as in *section 2950.01 of the Revised Code*.

(Z) "Traditional juvenile" means a case that is not transferred to adult court under a mandatory or discretionary transfer, that is eligible for a disposition under *sections 2152.16, 2152.17, 2152.19, and 2152.20 of the Revised Code*, and that is not eligible for a disposition under *section 2152.13 of the Revised Code*.

(AA) "Transfer" means the transfer for criminal prosecution of a case involving the alleged commission by a child of an act that would be an offense if committed by an adult from the juvenile court to the appropriate court that has jurisdiction of the offense.

(BB) "Category one offense" means any of the following:

- (1) A violation of *section 2903.01 or 2903.02 of the Revised Code*;
- (2) A violation of *section 2923.02 of the Revised Code* involving an attempt to commit aggravated murder or murder.

(CC) "Category two offense" means any of the following:

- (1) A violation of *section 2903.03, 2905.01, 2907.02, 2909.02, 2911.01, or 2911.11 of the Revised Code*;
- (2) A violation of *section 2903.04 of the Revised Code* that is a felony of the first degree;
- (3) A violation of *section 2907.12 of the Revised Code* as it existed prior to September 3, 1996.

(DD) "Non-economic loss" means nonpecuniary harm suffered by a victim of a delinquent act or juvenile traffic offense as a result of or related to the delinquent act or juvenile traffic 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.

**HISTORY:**

148 v S 179, § 3 (Eff 1-1-2002); 149 v S 3 (Eff 1-1-2002); 149 v H 400. Eff 4-3-2003; 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 52, § 1, eff. 6-1-04; 151 v S 53, § 1, eff. 5-17-06; 151 v H 23, § 1, eff. 8-17-06; 152 v S 10, § 1, eff. 1-1-08.

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TITLE 21. COURTS -- PROBATE -- JUVENILE

CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

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*ORC Ann. 2152.12 (2009)*

§ 2152.12. Transfer of case; prosecution of child nullity in absence of transfer; juvenile court loses jurisdiction if child is not taken into custody or apprehended prior to attaining age twenty-one

(A) (1) (a) After a complaint has been filed alleging that a child is a delinquent child for committing an act that would be aggravated murder, murder, attempted aggravated murder, or attempted murder if committed by an adult, the juvenile court at a hearing shall transfer the case if the child was sixteen or seventeen years of age at the time of the act charged and there is probable cause to believe that the child committed the act charged. The juvenile court also shall transfer the case at a hearing if the child was fourteen or fifteen years of age at the time of the act charged, if *section 2152.10 of the Revised Code* provides that the child is eligible for mandatory transfer, and if there is probable cause to believe that the child committed the act charged.

(b) After a complaint has been filed alleging that a child is a delinquent child by reason of committing a category two offense, the juvenile court at a hearing shall transfer the case if *section 2152.10 of the Revised Code* requires the mandatory transfer of the case and there is probable cause to believe that the child committed the act charged.

(2) The juvenile court also shall transfer a case in the circumstances described in division (C)(5) of *section 2152.02 of the Revised Code* or if either of the following applies:

(a) A complaint is filed against a child who is eligible for a discretionary transfer under *section 2152.10 of the Revised Code* and who previously was convicted of or pleaded guilty to a felony in a case that was transferred to a criminal court.

(b) A complaint is filed against a child who is domiciled in another state alleging that the child is a delinquent child for committing an act that would be a felony if committed by an adult, and, if the act charged had been committed in that other state, the child would be subject to criminal prosecution as an adult under the law of that other state without the need for a transfer of jurisdiction from a juvenile, family, or similar noncriminal court to a criminal court.

(B) Except as provided in division (A) of this section, after a complaint has been filed alleging that a child is a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court at a hearing may transfer the case if the court finds all of the following:

(1) The child was fourteen years of age or older at the time of the act charged.

(2) There is probable cause to believe that the child committed the act charged.

(3) The child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions. In making its decision under this division, the court shall consider whether the applicable factors under division (D) of this section indicating that the case should be transferred outweigh the applicable factors under division (E) of this section indicating that the case should not be transferred. The record shall indicate the specific factors that were applicable and that the court weighed.

(C) Before considering a transfer under division (B) of this section, the juvenile court shall order an investigation, including a mental examination of the child by a public or private agency or a person qualified to make the examination. The child may waive the examination required by this division if the court finds that the waiver is competently and intelligently made. Refusal to submit to a mental examination by the child constitutes a waiver of the examination.

(D) In considering whether to transfer a child under division (B) of this section, the juvenile court shall consider the following relevant factors, and any other relevant factors, in favor of a transfer under that division:

(1) The victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the alleged act.

(2) The physical or psychological harm suffered by the victim due to the alleged act of the child was exacerbated because of the physical or psychological vulnerability or the age of the victim.

(3) The child's relationship with the victim facilitated the act charged.

(4) The child allegedly committed the act charged for hire or as a part of a gang or other organized criminal activity.

(5) The child had a firearm on or about the child's person or under the child's control at the time of the act charged, the act charged is not a violation of *section 2923.12 of the Revised Code*, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm.

(6) At the time of the act charged, the child was awaiting adjudication or disposition as a delinquent child, was under a community control sanction, or was on parole for a prior delinquent child adjudication or conviction.

(7) The results of any previous juvenile sanctions and programs indicate that rehabilitation of the child will not occur in the juvenile system.

(8) The child is emotionally, physically, or psychologically mature enough for the transfer.

(9) There is not sufficient time to rehabilitate the child within the juvenile system.

(E) In considering whether to transfer a child under division (B) of this section, the juvenile court shall consider the following relevant factors, and any other relevant factors, against a transfer under that division:

(1) The victim induced or facilitated the act charged.

(2) The child acted under provocation in allegedly committing the act charged.

(3) The child was not the principal actor in the act charged, or, at the time of the act charged, the child was under the negative influence or coercion of another person.

(4) The child did not cause physical harm to any person or property, or have reasonable cause to believe that harm of that nature would occur, in allegedly committing the act charged.

(5) The child previously has not been adjudicated a delinquent child.

(6) The child is not emotionally, physically, or psychologically mature enough for the transfer.

(7) The child has a mental illness or is a mentally retarded person.

(8) There is sufficient time to rehabilitate the child within the juvenile system and the level of security available in the juvenile system provides a reasonable assurance of public safety.

(F) If one or more complaints are filed alleging that a child is a delinquent child for committing two or more acts that would be offenses if committed by an adult, if a motion is made alleging that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred for \*, and if a motion also is made requesting that the case or cases involving one or more of the acts charged be transferred pursuant to division (B) of this section, the juvenile court, in deciding the motions, shall proceed in the following manner:

(1) Initially, the court shall decide the motion alleging that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred.

(2) If the court determines that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred, the court shall transfer the case or cases in accordance with the \*\* that division. After the transfer pursuant to division (A) of this section, the court shall decide, in accordance with division (B) of this section, whether to grant the motion requesting that the case or cases involving one or more of the acts charged be transferred pursuant to that division. Notwithstanding division (B) of this section, prior to transferring a case pur-

suant to division (A) of this section, the court is not required to consider any factor specified in division (D) or (E) of this section or to conduct an investigation under division (C) of this section.

(3) If the court determines that division (A) of this section does not require that the case or cases involving one or more of the acts charged be transferred, the court shall decide in accordance with division (B) of this section whether to grant the motion requesting that the case or cases involving one or more of the acts charged be transferred pursuant to that division.

(G) The court shall give notice in writing of the time, place, and purpose of any hearing held pursuant to division (A) or (B) of this section to the child's parents, guardian, or other custodian and to the child's counsel at least three days prior to the hearing.

(H) No person, either before or after reaching eighteen years of age, shall be prosecuted as an adult for an offense committed prior to becoming eighteen years of age, unless the person has been transferred as provided in division (A) or (B) of this section or unless division (J) of this section applies. Any prosecution that is had in a criminal court on the mistaken belief that the person who is the subject of the case was eighteen years of age or older at the time of the commission of the offense shall be deemed a nullity, and the person shall not be considered to have been in jeopardy on the offense.

(I) Upon the transfer of a case under division (A) or (B) of this section, the juvenile court shall state the reasons for the transfer on the record, and shall order the child to enter into a recognizance with good and sufficient surety for the child's appearance before the appropriate court for any disposition that the court is authorized to make for a similar act committed by an adult. The transfer abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint, and, upon the transfer, all further proceedings pertaining to the act charged shall be discon-

tinued in the juvenile court, and the case then shall be within the jurisdiction of the court to which it is transferred as described in division (H) of *section 2151.23 of the Revised Code*.

(J) If a person under eighteen years of age allegedly commits an act that would be a felony if committed by an adult and if the person is not taken into custody or apprehended for that act until after the person attains twenty-one years of age, the juvenile court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act. In those circumstances, divisions (A) and (B) of this section do not apply regarding the act, and the case charging the person with committing the act shall be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been eighteen years of age or older when the person committed the act. All proceedings pertaining to the act shall be within the jurisdiction of the court having jurisdiction of the offense, and that court has all the authority and duties in the case as it has in other criminal cases in that court.

**HISTORY:**

*RC § 2151.26*, 133 v H 320 (Eff 11-19-69); 134 v S 325 (Eff 1-14-72); 137 v S 119 (Eff 8-30-78); 139 v H 440 (Eff 11-23-81); 140 v S 210 (Eff 7-1-83); 141 v H 499 (Eff 3-11-87); 144 v H 27 (Eff 10-10-91); 146 v H 1 (Eff 1-1-96); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 124 (Eff 3-31-97); *RC § 2152.12*, 148 v S 179, § 3. Eff 1-1-2002.

LEXSTAT ORC ANN. 2152.13

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 21. COURTS -- PROBATE -- JUVENILE

CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

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*ORC Ann. 2152.13 (2009)*

§ 2152.13. Serious youthful offender dispositional sentence

(A) A juvenile court may impose a serious youthful offender dispositional sentence on a child only if the prosecuting attorney of the county in which the delinquent act allegedly occurred initiates the process against the child in accordance with this division, and the child is an alleged delinquent child who is eligible for the dispositional sentence. The prosecuting attorney may initiate the process in any of the following ways:

(1) Obtaining an indictment of the child as a serious youthful offender;

(2) The child waives the right to indictment, charging the child in a bill of information as a serious youthful offender;

(3) Until an indictment or information is obtained, requesting a serious youthful offender dispositional sentence in the original complaint alleging that the child is a delinquent child;

(4) Until an indictment or information is obtained, if the original complaint does not request a serious youthful offender dispositional sentence, filing with the juvenile court a written notice of intent to seek a serious youthful offender dispositional sentence within twenty days after the later of the following, unless the time is extended by the juvenile court for good cause shown:

(a) The date of the child's first juvenile court hearing regarding the complaint;

(b) The date the juvenile court determines not to transfer the case under *section 2152.12 of the Revised Code*.

After a written notice is filed under division (A)(4) of this section, the juvenile court shall serve a copy of the notice on the child and advise the child of the prosecuting attorney's intent to seek a serious youthful offender dispositional sentence in the case.

(B) If an alleged delinquent child is not indicted or charged by information as described in division (A)(1) or (2) of this section and if a notice or complaint as described in division (A)(3) or (4) of this section indicates that the prosecuting attorney intends to pursue a serious youthful offender dis-

positional sentence in the case, the juvenile court shall hold a preliminary hearing to determine if there is probable cause that the child committed the act charged and is by age eligible for, or required to receive, a serious youthful offender dispositional sentence.

(C) (1) A child for whom a serious youthful offender dispositional sentence is sought has the right to a grand jury determination of probable cause that the child committed the act charged and that the child is eligible by age for a serious youthful offender dispositional sentence. The grand jury may be impaneled by the court of common pleas or the juvenile court.

Once a child is indicted, or charged by information or the juvenile court determines that the child is eligible for a serious youthful offender dispositional sentence, the child is entitled to an open and speedy trial by jury in juvenile court and to be provided with a transcript of the proceedings. The time within which the trial is to be held under Title XXIX [29] of the Revised Code commences on whichever of the following dates is applicable:

(a) If the child is indicted or charged by information, on the date of the filing of the indictment or information.

(b) If the child is charged by an original complaint that requests a serious youthful offender dispositional sentence, on the date of the filing of the complaint.

(c) If the child is not charged by an original complaint that requests a serious youthful offender dispositional sentence, on the date that the prosecuting attorney files the written notice of intent to seek a serious youthful offender dispositional sentence.

(2) If the child is detained awaiting adjudication, upon indictment or being charged by information, the child has the same right to bail as an adult charged with the offense the alleged delinquent act would be if committed by an adult. Except as provided in division (D) of *section 2152.14 of the Revised Code*, all provisions of Title XXIX [29] of the Revised Code and the Criminal Rules

shall apply in the case and to the child. The juvenile court shall afford the child all rights afforded a person who is prosecuted for committing a crime including the right to counsel and the right to raise the issue of competency. The child may not waive the right to counsel.

(D) (1) If a child is adjudicated a delinquent child for committing an act under circumstances that require the juvenile court to impose upon the child a serious youthful offender dispositional sentence under *section 2152.11 of the Revised Code*, all of the following apply:

(a) The juvenile court shall impose upon the child a sentence available for the violation, as if the child were an adult, under Chapter 2929. of the Revised Code, except that the juvenile court shall not impose on the child a sentence of death or life imprisonment without parole.

(b) The juvenile court also shall impose upon the child one or more traditional juvenile dispositions under sections 2152.16, 2152.19, and 2152.20, and, if applicable, *section 2152.17 of the Revised Code*.

(c) The juvenile court shall stay the adult portion of the serious youthful offender dispositional sentence pending the successful completion of the traditional juvenile dispositions imposed.

(2) (a) If a child is adjudicated a delinquent child for committing an act under circumstances that allow, but do not require, the juvenile court to impose on the child a serious youthful offender dispositional sentence under *section 2152.11 of the Revised Code*, all of the following apply:

(i) If the juvenile court on the record makes a finding that, given the nature and circumstances of the violation and the history of the child, the length of time, level of security, and types of programming and resources available in the juvenile system alone are not adequate to provide the juvenile court with a reasonable expectation that the purposes set forth in *section 2152.01 of the Revised Code* will be met, the juvenile court may impose upon the child a sentence available for the

violation, as if the child were an adult, under Chapter 2929. of the Revised Code, except that the juvenile court shall not impose on the child a sentence of death or life imprisonment without parole.

(ii) If a sentence is imposed under division (D)(2)(a)(i) of this section, the juvenile court also shall impose upon the child one or more traditional juvenile dispositions under sections 2152.16, 2152.19, and 2152.20 and, if applicable, *section 2152.17 of the Revised Code*.

(iii) The juvenile court shall stay the adult portion of the serious youthful offender dispositional sentence pending the successful completion of the traditional juvenile dispositions imposed.

(b) If the juvenile court does not find that a sentence should be imposed under division (D)(2)(a)(i) of this section, the juvenile court may impose one or more traditional juvenile dispositions under sections 2152.16, 2152.19, 2152.20, and, if applicable, *section 2152.17 of the Revised Code*.

(3) A child upon whom a serious youthful offender dispositional sentence is imposed under division (D)(1) or (2) of this section has a right to appeal under division (A)(1), (3), (4), (5), or (6) of *section 2953.08 of the Revised Code* the adult portion of the serious youthful offender dispositional sentence when any of those divisions apply. The child may appeal the adult portion, and the court shall consider the appeal as if the adult portion were not stayed.

#### **HISTORY:**

148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002.

LEXSTAT ORC ANN. 2152.82

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TITLE 21. COURTS -- PROBATE -- JUVENILE

CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAW

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*ORC Ann. 2152.82 (2009)*

§ 2152.82. Classification of child as juvenile offender registrant; compliance with sex offender registration and notification law; determination of tier classification

(A) The court that adjudicates a child a delinquent child shall issue as part of the dispositional order an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* if all of the following apply:

(1) The act for which the child is adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.

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

(3) The court has determined that the child previously was adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense, regardless of when the prior offense was committed and regardless of the child's age at the time of committing the offense.

(4) The court is not required to classify the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under *section 2152.86 of the Revised Code*.

(B) An order required under division (A) of this section shall be issued at the time the judge makes the order of disposition for the delinquent child. Prior to issuing the order required by division (A) of this section, the judge shall conduct a hearing under *section 2152.831 [2152.83.1] of the Revised Code* to determine whether the child is 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. If the court determines that the delinquent child to whom the order applies is a tier III sex offender/child-victim offender and the child is not a public registry-qualified juvenile offender registrant, the judge may impose a requirement subjecting the child to the victim and community notification provisions of

*sections 2950.10 and 2950.11 of the Revised Code.* When a judge issues an order under division (A) of this section, all of the following apply:

(1) The judge shall include in the order a statement that, upon completion of the disposition of the delinquent child that was made for the sexually oriented offense or child-victim oriented offense upon which the order is based, a hearing will be conducted, and the order and any determinations included in the order are subject to modification or termination pursuant to *sections 2152.84 and 2152.85 of the Revised Code.*

(2) The judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian the notice required under divisions (A) and (B) of *section 2950.03 of the Revised Code* and shall provide as part of that notice a copy of the order.

(3) The judge shall include the order in the delinquent child's dispositional order and shall specify in the dispositional order that the order issued under division (A) of this section was made pursuant to this section.

(4) If the court determines that the delinquent child to whom the order applies is a tier III sex offender/child-victim offender, if the child is not a public registry-qualified juvenile offender registrant, and if the judge imposes a requirement subjecting the child to the victim and community notification provisions of *sections 2950.10 and 2950.11 of the Revised Code*, the judge shall include the requirement in the order.

(5) The court shall include in the order its determination made at the hearing held under section 2151.831 [2151.83.1] of the Revised Code as to whether the delinquent child is 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.

(C) Except as provided in division (D) of this section, an order issued under division (A) of this section and any determinations included in the order shall remain in effect for the period of time specified in *section 2950.07 of the Revised Code*, subject to a modification or termination of the order under *section 2152.84 or 2152.85 of the Revised Code*, and *section 2152.851 [2152.85.1] of the Revised Code* applies regarding the order and the determinations. If an order is issued under division (A) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

(D) If a court issues an order under division (A) of this section before January 1, 2008, not later than February 1, 2008, the court shall terminate the order and issue a new order that reclassifies the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to *section 2152.86 of the Revised Code* if the court imposed on the child a serious youthful offender dispositional sentence under *section 2152.13 of the Revised Code* and if the act that was the basis of the classification of the delinquent child as a juvenile offender registrant and is the basis of the serious youthful offender dispositional sentence is any of the following:

(1) Committing, attempting to commit, conspiring to commit, or complicity in committing 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;

(2) Committing, attempting to commit, conspiring to commit, or complicity in committing 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.

**HISTORY:**

149 v S 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 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 \*

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TITLE 21. COURTS -- PROBATE -- JUVENILE

CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAW

*ORC Ann. 2152.83 (2005)*

§ 2152.83. Subsequent orders classifying child as juvenile sex offender registrant

(A) (1) The court that adjudicates a child a delinquent child shall issue as part of the dispositional order or, if the court commits the child for the delinquent act to the custody of a secure facility, shall issue at the time of the child's release from the secure facility, an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* if all of the following apply:

(a) The act for which the child is or was adjudicated a delinquent child is a sexually oriented offense that is not a registration-exempt sexually oriented offense or is a child-victim oriented offense that the child committed on or after January 1, 2002.

(b) The child was sixteen or seventeen years of age at the time of committing the offense.

(c) The court was not required to classify the child a juvenile offender registrant under *section 2152.82 of the Revised Code*.

(2) Prior to issuing the order required by division (A)(2) of this section, the judge shall conduct the hearing and make the determinations required by division (B) of *section 2950.09 of the Revised Code* regarding a sexually oriented offense that is not a registration-exempt sexually oriented offense or division (B) of *section 2950.091 [2950.09.1] of the Revised Code* regarding a child-victim oriented offense to determine if the child is to be classified a sexual predator or a child-victim predator, shall make the determinations required by division (E) of *section 2950.09 of the Revised Code* regarding a sexually oriented offense that is not a registration-exempt sexually oriented offense or division (E) of *section 2950.091 [2950.09.1] of the Revised Code* regarding a child-victim oriented offense to determine if the child is to be classified a habitual sex offender or a habitual child-victim offender, and shall otherwise comply with those divisions. When a judge issues an order under division (A)(1) of this section, the judge shall include in the order all of the de-

terminations and information identified in division (B)(1) of *section 2152.82 of the Revised Code* that are relevant.

(B) (1) The court that adjudicates a child a delinquent child, on the judge's own motion, may conduct at the time of disposition of the child or, if the court commits the child for the delinquent act to the custody of a secure facility, may conduct at the time of the child's release from the secure facility, a hearing for the purposes described in division (B)(2) of this section if all of the following apply:

(a) The act for which the child is adjudicated a delinquent child is a sexually oriented offense that is not a registration-exempt sexually oriented offense or is a child-victim oriented offense that the child committed on or after January 1, 2002.

(b) The child was fourteen or fifteen years of age at the time of committing the offense.

(c) The court was not required to classify the child a juvenile offender registrant under *section 2152.82 of the Revised Code*.

(2) A judge shall conduct a hearing under division (B)(1) of this section to review the effectiveness of the disposition made of the child and of any treatment provided for the child placed in a secure setting and to determine whether the child should be classified a juvenile offender registrant. The judge may conduct the hearing on the judge's own initiative or based upon a recommendation of an officer or employee of the department of youth services, a probation officer, an employee of the court, or a prosecutor or law enforcement officer. If the judge conducts the hearing, upon completion of the hearing, the judge, in the judge's discretion and after consideration of the factors listed in division (E) of this section, shall do either of the following:

(a) Decline to issue an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*;

(b) Issue an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* and, if the judge conducts a hearing as described in division (C) of this section to determine whether the child is a sexual predator or child-victim predator or a habitual sex offender or habitual child-victim offender, include in the order a statement that the judge has determined that the child is, or is not, a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender, whichever is applicable.

(C) A judge may issue an order under division (B) of this section that contains a determination that a delinquent child is a sexual predator or child-victim predator only if the judge, in accordance with the procedures specified in division (B) of *section 2950.09 of the Revised Code* regarding sexual predators or division (B) of *section 2950.091 [2950.09.1] of the Revised Code* regarding child-victim predators, determines at the hearing by clear and convincing evidence that the child is a sexual predator or a child-victim predator. A judge may issue an order under division (B) of this section that contains a determination that a delinquent child is a habitual sex offender or a habitual child-victim offender only if the judge at the hearing determines as described in division (E) of *section 2950.09 of the Revised Code* regarding habitual sex offenders or division (E) of *section 2950.091 [2950.09.1] of the Revised Code* regarding habitual child-victim offenders that the child is a habitual sex offender or a habitual child-victim offender. If the judge issues an order under division (B) of this section that contains a determination that a delinquent child is a habitual sex offender or a habitual child-victim offender, the judge may impose a requirement subjecting the child

to community notification provisions as described in division (E) of *section 2950.09* or *2950.091 [2950.09.1]* of the *Revised Code*, whichever is applicable. If the court conducts a hearing as described in this division to determine whether the child is a sexual predator or child-victim predator or a habitual sex offender or habitual child-victim offender, the judge shall comply with division (B) or (E) of *section 2950.09* or *2950.091 [2950.09.1]* of the *Revised Code*, whichever is applicable, in all regards.

(D) If a judge issues an order under division (A) or (B) of this section, the judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian a copy of the order and a notice containing the information described in divisions (A) and (B) of *section 2950.03* of the *Revised Code*. The judge shall provide the notice at the time of the issuance of the order and shall comply with divisions (B) and (C) of that section regarding that notice and the provision of it.

The judge also shall include in the order a statement that, upon completion of the disposition of the delinquent child that was made for the sexually oriented offense or child-victim oriented offense upon which the order is based, a hearing will be conducted and the order is subject to modification or termination pursuant to *section 2152.84* of the *Revised Code*.

(E) In making a decision under division (B) of this section as to whether a delinquent child should be classified a juvenile offender registrant and, if so, whether the child also is a sexual predator or child-victim predator or a habitual sex offender or habitual child-victim offender, a judge shall consider all relevant factors, including, but not limited to, all of the following:

- (1) The nature of the sexually oriented offense that is not a registration-exempt sexually oriented offense or the child-victim oriented offense committed by the child;
- (2) Whether the child has shown any genuine remorse or compunction for the offense;
- (3) The public interest and safety;

(4) The factors set forth in division (B)(3) of *section 2950.09* or *2950.091 [2950.09.1]* of the *Revised Code*, whichever is applicable;

(5) The factors set forth in divisions (B) and (C) of *section 2929.12* of the *Revised Code* as those factors apply regarding the delinquent child, the offense, and the victim;

(6) The results of any treatment provided to the child and of any follow-up professional assessment of the child.

(F) An order issued under division (A) or (B) of this section and any determinations included in the order shall remain in effect for the period of time specified in *section 2950.07* of the *Revised Code*, subject to a modification or termination of the order under *section 2152.84* of the *Revised Code*, and *section 2152.851 [2152.85.1]* of the *Revised Code* applies regarding the order and the determinations. The child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

(G) A court that adjudicates a child a delinquent child for a sexually oriented offense that is a registration-exempt sexually oriented offense shall not issue based on that adjudication an order under this section that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06* of the *Revised Code*.

(H) As used in the section, "secure facility" has the same meaning as in *section 2950.01* of the *Revised Code*.

**HISTORY:** 149 v S 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03.

LEXSTAT ORC ANN. 2152.83

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\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 21. COURTS -- PROBATE -- JUVENILE

CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAW

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*ORC Ann. 2152.83 (2009)*

§ 2152.83. Classification at time of disposition or release from secure facility; determination of tier classification

(A) (1) The court that adjudicates a child a delinquent child shall issue as part of the dispositional order or, if the court commits the child for the delinquent act to the custody of a secure facility, shall issue at the time of the child's release from the secure facility, an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* if all of the following apply:

(a) The act for which the child is or was adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.

(b) The child was sixteen or seventeen years of age at the time of committing the offense.

(c) The court was not required to classify the child a juvenile offender registrant under *section 2152.82 of the Revised Code* or as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under *section 2152.86 of the Revised Code*.

(2) Prior to issuing the order required by division (A)(2) of this section, the judge shall conduct a hearing under *section 2152.831 [2152.83.1] of the Revised Code*, except as otherwise provided in that section, to determine whether the child is 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. When a judge issues an order under division (A)(1) of this section, the judge shall include in the order the determinations identified in division (B)(5) of *section 2152.82 of the Revised Code*.

(B) (1) The court that adjudicates a child a delinquent child, on the judge's own motion, may conduct at the time of disposition of the child or, if the court commits the child for the delinquent act to the custody of a secure facility, may conduct at the time of the child's release from the secure facility a hearing for the purposes described in division (B)(2) of this section if all of the following apply:

(a) The act for which the child is adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.

(b) The child was fourteen or fifteen years of age at the time of committing the offense.

(c) The court was not required to classify the child a juvenile offender registrant under *section 2152.82 of the Revised Code* or as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under *section 2152.86 of the Revised Code*.

(2) A judge shall conduct a hearing under division (B)(1) of this section to review the effectiveness of the disposition made of the child and of any treatment provided for the child placed in a secure setting and to determine whether the child should be classified a juvenile offender registrant. The judge may conduct the hearing on the judge's own initiative or based upon a recommendation of an officer or employee of the department of youth services, a probation officer, an employee of the court, or a prosecutor or law enforcement officer. If the judge conducts the hearing, upon completion of the hearing, the judge, in the judge's discretion and after consideration of the factors listed in division (E) of this section, shall do either of the following:

(a) Decline to issue an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*;

(b) Issue an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* and that states the determination that the judge makes at the hearing held pursuant to *section 2152.831 [2152.83.1] of the Revised Code* as to whether the child is 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.

(C) (1) Prior to issuing an order under division (B)(2)(b) of this section, the judge shall conduct a hearing under *section 2152.831 [2152.83.1] of the Revised Code* to determine whether the child is 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. The judge may hold the hearing at the same time as the hearing under division (B) of this section.

(2) If a judge issues an order under division (A) or (B) of this section and the court determines that the delinquent child to whom the order applies is a tier III sex offender/child-victim offender and the child is not a public registry-qualified juvenile offender registrant, the judge may impose a requirement subjecting the child to the victim and community notification provisions of *sections 2950.10 and 2950.11 of the Revised Code*. If the judge imposes a requirement subjecting the child to the victim and community notification provisions of *sections 2950.10 and 2950.11 of the Revised Code*, the judge shall include the requirement in the order.

(3) If a judge issues an order under division (A) or (B) of this section, the judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian a copy of the order and a notice containing the information described in divisions (A) and (B) of *section 2950.03 of the Revised Code*. The judge shall provide the notice at the time of the issuance of the order and shall comply with divisions (B) and (C) of that section regarding that notice and the provision of it.

The judge also shall include in the order a statement that, upon completion of the disposition of the delinquent child that was made for the sexually oriented offense or child-victim oriented offense upon which the order is based, a hearing will be conducted and the order is subject to modification or termination pursuant to *section 2152.84 of the Revised Code*.

(D) In making a decision under division (B) of this section as to whether a delinquent child should be classified a juvenile offender registrant, a judge shall consider all relevant factors, including, but not limited to, all of the following:

(1) The nature of the sexually oriented offense or the child-victim oriented offense committed by the child;

(2) Whether the child has shown any genuine remorse or compunction for the offense;

(3) The public interest and safety;

(4) The factors set forth in division (K) of *section 2950.11 of the Revised Code*, provided that references in the factors as set forth in that division to "the offender" shall be construed for purposes of this division to be references to "the delinquent child;"

(5) The factors set forth in divisions (B) and (C) of *section 2929.12 of the Revised Code* as those factors apply regarding the delinquent child, the offense, and the victim;

(6) The results of any treatment provided to the child and of any follow-up professional assessment of the child.

(E) An order issued under division (A) or (B) of this section and any determinations included in the order shall remain in effect for the period of time specified in *section 2950.07 of the Revised Code*, subject to a modification or termination of the order under *section 2152.84 of the Revised Code*, and *section 2152.851 [2152.85.1] of the Revised Code* applies regarding the order and the determinations. The child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

(F) If a court issues an order under division (A) or (B) of this section before January 1, 2008, not later than February 1, 2008, the court shall terminate the order and issue a new order that reclassifies the child as both a juvenile offender registrant and a public registry-qualified juvenile offender

registrant pursuant to *section 2152.86 of the Revised Code* if the court imposed on the child a serious youthful offender dispositional sentence under *section 2152.13 of the Revised Code* and if the act that was the basis of the classification of the delinquent child as a juvenile offender registrant and is the basis of the serious youthful offender dispositional sentence is any of the following:

(1) Committing, attempting to commit, conspiring to commit, or complicity in committing 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;

(2) Committing, attempting to commit, conspiring to commit, or complicity in committing 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.

(G) As used in this section, "secure facility" has the same meaning as in *section 2950.01 of the Revised Code*.

**HISTORY:**

149 v S 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

LEXSTAT ORC ANN. 2152.86

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TITLE 21. COURTS -- PROBATE -- JUVENILE

CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAW

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*ORC Ann. 2152.86 (2009)*

§ 2152.86. Court's duty on or after January 1, 2008 to classify child as juvenile offender registrant, specify compliance with SORN law, and additionally classify child as public registry-qualified juvenile offender registrant; reclassification

(A) (1) The court that, on or after January 1, 2008, adjudicates a child a delinquent child for committing an act shall issue as part of the dispositional order an order that classifies the child a juvenile offender registrant, specifies that the child has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*, and additionally classifies the child a public registry-qualified juvenile offender registrant if the child was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the act, the court imposed on the child a serious youthful offender dispositional sentence under *section 2152.13 of the Revised Code*, and the child is adjudicated a delinquent child for committing, attempting to commit, conspiring to commit, or complicity in committing any 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) Upon a child's release, on or after January 1, 2008, from the department of youth services, the court shall issue an order that classifies the child a juvenile offender registrant, specifies that the child has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*, and additionally classifies the child a public registry-qualified juvenile offender registrant if all of the following apply:

(a) The child was adjudicated a delinquent child, and a juvenile court imposed on the child a serious youthful offender dispositional sentence under *section 2152.13 of the Revised Code* for committing one of the acts described in division (A)(1)(a) or (b) of this section.

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

(c) The court did not issue an order classifying the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to division (A)(1) of this section.

(3) If a court issued an order classifying a child a juvenile offender registrant pursuant to *section 2152.82 or 2152.83 of the Revised Code* prior to January 1, 2008, not later than February 1, 2008, the court shall issue a new order that reclassifies the child as a juvenile offender registrant, specifies that the child has a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*, and additionally classifies the child a public registry-qualified juvenile offender registrant if all of the following apply:

(a) The sexually oriented offense that was the basis of the previous order that classified the child a juvenile offender registrant was an act described in division (A)(1)(a) or (b) of this section.

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

(c) The court imposed on the child a serious youthful offender dispositional sentence under *section 2152.13 of the Revised Code* for the act described in division (A)(1)(a) or (b) of this section.

(B) (1) If an order is issued under division (A)(1), (2), or (3) of this section, the classification of tier III sex offender/child-victim offender automatically applies to the delinquent child based on the sexually oriented offense the child committed, subject to a possible reclassification pursuant to divi-

sion (D) of this section for a child whose delinquent act was committed prior to January 1, 2008. If an order is issued under division (A)(2) of this section regarding a child whose delinquent act described in division (A)(1)(a) or (b) of this section was committed prior to January 1, 2008, or if an order is issued under division (A)(3) of this section regarding a delinquent child, the order shall inform the child and the child's parent, guardian, or custodian, that the child has a right to a hearing as described in division (D) of this section and inform the child and the child's parent, guardian, or custodian of the procedures for requesting the hearing and the period of time within which the request for the hearing must be made. *Section 2152.831 [2152.83.1] of the Revised Code* does not apply regarding an order issued under division (A)(1), (2), or (3) of this section.

(2) The judge that issues an order under division (A)(1), (2), or (3) of this section shall provide to the delinquent child who is the subject of the order and to the delinquent child's parent, guardian, or custodian the notice required under divisions (A) and (B) of *section 2950.03 of the Revised Code* and shall provide as part of that notice a copy of the order required under division (A)(1), (2), or (3) of this section. The judge shall include the order in the delinquent child's dispositional order and shall specify in the dispositional order that the order issued under division (A)(1), (2), or (3) of this section was made pursuant to this section.

(C) An order issued under division (A)(1), (2), or (3) of this section shall remain in effect for the period of time specified in *section 2950.07 of the Revised Code* as it exists on and after January 1, 2008, subject to a judicial termination of that period of time as provided in *section 2950.15 of the Revised Code*, subject to a possible reclassification of the child pursuant to division (D) of this section if the child's delinquent act was committed prior to January 1, 2008. If an order is issued under division (A)(1), (2), or (3) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time de-

scribed in this division. If an order is issued under division (A)(3) of this section, the duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* based upon that order 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 to comply with those sections imposed upon the child prior to January 1, 2008, under the order issued under section 2152.82, 2152.83, 2152.84, or 2152.85 and Chapter 2950. of the Revised Code.

(D) (1) If an order is issued under division (A)(2) of this section regarding a delinquent child whose delinquent act described in division (A)(1)(a) or (b) of this section was committed prior to January 1, 2008, or if an order is issued under division (A)(3) of this section regarding a delinquent child, except as otherwise provided in this division, the child may request as a matter of right a court hearing to contest the court's classification in the order of the child as a public registry-qualified juvenile offender registrant. To request the hearing, not later than the date that is sixty days after the delinquent child is provided with the copy of the order, the delinquent child shall file a petition with the juvenile court that issued the order.

If the delinquent child requests a hearing by timely filing a petition with the juvenile court, the delinquent child shall serve a copy of the petition on the prosecutor who handled the case in which the delinquent child was adjudicated a delinquent child for committing the sexually oriented offense or child-victim oriented offense that resulted in the delinquent child's registration duty under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code*. The prosecutor shall represent the interest of the state in the hearing. In any hearing under this division, 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 delinquent child and the delinquent child's parent, guardian, or custodian and to the prosecutor of the date, time, and place of the hearing.

If the delinquent child requests a hearing in accordance with this division, until the court issues its decision at or subsequent to the hearing, the delinquent child shall comply with Chapter 2950. of the Revised Code as it exists on and after January 1, 2008. If a 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 issue of whether the child should be classified a public registry-qualified juvenile offender registrant. Notwithstanding the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant, the court may terminate that classification if it determines by clear and convincing evidence that the classification is in error.

If the court decides to terminate the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant, the court shall issue an order that specifies that it has determined that the child is not a public registry-qualified juvenile offender registrant and that it has terminated the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant. The court promptly shall serve a copy of the order upon the sheriff with whom the delinquent child most recently registered under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* and upon the bureau of criminal identification and investigation. The delinquent child and the prosecutor have the right to appeal the decision of the court issued under this division.

If the 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 delinquent child of the delinquent child's right to a hearing under this division, and the delinquent child is bound by the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant.

(2) An order issued under division (D)(1) of this section is independent of any order of a type described in division (F) of *section 2950.031 [2950.03.1] of the Revised Code* or division (E) of *section 2950.032 [2950.03.2] of the Revised Code*, and the court may issue an order under both division (D)(1) of this section and an order of a type described in division (F) of *section 2950.031 [2950.03.1] of the Revised Code* or division (E) of *section 2950.032 [2950.03.2] of the Revised Code*. A court that conducts a hearing under division (D)(1) of this section may consolidate that hearing with a hearing conducted for the same delinquent child under division (F) of *section 2950.031 [2950.03.1] of the Revised Code* or division (E) of *section 2950.032 [2950.03.2] of the Revised Code*.

**HISTORY:**

152 v S 10, § 1, eff. 1-1-08.

LEXSTAT ORC ANN. 2907.02

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TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2907. SEX OFFENSES

SEXUAL ASSAULTS

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*ORC Ann. 2907.02 (2009)*

§ 2907.02. Rape

(A) (1) No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies:

(a) For the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.

(b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person.

(c) The other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.

(2) No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.

(B) Whoever violates this section is guilty of rape, a felony of the first degree. If the offender under division (A)(1)(a) of this section substantially impairs the other person's judgment or control by administering any controlled substance described in *section 3719.41 of the Revised Code* to the other person surreptitiously or by force, threat of force, or deception, the prison term imposed upon the offender shall be one of the prison terms prescribed for a felony of the first degree in *section 2929.14 of the Revised Code* that is not less than five years. Except as otherwise provided in this division, notwithstanding *sections 2929.11 to 2929.14 of the Revised Code*, an offender under division (A)(1)(b) of this section shall be sentenced to a prison term or term of life imprisonment pursuant to *section 2971.03 of the Revised Code*. If an offender is convicted of or pleads guilty to a viola-

tion of division (A)(1)(b) of this section, if the offender was less than sixteen years of age at the time the offender committed the violation of that division, and if the offender during or immediately after the commission of the offense did not cause serious physical harm to the victim, the victim was ten years of age or older at the time of the commission of the violation, and the offender has not previously been convicted of or pleaded guilty to a violation of this section or a substantially similar existing or former law of this state, another state, or the United States, the court shall not sentence the offender to a prison term or term of life imprisonment pursuant to *section 2971.03 of the Revised Code*, and instead the court shall sentence the offender as otherwise provided in this division. If an offender under division (A)(1)(b) of this section previously has been convicted of or pleaded guilty to violating division (A)(1)(b) of this section or to violating an existing or former law of this state, another state, or the United States that is substantially similar to division (A)(1)(b) of this section, if the offender during or immediately after the commission of the offense caused serious physical harm to the victim, or if the victim under division (A)(1)(b) of this section is less than ten years of age, in lieu of sentencing the offender to a prison term or term of life imprisonment pursuant to *section 2971.03 of the Revised Code*, the court may impose upon the offender a term of life without parole. If the court imposes a term of life without parole pursuant to this division, division (F) of *section 2971.03 of the Revised Code* applies, and the offender automatically is classified a tier III sex offender/child-victim offender, as described in that division.

(C) A victim need not prove physical resistance to the offender in prosecutions under this section.

(D) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the

victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under *section 2945.59 of the Revised Code*, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

(E) Prior to taking testimony or receiving evidence of any sexual activity of the victim or the defendant in a proceeding under this section, the court shall resolve the admissibility of the proposed evidence in a hearing in chambers, which shall be held at or before preliminary hearing and not less than three days before trial, or for good cause shown during the trial.

(F) Upon approval by the court, the victim may be represented by counsel in any hearing in chambers or other proceeding to resolve the admissibility of evidence. If the victim is indigent or otherwise is unable to obtain the services of counsel, the court, upon request, may appoint counsel to represent the victim without cost to the victim.

(G) It is not a defense to a charge under division (A)(2) of this section that the offender and the victim were married or were cohabiting at the time of the commission of the offense.

**HISTORY:**

134 v H 511 (Eff 1-1-74); 136 v S 144 (Eff 8-27-75); 139 v S 199 (Eff 7-1-83); 141 v H 475 (Eff 3-7-86); 145 v S 31 (Eff 9-27-93); 146 v S 2 (Eff 7-1-96); 147 v H 32 (Eff 3-10-98); 149 v H 485. Eff 6-13-2002; 151 v S 260, § 1, eff. 1-2-07; 152 v S 10, § 1, eff. 1-1-08.

LEXSTAT ORC ANN. 2929.12

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TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2929. PENALTIES AND SENTENCING

PENALTIES FOR FELONY

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*ORC Ann. 2929.12 (2009)*

§ 2929.12. Seriousness and recidivism factors

(A) Unless otherwise required by *section 2929.13* or *2929.14 of the Revised Code*, a court that imposes a sentence under this chapter upon an offender for a felony has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in *section 2929.11 of the Revised Code*. In exercising that discretion, the court shall consider the factors set forth in divisions (B) and (C) of this section relating to the seriousness of the conduct and the factors provided in divisions (D) and (E) of this section relating to the likelihood of the offender's recidivism and, in addition, may consider any other factors that are relevant to achieving those purposes and principles of sentencing.

(B) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is more serious than conduct normally constituting the offense:

(1) The physical or mental injury suffered by the victim of the offense due to the conduct of the offender was exacerbated because of the physical or mental condition or age of the victim.

(2) The victim of the offense suffered serious physical, psychological, or economic harm as a result of the offense.

(3) The offender held a public office or position of trust in the community, and the offense related to that office or position.

(4) The offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice.

(5) The offender's professional reputation or occupation, elected office, or profession was used to facilitate the offense or is likely to influence the future conduct of others.

(6) The offender's relationship with the victim facilitated the offense.

(7) The offender committed the offense for hire or as a part of an organized criminal activity.

(8) In committing the offense, the offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion.

(9) If the offense is a violation of section 2919.25 or a violation of *section 2903.11, 2903.12, or 2903.13 of the Revised Code* involving a person who was a family or household member at the time of the violation, the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children.

(C) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is less serious than conduct normally constituting the offense:

(1) The victim induced or facilitated the offense.

(2) In committing the offense, the offender acted under strong provocation.

(3) In committing the offense, the offender did not cause or expect to cause physical harm to any person or property.

(4) There are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense.

(D) The sentencing court shall consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is likely to commit future crimes:

(1) At the time of committing the offense, the offender was under release from confinement before trial or sentencing, under a sanction imposed pursuant to *section 2929.16, 2929.17, or 2929.18 of the Revised Code*, or under post-release control pursuant to section 2967.28 or any other provision of the Revised Code for an earlier offense or had been unfavorably terminated from post-

release control for a prior offense pursuant to division (B) of *section 2967.16* or *section 2929.141* [2929.14.1] of the Revised Code.

(2) The offender previously was adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has a history of criminal convictions.

(3) The offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has not responded favorably to sanctions previously imposed for criminal convictions.

(4) The offender has demonstrated a pattern of drug or alcohol abuse that is related to the offense, and the offender refuses to acknowledge that the offender has demonstrated that pattern, or the offender refuses treatment for the drug or alcohol abuse.

(5) The offender shows no genuine remorse for the offense.

(E) The sentencing court shall consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is not likely to commit future crimes:

(1) Prior to committing the offense, the offender had not been adjudicated a delinquent child.

(2) Prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal offense.

(3) Prior to committing the offense, the offender had led a law-abiding life for a significant number of years.

(4) The offense was committed under circumstances not likely to recur.

(5) The offender shows genuine remorse for the offense.

**HISTORY:**

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 148 v S 9 (Eff 3-8-2000); 148 v S 107 (Eff 3-23-2000); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 327. Eff 7-8-2002.

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\*\*\* ARCHIVE MATERIAL \*\*\*

\*\*\* CURRENT THROUGH LEGISLATION APPROVED THROUGH DECEMBER 15, 2004

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\*\*\* ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2004 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2950. SEXUAL PREDATORS, HABITUAL SEX OFFENDERS, SEXUALLY ORI-  
ENTED OFFENDERS

*ORC Ann. 2950.01 (2004)*

§ 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 sexually violent 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 sexually violent offense that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(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 a sexually violent offense and that is not a registration-exempt sexually oriented 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 that charged the sexually violent offense.

(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," and "sexually violent offense," "sexual motivation," 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 delin-

quent 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 the effective date of this amendment, 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 the effective date of this section, 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*.

**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.

LEXSTAT ORC ANN. 2950.01

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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*ORC Ann. 2950.01 (2009)*

§ 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, 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.

(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 dispositional 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 regis-

try-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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*ORC Ann. 2950.031 (2009)*

§ 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 ori-

ented 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 em-

ployment 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 ANN. 2950.032

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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*ORC Ann. 2950.032 (2009)*

§ 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. 2950.04

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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*ORC Ann. 2950.04 (2009)*

§ 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 regis-

tered 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 temporar-

ily 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 regis-

try-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 of-

fender 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.

LEXSTAT ORC ANN. 2950.041

PAGE'S OHIO REVISED CODE ANNOTATED

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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*ORC Ann. 2950.041 (2009)*

§ 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 regis-

tered 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.

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PAGE'S OHIO REVISED CODE ANNOTATED

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\*\*\* ARCHIVE MATERIAL \*\*\*

\* CURRENT THROUGH LEGISLATION PASSED BY THE 126TH OHIO GENERAL ASSEMBLY \*

\* AND FILED WITH THE SECRETARY OF STATE THROUGH DECEMBER 18, 2005 \*

\* ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2005 \*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2950. SEXUAL PREDATORS, HABITUAL SEX OFFENDERS, SEXUALLY ORIENTED OFFENDERS

*ORC Ann. 2950.07 (2005)*

§ 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. 2950.07

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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*ORC Ann. 2950.07 (2009)*

§ 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 confinement, 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 ori-

ented 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 of-

fender 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 DECEMBER 18, 2005 \*

\* ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2005 \*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2950. SEXUAL PREDATORS, HABITUAL SEX OFFENDERS, SEXUALLY ORIENTED OFFENDERS

*ORC Ann. 2950.09 (2005)*

§ 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, 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 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, 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 con-

duct 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 either of the following applies: the sexually oriented offense is a violent sex offense 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 the sexually oriented offense in question is a sexually violent offense, if the indictment, count in the indictment, or information charging the offense also included a sexually violent predator specification, and if the offender is convicted of or pleads guilty to that sexually violent predator specification.

(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 recom-

mend 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 require-

ment 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 described 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 sexu-

ally 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 the effective date of this section, 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.

LEXSTAT ORC ANN. 2950.09

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\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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*ORC Ann. 2950.09 (2009)*

§ 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.

[Repealed]

LEXSTAT ORC ANN. 2950.10

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TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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*ORC Ann. 2950.10 (2009)*

§ 2950.10. Notice to victim of offender's or delinquent child's registration or change of information

(A) (1) 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, if the offender or delinquent child is in any category specified in division (B)(1)(a), (b), or (c) of this section, if the offender or delinquent child registers with a sheriff pursuant to *section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code*, and if the victim of the sexually oriented offense or child-victim oriented offense has made a request in accordance with rules adopted by the attorney general that specifies that the victim would like to be provided the notices described in this section, the sheriff shall notify the victim of the sexually oriented offense or child-victim oriented offense, in writing, that the offender or delinquent child has registered and shall include in the notice the offender's name and photograph, and the address or addresses of the offender's residence, school, institution of higher education, or place of employment, as applicable, or the delinquent child's name, photograph, and residence address or addresses. The sheriff shall provide the notice required by this division to the victim at the most recent residence address available for that victim and not later than five days after the offender or delinquent child registers with the sheriff.

(2) 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, if the offender or delinquent child is in any category specified in division (B)(1)(a), (b), or (c) of this section, if the offender or delinquent child registers with a sheriff pursuant to *section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code*, if the victim of the sexually oriented offense or child-victim oriented offense has made a request in accordance with rules adopted by the attorney general that specifies that the victim would like to be provided the notices described in this section, and if the offender notifies the sheriff of a change of residence, school, institution of higher education, or place of employment address or the delinquent child notifies the sheriff of a change of residence address pursuant to *section 2950.05 of the Revised Code*, the sheriff shall notify the victim of the sexually oriented offense or child-victim oriented offense, in writing, that the offender's or delinquent child's address has changed and shall include in the notice the offender's name and photograph, and the new address or addresses of the offender's residence, school, institution of higher education, or place of employment, as applicable, or the delinquent child's name, photograph, and new residence address or addresses. The sheriff shall provide the notice required by this division to the victim at the most recent residence address available for that victim and no later than five days after the offender or delinquent child notifies the sheriff of the change in the offender's or delinquent child's residence, school, institution of higher education, or place of employment address.

(3) 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 di-

vision (B)(1)(a), (b), or (c) of this section, the victim of the offense may make a request in accordance with rules adopted by the attorney general pursuant to *section 2950.13 of the Revised Code* that specifies that the victim would like to be provided the notices described in divisions (A)(1) and (2) of this section. If the victim makes a request in accordance with those rules, the sheriff described in divisions (A)(1) and (2) of this section shall provide the victim with the notices described in those divisions.

(4) If a victim makes a request as described in division (A)(3) of this section that specifies that the victim would like to be provided the notices described in divisions (A)(1) and (2) of this section, all information a sheriff obtains regarding the victim from or as a result of the request is confidential, and the information is not a public record open for inspection under *section 149.43 of the Revised Code*.

(5) The notices described in divisions (A)(1) and (2) of this section are in addition to any notices regarding the offender or delinquent child that the victim is entitled to receive under Chapter 2930. of the Revised Code.

(B) (1) The duties to provide the notices described in divisions (A)(1) and (2) 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 relative to the offense described in division (A) of this section for which a victim requested to be provided notice under that division, 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) A victim of a sexually oriented offense or of a child-victim oriented offense is not entitled to be provided any notice described in division (A)(1) or (2) of this section unless the offender or delinquent child is in a category specified in division (B)(1)(a), (b), or (c) of this section. A victim of a sexually oriented offense or of a child-victim oriented offense is not entitled to any notice described in division (A)(1) or (2) of this section unless the victim makes a request in accordance with rules adopted by the attorney general pursuant to *section 2950.13 of the Revised Code* that specifies that the victim would like to be provided the notices described in divisions (A)(1) and (2) of this section. This division does not affect any rights of a victim of a sexually oriented offense or child-

victim oriented offense to be provided notice regarding an offender or delinquent child that are described in Chapter 2930. 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; 151 v H 15, § 1, eff. 11-23-05; 152 v S 10, § 1, eff. 1-1-08.

LEXSTAT ORC ANN. 2950.11

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TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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*ORC Ann. 2950.11 (2009)*

§ 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:

(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 no-

tice 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.

LEXSTAT ORC ANN. 2950.12

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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*ORC Ann. 2950.12 (2009)*

§ 2950.12. Immunity

(A) Except as provided in division (B) of this section, any of the following persons shall be immune from liability in a civil action to recover damages for injury, death, or loss to person or property allegedly caused by an act or omission in connection with a power, duty, responsibility, or authorization under this chapter or under rules adopted under authority of this chapter:

(1) An officer or employee of the bureau of criminal identification and investigation;

(2) The attorney general, a chief of police, marshal, or other chief law enforcement officer of a municipal corporation, a sheriff, a constable or chief of police of a township police department or police district police force, and a deputy, officer, or employee of the office of the attorney general, the law enforcement agency served by the marshal or the municipal or township chief, the office of the sheriff, or the constable;

(3) A prosecutor and an officer or employee of the office of a prosecutor;

(4) A supervising officer and an officer or employee of the adult parole authority of the department of rehabilitation and correction;

(5) A supervising officer and an officer or employee of the department of youth services;

(6) A supervisor and a caseworker or employee of a public children services agency acting pursuant to *section 5153.16 of the Revised Code*;

(7) A managing officer of a state correctional institution and an officer or employee of the department of rehabilitation and correction;

(8) A person identified in division (A)(2), (3), (4), (5), (6), or (7) of *section 2950.11 of the Revised Code*, an organization or person identified in division (A)(10) of that section, or the agent of that person or organization;

(9) A person identified in division (A)(2) of *section 2950.111 [2950.11.1] of the Revised Code*, regarding the person's provision of information pursuant to that division to a sheriff or a designee of a sheriff.

(B) The immunity described in division (A) of this section does not apply to a person described in divisions (A)(1) to (8) of this section if, in relation to the act or omission in question, any of the following applies:

(1) The act or omission was manifestly outside the scope of the person's employment or official responsibilities.

(2) The act or omission was with malicious purpose, in bad faith, or in a wanton or reckless manner.

(3) Liability for the act or omission is expressly imposed by a section of the Revised Code.

**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; 152 v S 10, § 1, eff. 1-1-08.