

ORIGINAL

IN THE SUPREME COURT OF OHIO

IN RE:

ADRIAN R.,

Case No. 09-0189

DELINQUENT CHILD

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

C.A. No. 08-CA-17

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MERIT BRIEF OF PLAINTIFF-APPELLEE, STATE OF OHIO

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**STATEMENT OF THE CASE AND STATEMENT OF FACTS**

The State accepts the Appellant's Statement of the Case and Facts.

## APPELLANT'S 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.

## ARGUMENT CONTRA

**S.B. 10 does not violate a juvenile's due process rights under either the Fourteenth Amendment to the U.S. Constitution or under Article I, Section 16 of the Ohio Constitution.**

### I. RETROACTIVE APPLICATION TO OFFENSES COMMITTED PRIOR TO S.B. 10'S EFFECTIVE DATE

The State notes that, while the Proposition of Law restricts itself to due process as it relates to an alleged "retroactive" effect of S.B. 10, nothing in the Appellant's Merit Brief argument restricts its analysis to this narrow proposition, and in fact, this purported "retroactive" application is not addressed whatsoever.

### II. PREDICATE QUESTION

The Appellant has acknowledged that this Court must answer a predicate question before the issue of due process can be reviewed, as the answer to the predicate question could be dispositive of the due process argument. That predicate question is, are juvenile sex offenders statutorily assigned a tier classification, based solely on their underlying sex offense, or are juvenile sex offenders assigned a tier classification as determined by the discretion of the juvenile court?

\* \* \* if this Court adopts the reasoning and holding of the Ninth District Court of Appeals (finding that tier assignment is discretionary), \* \* \* this Court may find that S.B. 10's provisions are constitutional as applied to juveniles \* \* \*.

(Merit Brief of Appellant Adrian R, page 22).

In fact, A.R. proposes that if this Court adopts the reasoning applied by the Ninth District in *In re G.E.S.*, A.R.'s constitutional challenges would be rendered moot, \* \* \*

(Appellant's Memorandum in Support of Jurisdiction, page 6).

The State submits that the correct tier classification for a juvenile sex offender is solely offense-based under S.B. 10, and that if this Court both agrees and also finds that the Appellant's within Proposition of Law is ripe for consideration, the due process argument is not moot. (But see *Plaintiff– Appellee's Motion To Dismiss as Appeal Improvidently Granted*, filed on this date). The State must therefore initially brief this issue, then, as this Court's finding of an offense-based classification scheme is a prerequisite to actually addressing the due process Proposition of Law.

#### **A. Split Among the Appellate Courts**

Several lower courts have concluded that juvenile sex offender tier classification falls within the discretion of the juvenile court. The five lower courts reaching this conclusion include the First, Second, Eighth, Ninth, and Twelfth Districts, finding that the particular tier assignment is discretionary.<sup>1</sup> There are also four lower courts reaching the opposite interpretation and finding that juvenile sex offender tier classification is automatic, based on the underlying offense. These include the Second,<sup>2</sup> Third, Fourth, and Fifth Districts.<sup>3</sup>

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<sup>1</sup> *In re Antwon C.*, 1<sup>st</sup> Dist., No. C-080847, 2009-Ohio-2567, *In re C.A.*, 2d Dist., No. 23033, 2009-Ohio-3303, *In re P.M.*, 8<sup>th</sup> Dist., No. 91922, 2009-Ohio-1694, *In re G.E.S.*, 9<sup>th</sup> Dist. No. 24079, 2008-Ohio-4076; and *In re A.R.*, 12<sup>th</sup> Dist., No. CA2008-03-036, 2008-Ohio-656

<sup>2</sup> The Second District is listed on both sides, as it examined the issue in two cases, and came up with two different results, with two of the three appellate judges being different on this second case. It does not appear that the Second District has addressed this matter *en banc* to resolve their differences, as required by *McFadden v. Cleveland State University*(2008), 120 Ohio St.3d 54, 2008-Ohio-4914.

<sup>3</sup> *In re S.R.B.*, 2d Dist., No. 08-CA-8, 2008-Ohio-6340, *In re Smith*, 3<sup>rd</sup> Dist. No. 1-07-58, 2008-Ohio-3234, appeal allowed at 120 Ohio St.3d 1416, 2008-Ohio-6166 (Ohio Dec. 03, 2008); *In re T.M.*, 4<sup>th</sup> Dist. No. 08CA863, 2009-Ohio-4224, and *In re Kristopher W.*, 5<sup>th</sup> Dist. No. 2008 AP 03-0022, 2008-Ohio-6075.

The Third District has held in a juvenile delinquency rape case:

The new law severely limits the discretion of the trial court in imposing a certain classification on offenders. Instead, the new law requires trial courts to merely place the offender into a category based on their offense.

*In re Smith*, 3<sup>rd</sup> Dist. No. 1-07-58, 2008-Ohio-3234, ¶ 31 appeal allowed at 120 Ohio St.3d 14162008-Ohio-6166 (Ohio Dec. 03, 2008).

The Third District restated its position and interpretation in another juvenile rape case. That court stated in *In re Copeland*, 3<sup>rd</sup> Dist. No. 1-08-40, 2009-Ohio-190:

The new classification system places a much greater limit on the discretion of the trial court to categorize the offender, as S.B. 10 requires the trial court to simply place the offender into one of the three tiers based on their offense.

*Id* at ¶ 10.

In two cases that the Fifth District addressed, in a recent case from the Fourth District, and in the first case from the Second District, those courts also found that juvenile tier classification was offense-based. See *In re Kristopher W.*; *In re T.M.*, and *In re S.R.B.*, *supra*, as well as the lower court decision of the within case, *In re Adrian R.*, 5<sup>th</sup> Dist. No. 08-CA-17, 2008-Ohio-6581.

Based on the decisions of the Third, Fourth, and Fifth Districts, as well as the initial decision of the Second District, the State submits that under S.B. 10, sex offender tier classification assignments are based solely upon the juvenile's underlying offense. Not wishing to rest upon the decision of those esteemed courts, the State, instead, will thoroughly analyze the issue anew.

#### **B. Statutory Analysis and Legislative Intent: Convictions v. Adjudications**

In considering whether a juvenile court has discretion as to the tier in which to place a juvenile, those courts supporting the discretionary view rely upon the language of the statute,

specifically, those portions of the definitions of the various tier offenders that state that they include one who “has been convicted of, or has pleaded guilty to” a list of enumerated offenses. The proponents of that position assert that, as juveniles are not “convicted,” then they do not fall under the mandatory definitions of Tier I, or Tier II, or Tier III offenders found in R.C. 2950.01(E) – (G).

However, those proponents fail to consider that the word “conviction” has previously been interpreted to include juvenile delinquency adjudications. In *In re Russell* (1984), 12 Ohio St.3d 304, 446 N.E.2d 553, this Court analyzed whether a juvenile theft offense could be used to enhance a juvenile misdemeanor theft offense charge to a juvenile felony theft offense charge. Under the language found in the theft statute at that time, the charge would be enhanced to grand theft if “the offender has previously been convicted of a theft offense.”

After noting that the appellate districts had reached different conclusions on the issue, this Court found that a juvenile theft adjudication should, indeed, be interpreted as a theft conviction. In reaching this decision, this Court used the guidelines of R.C. 1.49, “*Determining Legislative Intent.*”

That statute states:

If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:

- (A) The object sought to be attained;
- (B) The circumstances under which the statute was enacted;
- (C) The legislative history;
- (D) The common law or former statutory provisions, including laws upon the same or similar subjects;
- (E) The consequences of a particular construction;
- (F) The administrative construction of the statute.

In applying those factors to the within matter, it is clear that legislative intent here, as in *Russell*, would require a finding that conviction for the purposes of the statute includes a juvenile adjudication.

Initially, in reaching this conclusion, the State notes that the express statutory language indicates that the classification procedures for adults apply to juvenile sex offenders over the age of fourteen. R.C. 2152.191 provides:

If a child is adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense, if the child is fourteen years of age or older at the time of committing the offense, and if the child committed the offense on or after January 1, 2002, \* \* \* both of the following apply:

(A) Sections 2152.82 to 2152.86 and Chapter 2950. of the Revised Code apply to the child and the adjudication.

As such, by its terms, this language makes every provision of R.C. Chapter 2950, including the mandatory tier classification, applicable to a juvenile who has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense.

Further, the statute in question is part of S.B. 10, and S.B. 10 did not arise from a legislative vacuum. It was Ohio's response to Title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248), otherwise known as the Sex Offender Registration and Notification Act (SORNA). The purpose of the federal law was to work with all fifty states to create a nationwide system to monitor sex offenders for the safety of the public. 152 Cong. Rec. S8012 (July 20, 2006).

The passage of S.B. 10 was intended to achieve certain statewide policy goals as well. The object of the statute was the creation and continuation of a registration system, civil and regulatory in nature, involving "a paramount governmental interest" in providing "protection of members of

the public from sex offenders and child-victim offenders.” R.C. 2950.02(A)(2). “The general assembly \* \* \* (specifically declared) that it is the policy of this state to require the exchange in accordance with this chapter of relevant informaton about sex offenders and child-victim offenders among public agencies and officials. \* \* \* ” R.C. 2950.02(B). There appears to be no difference in these goals of protecting the citizenry and sharing information among professionals between regulating adult offenders and regulating juvenilc offenders.

A spokesperson for the Ohio Public Defender’s Office testified before a senate hearing regarding S.B. 10 that the Ohio Association of County Behavioral Health Authorities found that juvenile sex offender recidivism rate ranged from approximately 4% to 10% for those who received supervision, treatment, and support. Neal F. Wilson, *No Child Left Behind: The Adam Walsh Act and Pennsylvania Juvenile Sex Offenders*, 70 Univ. Pittsburgh Law Rev. 327, 336 and Appendix A, Senate Bill 10 Opponent Testimony, p. 1. A further examination of a document from the Ohio Association of County Behavioral Health Authorities referred to by the spokesperson, and attached to her testimony, however, concluded “Up to 10% of youth released after having been committed for a sex offense may commit a subsequent sex offense *within one year.*” (Emphasis added) (Appendix A). Further, the spokesperson also included fact sheets from the National Center on Sexual Behavior of Youth Adolescent with her testimony, which set forth that sex offender rates for sexual re-offenses ranged from 5 to 14%, (Appendix A), and that recidivism rates for children aged 6 – 12 with sexual behavior problems was approximately 15% after treatment. *Id.* As these are significant known recidivism rates, considering the severity of impact of a sexual crime upon a victim, not to mention the number of undisclosed events due to the intimate nature of the crime, the regulatory policy goal would equally apply to juvenile and adult offenders.

The legislature had a second legitimate governmental interest: to obtain a bonus payment from the federal government by complying with SORNA federal requirements. As such, one must assume that the legislature intended the statute to be in compliance with those federal requirements, in order for the legislature to achieve this financial governmental interest.

Next, the State notes that the federal requirements specifically and expressly addressed juvenile offenders and their delinquency adjudication in relation to the definition of “conviction” in 42 U.S. C. § 1691, *Relevant Definitions*:

In this subchapter the following definitions apply:

\* \* \*

(8) Convicted as including certain juvenile adjudications

The term “convicted” or a variant thereof, used with respect to a sex offense, includes adjudicated delinquent as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241<sup>4</sup> of title 18) or was an attempt or conspiracy to commit such an offense.

The legislature’s desire to be in compliance with SORNA requirements (which would thus include an “adjudication” within the definition of “conviction”) can be found in the S.B. 10’s state legislative history, where its original senate proponent stated that Ohio sex offender laws should be amended “so that they can be consistent with federal law” Senate Session (May 16, 2007). The legislature’s desire to be in compliance with SORNA requirements can be found in the preamble to S.B. 10, which states that the intent of the act is: “to revise Ohio's Sex Offender Registration and

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<sup>4</sup> The State submits that the Ohio rape statute concerning sexual conduct with a minor under the age of thirteen in the within case is comparable to the federal Aggravated Sexual Abuse crime involving victims under the age of twelve. See Appendix B for language of 18 U.S.C. § 2241, particularly subsection (c).

Notification Law and conform it to recently enacted requirements of federal law contained in the Adam Walsh Child Protection and Safety Act of 2006.” Not stopping there, the legislature also restated its intent within the codified section of the law itself:

If, on or after the effective date of this section, the United States attorney general or an office established under the authority of the United States attorney general adopts any regulation, guideline, or standard that interprets or applies the federal Sex Offender Registration and Notification Act, Pub. L. No. 109-249, to require additional sex offender registration and notification than otherwise required by Chapter 2950. of the Revised Code, as amended by this act, or notifies the attorney general of this state that the amendments made by this act are not in substantial compliance with the federal Sex Offender Registration and Notification Act or regulations, guidelines or standards interpreting or applying the federal Sex Offender Registration and Notification Act, the attorney general of this state within one hundred eighty days after notification or the adoption of any regulation, guideline or standard that interprets or applies the federal Sex Offender Registration and Notification Act, shall adopt rules in accordance with Chapter 119. of the Revised Code to require additional sex offender registration or notification so that Ohio’s sex offender registration and notification requirements are consistent with, and not less stringent than, the federal Sex Offender Registration and Notification Act and any regulation, guideline or standard that interprets or applies the federal Sex Offender Registration and Notification Act.

R.C. 2950.132, *Conformity to Federal Regulations, Guidelines, or Standards.*

In an extremely unusual action, then, the legislature has stated that, if Ohio law did not comply with federal requirements, the Ohio Attorney General was authorized and required to take action in order to reach that compliance. As the Ohio Attorney General has not taken any such action or enacted any remedial complying rules, one must assume that S.B. 10 was found by the Ohio Attorney General to be in compliance with SORNA at the time.

“Due deference should be given to statutory interpretations by an agency that has

accumulated substantial expertise and to which the General Assembly has delegated enforcement responsibility.” *Weiss v. Pub. Util. Comm.*(2000), 90 Ohio St.3d 15, 17-18, 734 N.E.2d 775, citing to *Collinsworth v. W. Elec. Co.*(1992), 63 Ohio St.3d 268, 272, 586 N.E.2d 1071. “It is a fundamental tenet of administrative law that an agency’s interpretation of a statute that it has the duty to enforce will not be overturned unless the interpretation is unreasonable.” *State ex rel Clark v. Great Lakes Construction Co.*, 99 Ohio St.3d 320, 2003-Ohio-3802 at ¶ 10.

After S.B. 10 was passed, but before it went into effect, the Ohio Attorney General (the relevant agency tasked with statewide sex offender registration duties), worked with interested criminal and juvenile justice professionals and their associations in bringing them “up to speed” on the new law. In this capacity, a “Quick Reference Guide” was prepared for the Ohio Judicial Conference in cooperation with a number of professionals, including a Senior Assistant Ohio Attorney General. (Appendix C) That Guide stated: “3. Identify the juvenile as a Tier I, Tier II, or Tier III sex offender/child-victim offender *on the basis of the juvenile’s underlying offense \* \* \**.” (Emphasis added)

Further, shortly after S.B. 10 was enacted, the Ohio Attorney General prepared a booklet for state and local authorities to assist them in their duties. Under the heading “*Tier Classification Hearing under R.C. 2152.831*,” that booklet stated:

If the juvenile is classified as a JOR (juvenile offender registrant), but not a PRQJOR (public registry qualified juvenile offender registrant), the court shall conduct a hearing to determine which Tier classification will be imposed. *Tier classification is based solely on the offense for which the juvenile is adjudicated and is the same as for adults. \* \* \* The court does not have discretion on which Tier classification to impose. \* \* \**

(Emphasis added). State of Ohio, *Office of the Attorney General, Ohio’s Adam Walsh Act*

*Compliance: Guide to Ohio's Sex Offender Registration and Notification Laws, "SORN:" 2008 Update Following Passage of the Adam Walsh Act June 2008.* P. 26. (Appendix D).<sup>5</sup>

On January 16, 2009 the U.S. Department of Justice's Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) completed a compliance review concerning S.B. 10 in relation to SORNA. That review clarified that in reference to juvenile sex offender registrants, "SORNA is a conviction-based system." (Appendix E). Since SMART's formal and detailed review did not take the State to task for failing to include an "adjudication" as a "conviction" within its definition, it appears that the United States Department of Justice has interpreted the Ohio definition of conviction to already include a juvenile delinquency adjudication.

As the federal government requires "convictions" to include "adjudications" in relation to the Adam Walsh Act, and as the state and federal government indicate that Ohio is not out of compliance with SORNA on this point, it appears that the federal government, the agency responsible for implementing S.B. 10, and the Ohio legislature itself, all take the position that adjudications are included, despite the representations to the contrary in the recent amicus brief. Based upon the R.C. 1.49 analysis and the Ohio Supreme Court decision in *Russell, supra*, the definition of a "conviction" includes an "adjudication." As such, when the definitions of the various tiers refer to convictions as offense-based, the term "conviction" also includes adjudications as

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<sup>5</sup> Recently, the Ohio Attorney General has distanced itself from this interpretation, and in an amicus brief before this Court, actually takes the opposite view. That case, *In re Smith, supra*, involves an argument that the juvenile's ex post facto, retroactivity, and cruel and unusual punishments constitutional rights are violated by a mandatory tier classification. It is the Attorney General's position in its amicus brief, as well as the position of juvenile Smith, that if this Court would find that the lower court had discretion into which tier the juvenile was categorized, those arguments of juvenile Smith would become moot. As such, it is in the Attorney General's immediate interest to find the classification discretionary *in that case*, in order to prevail on the constitutional issues. Regardless of the position of this new interpretation in April 2009, it cannot be disputed that at the time of A.R.'s classification, the Ohio Attorney General's interpretation was that the specific tier classification was mandatory.

offense-based, and the Tier III designation in this case was mandatory.

### **C. Statutory Analysis and Legislative Intent – Other Considerations**

#### **1) Apparent Circular Definitions in R.C. 2950.01(E), (F), and (G)(3).**

Some have argued that the tier classification definition of R.C. 2950.01(G)(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 \* \* \* classifies as a tier III sex offender/child-victim offender relative to the offense,” indicates that the juvenile court has discretion to classify as a Tier III registrant any juvenile offender registrant who a juvenile court determines should be a Tier III registrant.<sup>6</sup> However, the better view is to interpret this subsection as the legislative acknowledgement that some juvenile sex offenders will not have to register at all, pursuant to the court’s discretion as to first offense juvenile sex offenders who are fourteen or fifteen years of age. Thus, a Tier III registrant is: 1) a juvenile who is a mandatory registrant, or 2) a younger first offender who the court determines should register, and who fits the offense-based tier category “relative to that offense.”

#### **2) Lack of Guidelines as to Specific Tiers**

The position that the law intends that the lower courts make discretionary decisions as to which tier to place a juvenile is also contrary to common sense, as the statute sets forth no guidelines or factors for the court to consider in making such a decision. If the legislature had wanted the juvenile courts to make discretionary determinations, it most certainly could have provided guidelines, as it did under earlier law in reference to sexual predator hearings pursuant to R.C. 2950.09, repealed January 1, 2008; as it did in guiding the courts in determining whether fourteen

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<sup>6</sup> The State notes that R.C. 2950.01(E)(3) and (F)(3) have similar apparently definitions for Tier I and Tier II registrants.

and fifteen year old first offenders should register or not pursuant to R.C. 2152.83(D); and as it did in providing procedures for the three year and five year reclassification and declassification hearings pursuant to R.C. 2152.85(B) and( C).

“(A)s the legislature could have included certain language that it wanted, the court must assume that the General Assembly’s failure to do so was intentional.” *Griffith v. State*, 10<sup>th</sup> Dist. No. 08AP-964, 2009-Ohio-2854, ¶ 12. Since, instead, the legislature did not enact guidelines, list factors for consideration, or set forth procedures for determining whether a juvenile should be in Tier I, or Tier II, or Tier III, when it had the ability to do so and as it has demonstrated that it was able to set forth such factors when it desires discretionary classification determinations, it is clear that there was no intent for the juvenile trial court to engage in such discretionary determinations.

For the above reasons, the State submits that S.B. 10 provides an offense-based tier classification process for juvenile sex offender registrants. As such, the due process argument presented by the Appellant, while not ripe for consideration, is not moot, and the State will below examine the issue on its merits.

### **III. PRESUMPTION OF CONSTITUTIONALITY**

All statutes enjoy a presumption of constitutionality. *State v. Thompson*, 92 Ohio St.3d 584, 586, 2001-Ohio-1288; *Doran v. Northmont Board of Education*, 153 Ohio App.3d 499, 2003-Ohio-4084. It is the burden of the party challenging the constitutionality of a statute to prove beyond a reasonable doubt that the statute is incompatible with a state or federal constitutional provision. *State v. Cook*, 83 Ohio St.3d 404, 409, 1998-Ohio-291; *State v. Williams*, 88 Ohio St.3d 513, 521, 2000-Ohio-428.

In such cases, the challenging party must prove that there is no set of circumstances under

which the law could be applied constitutionally, *Harrold v. Collier*, 107 Ohio St.3d 44, 2005-Ohio-5334, and must present clear and convincing evidence of an existing set of facts that make the statute unconstitutional. *Belden v. Union Cent. Life Ins. Co.*(1944), 143 Ohio St. 329, 55 N.E.2d 629, syllabus, paragraph six. Additionally, if a constitutional interpretation is reasonably available, the statute must be so construed. *Thompson* at 586.

The Appellant has admitted that the offense-based tier classification below may not be the correct classification scheme, as there are two divergent methods of tier classification advanced by the various lower appellate courts. The Appellant indicates that instead of an offense-based classification, the lower court may have had complete discretion to classify the Appellant as it saw fit, and is asking this Court to give guidance as to which of the methods is appropriate. The Appellant has submitted that, if the method espoused by the Ninth Appellate District is the correct method of juvenile tier classification, its due process argument is moot. Due to its own admissions, therefore, the Appellant herein has not met his burden of proof in establishing beyond a reasonable doubt that S.B. 10 as applied to juveniles unconstitutionally violates their due process rights.

#### **IV. OFFENSE-BASED TIER CLASSIFICATIONS AND DUE PROCESS (ADULT CASES)**

As to the merits of their argument, the Appellant argues that, if the lower court was correct in using an offense-based tier classification method in his case, said method unconstitutionally violated his due process rights. In addressing an adult sex offender, the U.S. Supreme Court found that an offense-based classification was not violative of due process. That Court, in *Smith v. Doe*(2003), 538 U.S. 84, 123 S.Ct. 1140, came to the conclusion that tying a tier classification directly and solely to the underlying offense does not violate the juvenile's due process rights. "The 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 [.]” *Id* at 104.

This Court has also examined the due process issue of sex offender registration requirements sans an individualized analysis. In *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169, this Court held:

The Due Process Clauses of the Fourteenth Amendment to the United States Constitution and of Section 16, Article I of the Ohio Constitution do not require a trial court to conduct a hearing to determine whether a defendant is a sexually oriented offender. Instead, according to R.C. Chapter 2950, if a defendant has been convicted of a sexually oriented offense as defined in R.C. 2950.01(D) and is neither a habitual sex offender nor a sexual predator, the sexually oriented offender designation attaches as a matter of law.

*Id.* at 215, 2002-Ohio-4169 at 15, 773 N.E.2d at 506. In so finding, this Court determined that an offense-based sex offender registration assignment imposed neither bodily restraint nor punishment upon the offender. *Id* at 214. While surely juveniles are entitled to due process, *In re Gault*(1967), 387 U.S.1, 87 S. Ct. 1428; *In re L.A.B.*. 121 Ohio St. 3d 122, 2009-Ohio-354, there is no authority cited by the Appellant to suggest that they are entitled to more due process rights than adult criminal defendants. As the current version of the sex offender registration law does nothing to change the holdings of *Doe* or *Hayden*, its new terms represent a distinction without a difference. As such, a S.B. 10 interpretation giving rise to an offense-based tier classification would remain equally constitutional in providing for adult and juvenile due process.

#### **V. ADDITIONAL PROTECTIONS UNDER S.B. 10’S OFFENSE-BASED JUVENILE TIER CLASSIFICATION**

The Appellant further contends that, assuming that the offense-based tier assignment utilized by the lower court was correct, the lack of special statutory considerations for juveniles somehow

renders S.B. 10 in violation of a juvenile's due process rights. There is no authority for a juvenile's entitlement to "super" due process protections. Indeed, on the contrary, the issues that have arisen regarding juvenile due process rights typically address whether or not a juvenile is entitled to equal due process versus lesser due process than adults. "Over the past 50 years, courts have increasingly held that while juvenile proceedings are still civil proceedings, juveniles have the right to certain fundamental protections, just as adult criminal defendants do." *L.A.B., supra*, ¶ 54. The cases cited by the Appellant in support of its "due process plus" argument, however, address "cruel unusual punishment" matters, and not due process matters. Sex offender registration has repeatedly been determined to be non-punitive, and is not relevant to a due process analysis. Sex offender registration matters, even under an Eighth Amendment analysis, are collateral consequence, they do not affect "substantial rights," and "(s)exual predator adjudication is a remedial collateral consequence, rather than punitive." See *Goodballet v. Mack*, (N.D. Ohio 2003), 266 F.Supp. 2d 702, 711; *State v. Cook*, *supra* at 42; and *State v. Ferguson*, 120 Ohio St.3d 7, ¶ 34, 2008-Ohio-4824.

Even if a juvenile was entitled to additional protections, however, the legislature has crafted S.B. 10 to provide for additional protections. Indeed, it provides that only Tier III registrants and "public registry qualified juvenile offenders" are even eligible for victim and community notification requirements pursuant to R.C. 2950.10 and 2950.11;<sup>7</sup> it provides that juveniles thirteen years of age or younger are not to be juvenile sex offender registrants at all; it establishes factors for lower courts to consider in reaching a determination as to whether fourteen and fifteen year old first offenders should register or not pursuant to R.C. 2152.83(D); it provides procedures at disposition to deter-

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<sup>7</sup>While community notification requirements are cited in support of his argument that S.B. 10 violated the due process rights of juveniles, the State notes that the lower court determined that the Appellant would not be subject to community notification, and consequently on this point the Appellant's argument is spurious.

mine if reclassification and even declassification should occur pursuant to R.C. 2152.84(A); and it provides procedures for a hearing after three or five year non-ending intervals after the initial dispositional classification and subsequent review hearings, to further review the possibility of reclassification or declassification pursuant to R.C. 2152.85(B) and (C). As such, multiple provisions have been made in S.B. 10 statutorily to specifically provide for additional safeguards for juvenile delinquent sex offenders, and even a “lifetime” Tier III registration assignment need not be “lifetime” at all.

### CONCLUSION

In conclusion, the State submits that before the due process issue can be addressed, this Court first must determine that the offense-based tier registration assignment process used by the lower court was the correct process envisioned by statute. If the lower court instead had complete discretion in determining in which tier to place the Appellant, he admits that his due process argument is moot. As such, until the correct method of classification is determined, a dispositive determination that is not properly and squarely before this Court, a due process analysis would be unripe and premature. Further, if S.B. 10 does envision an offense-based classification system, the Appellant must establish a constitutional due process violation beyond a reasonable doubt. He has failed to so meet this burden. Both this Court and the U.S. Supreme Court previously have found offense-based sex offender categories to be proper, and S.B. 10 and the federal Adam Walsh Act have done nothing to alter these analyses. Registration remains remedial and non-punitive, and serves legitimate governmental purposes. Finally, multiple statutory considerations have been specifically placed within the language of S.B. 10, to provide juveniles with even more procedural

protections and opportunities for review than their adult counterparts enjoy.

For the foregoing reasons, Appellee respectfully submits that this Court affirm the lower court decision.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been sent by regular U.S. Mail this 9<sup>th</sup> day of September, 2009, to Attorney for appellant at the address noted on the cover page hereto.



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APPENDIX A

APPENDIX A



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DAVID H. BODIKER  
State Public Defender

**Senate Bill 10  
Opponent Testimony  
Senate Judiciary – Criminal Justice Committee  
May 2, 2007**

Thank you, Chairman Grendell and members of the Committee. My name is Jill Beeler, and I am the Supervisor of the Juvenile Section at the Office of the Ohio Public Defender. My section provides legal representation to juveniles incarcerated at DYS. We give each youth who enters DYS an orientation about their legal rights, and we are virtually the only attorneys in the state who provide legal representation to juveniles on their appeals.

I am here today to talk to you about Senate Bill 10's impact on juveniles and to urge you to exempt juvenile sex offenders from the public registry requirements of the Adam Walsh Act.

Children are different from adults—physically, mentally, emotionally, and developmentally. This may seem like a terribly obvious statement, but it is too often forgotten in public policy debates such as this. Kids—even those we label as "offenders"—are kids.

**The juvenile court system**

The judicial system first recognized the unique qualities and needs of children 108 years ago, when the first juvenile court was established in Chicago, in 1899. Recognizing that kids are different, the juvenile court system was founded to focus on treatment, supervision, and control, rather than on punishment.

Juvenile delinquency jurisprudence has, of course, evolved over the last 108 years. This month marks the 40<sup>th</sup> anniversary of *In re Gault*, the landmark U.S. Supreme Court decision that granted many—but not all—basic due process rights to children in juvenile court, including the right to advance notice of the charges, the right to a fair and impartial hearing, and the right to be represented by counsel.

Ohio's juvenile courts have yet to fully realize the promises of *Gault*, though. Last year, my office compared the number of unruly and delinquency cases reported by the Supreme Court of Ohio's 2004 *Ohio Courts Summary* to the number of unruly and delinquency cases that my office reimbursed the counties for in that same calendar year. This comparison showed that two-thirds of Ohio children facing unruly or delinquency complaints are not represented by counsel when they appear in juvenile courts.

**Juveniles' amenability to treatment**

Despite what many are led to believe by banner headlines and the 6 o'clock news, juvenile sex offenders are especially amenable to treatment. According to the Ohio Association of County Behavioral Health Authorities, research shows that "with treatment, supervision and support, the likelihood of a youth committing subsequent sex offenses is about 4–10 percent." Compare that to the recidivism rates of youth in the general population: within the first year after release from DYS, 30 percent of the youth in the general population commit a subsequent crime or parole violation. Looking out three years after release, the recidivism rate jumps to 50 percent.

Attached to my written testimony is a fact sheet from the Ohio Association of County Behavioral Health Authorities about juvenile sex offenders, and fact sheets from the National Center on Sexual Behavior of Youth. These fact sheets offer research and information such as:

- Adolescent sex offenders are significantly different from adult sex offenders.
- Adolescent sex offenders are considered to be more responsive to treatment than adult sex offenders and do not appear to continue re-offending into adulthood, especially when provided with appropriate treatment.
- Most adolescents are not sexual predators nor do they meet the accepted criteria for pedophilia.

Juveniles' inherent amenability to rehabilitation has been recognized by the United States Supreme Court. In its 2005 opinion in *Roper v. Simmons*, a landmark decision that declared the death penalty for juveniles unconstitutional, the Court stated:

The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From 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.

#### JSORN, Adam-Walsh, & trial by jury

Ohio already has in place a registry for juvenile sex offenders. Known as JSORN (juvenile sex offender registration and notification), it respects juvenile court judges' discretion and recognizes the likelihood that juvenile sex offenders will be successfully rehabilitated. The JSORN registry is not available to the public, and there is only very limited community notification. Juvenile sex offenders can be required to register on JSORN for 10 years, for 20 years, or for a lifetime.

In an opinion issued last week (*In the matter of: B.W.*), Ohio's Second District Court of Appeals commented on the impact of JSORN's non-public registry:

While protection of the public is a laudable goal of sex offender designation, B.W. was just 15 at the time of the offense and still subject to DYS supervision and treatment modalities. It is undeniable that severe obligations were imposed upon B.W. for ten years. This stigma as a sex offender is significant and a real potential exists for harassment and long term consequences stretching well into B.W.'s adulthood.

Imagine the potential for harassment and long-term consequences for juveniles whose pictures, names, addresses, schools, and other identifying information will now be available online, to any member of the public. Knowing that the recidivism rate of juvenile sex offenders is 4-10% means that 90-96% of the kids included on this public registry will never commit another sex offense. Remember, too, that many of these children have been adjudicated of or have plead guilty to a sex offense without ever having been represented by counsel.

By placing juvenile sex offenders age 14 and older on a public registry, the Adam Walsh Act is imposing an adult sanction on juvenile defendants. When the Ohio Legislature has previously chosen to impose adult penalties on juvenile defendants, it has also granted to juveniles the

same protections that adults have in criminal court, most notably, the right to trial by jury. The right to trial by jury is not recognized in juvenile court; it is, however, expressly granted to children facing serious youthful offender dispositions (ORC §2152.13(C)(1)). And children who are bound over to adult criminal court also enjoy the same protections as adults facing criminal charges, including the right to trial by jury.

Placing a child who appeared in juvenile court on an adult sex offender registry creates significant constitutional issues, including equal protection and the right to trial by jury.

### Recommended changes

#### 1. Exempt juvenile sex offenders from the public registry requirements of the Adam Walsh Act.

Why should this committee exempt juvenile sex offenders from the public registry requirements of the Adam Walsh Act?

- Children are different. Kids are kids. Juveniles are inherently amenable to treatment. Juvenile sex offenders are known to be especially amenable to treatment.
- The juvenile court system is based on the fundamental belief that children can be rehabilitated.
- Incredibly, two-thirds of Ohio children facing unruly and delinquency complaints are not represented by counsel when they appear in juvenile court.
- The purpose of a sex offender registry is to protect the public by identifying those most likely to commit another sex offense. But juvenile sex offenders' recidivism rates are extremely low, 4–10%.
- Ohio already has in place a registry for juvenile sex offenders. JSORN allows for the registration of juvenile sex offenders, while respecting juvenile court judges' discretion and recognizing the positive impact of treatment and the low recidivism rate of juvenile sex offenders.
- The public registry of the Adam Walsh Act imposes an adult sanction on juvenile defendants, even though juvenile defendants do not enjoy all of the due process protections guaranteed to adult defendants.
- The U.S. Supreme Court has recognized 18 as a legally, socially, scientifically, and morally valid age at which to draw distinctions between juveniles and adults for the purpose of treatment under criminal law.
- The Ohio Association of County Behavioral Health Authorities urges lawmakers to "[r]esist efforts to lump juvenile sex offenders with adult sex offenders when considering legislation" and remember that "[r]egistration and community notification of a juvenile sex offender...should consider the varying levels of risk and recognize the differences between adult and juvenile offenders."

#### 2. Grant children facing sex offense complaints a right to trial by jury.

If Senate Bill 10 is enacted in its current form, children charged with a sex offense will potentially face an adult penalty—inclusion in a public sex offender registry. If this Committee does not exempt juvenile defendants from inclusion on that public registry, it should extend to juvenile defendants the full protection of due process rights enjoyed by adult criminal defendants.

Chairman Grendell, members of the Committee, thank you for your time today. I will be happy to answer any questions you may have.



# Behavioral Health: Developing a Better Understanding

Vol. Three, Issue I

## JUVENILE SEX OFFENDERS

### What We Know

Sexual victimization is a significant public health problem. Annual estimates are that nationally there are over 876,000 cases of rape against women with over 300,000 victims and over 111,000 cases of rape against men with over 92,000 victims. Nationally, although 100,00 reports of child sexual abuse are made to child welfare authorities annually, it is estimated that over 500,000 children are victimized sexually. Most victims of sex offenses are targeted by someone known to them. According to the Ohio Department of Youth Services (ODYS), there were 632 youth adjudicated for sex offenses during calendar in 2005.

In the 2006 report entitled *Report of the Task Force on Children with Sexual Behavior Problems*, the Association for the Treatment of Sexual Abusers states that the origins of sexual behavior problems in children are not clearly understood. Juvenile sex offenders are often referred to as children with sexual behavior problems. Children who have been abused engage in a higher frequency of sexual behaviors than those who have not been abused; however, many youth with broadly defined sexual behavior problems have no known history of sexual abuse. Recent decades have seen a significant increase in the number of youth with sexual behavior problems who have been referred to child protective services, juvenile courts and outpatient and inpatient treatment.

Juveniles who have committed sex offenses are a heterogeneous group who, like all juveniles, have developmental needs, but who also have special needs and present special risks related to their abusive behaviors. Current research suggests that with treatment, supervision and support, the likelihood of a youth committing subsequent sex offenses is about 4-10% percent.

### General Statistics for Ohio

- ◆ Ohio currently has 445 sex offenders in ODYS and 242 on parole.
- ◆ The average length of stay for an adjudicated juvenile sex offender in ODYS is about twice the length of stay for youth in the general population.
- ◆ 89% of sex offenders have had mental health counseling prior to commitment to ODYS and 35% of sex offenders are on the ODYS mental health caseload.
- ◆ Approximately 65% of the sex offenders have significant drug problems requiring treatment compared to 78% of the total ODYS population.
- ◆ About 54% of the sex offenders are in need of special education compared to 36% of the total population of youth in ODYS institutions.
- ◆ 65% of juvenile sex offenders are white.

*"On the whole, juveniles have more positive treatment outcomes and lower recidivism rates than their adult counterparts."*

Tom Talbot, Senior Manager  
Center for Effective Public Policy, Silver Springs, MD

### We Don't Know What We Don't Know

We don't know what causes individuals to commit sex offenses whether they are adults or juveniles. Sexual abuse is perhaps the most significantly underreported crime. Even when a sex offender is detected or reported, that offense may not be his/her first one. Thus, arrest data alone yield an underestimate of the true extent of sex offending by juveniles and adults.

Researchers have proposed a number of theories to explain the causes of sex offenses committed by juveniles; however, to date, there is no generally accepted theory regarding juvenile sex offending. A number of factors have received programmatic and clinical attention including maltreatment experiences, exposure to pornography, substance abuse, mental health disorders and exposure to aggressive role models. Without question, responding to the needs of juvenile sex offenders is complex and multifaceted.

## Ohio's Comprehensive Approach to Juvenile Sex Offender Management

Ohio has begun a promising new initiative. Late last year, the ODYS, received funding under the *2005 Comprehensive Approaches to Sex Offender Management Grant Program*, sponsored by the U.S. Department of Justice. As one of only nine jurisdictions awarded nationally, Ohio has a unique opportunity to pave the way for ongoing efforts to create and implement effective solutions in the management of juvenile sex offenders.

Ohio's design is a two-phased effort. Phase I is a thorough assessment of Ohio's juvenile sex offender management policies and practices based upon empirical knowledge and emerging best practices and identification of both the successes and critical gaps in our systems. Phase II will be the development and implementation of strategies to strengthen Ohio's approach to responding to the needs of juvenile sex offenders while insuring public safety. In addition, the Center for Sex Offender Management (CSOM) will provide technical assistance during the grant period.

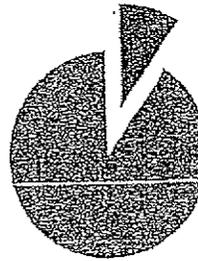
## What Can Policy Makers, Local Officials, and Voters Do to Make a Difference?

- ✓ Remember that recent high-profile juvenile sex offense cases do not represent the typical sex offender. Sexually motivated abduction and murder are rare events, and such cases should not become the impetus for legislation.
- ✓ Resist efforts to lump juvenile sex offenders with adult sex offenders when considering sex offender legislation.
- ✓ Sex offender management solutions such as legislating colored license plates, civil commitment, electronic monitoring, use of Global Positioning Systems (GPS) or residential restrictions, in and of themselves, are not effective without additional support services.
- ✓ Promote the understanding that juveniles who commit sex offenses are *NOT* destined to become adult sex offenders.
- ✓ Ensure that offenders returning to the community have access to needed mental health and/or addiction services to help with their successful and safe reentry into the community and to prevent future sexual victimization.

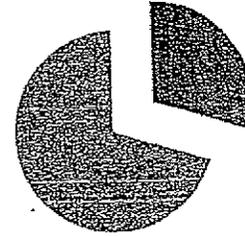
### Sources:

Association for the Treatment of Sexual Abusers  
 Center for Effective Public Policy  
 Center for Sex Offender Management  
 Ohio Department of Youth Services  
 U.S. Department of Justice

## Recidivism Rates



Up to 10% of youth released after having been committed for a sex offense may commit a subsequent sex offense within one year.



Approximately 30% of youth in the general population will return to ODYS or an adult prison within one year of release for having committed another crime or for violating parole.

## Components of a Comprehensive Approach to Juvenile Sex Offender

**Investigation, Prosecution & Disposition** require specialized, thorough and victim-sensitive knowledge and understanding.

Assessment is an ongoing process, not a single event, to be used for informed decisionmaking throughout the system.

Supervision involves developing community networks that enhance public safety and accountability.

Treatment interventions must be developmentally appropriate, gender responsive and culturally competent.

Reentry planning to return a youth to his/her community should begin at the point of entry into the juvenile justice system.

Registration and community notification of a juvenile sex offender returning to his or her community should consider the varying levels of risk and recognize the differences between adult and juvenile offenders.

## NCSBY Fact Sheet

### What Research Shows About Adolescent Sex Offenders

This Fact Sheet was developed to provide practitioners and professionals with basic information about adolescent sex offenders. The information is based on the most current and available research and it should be noted that research in this area continues to be limited. The first section briefly reviews the research on adolescent sex offenders and the second section describes issues related to community safety and supervision.

#### Review of Research on Adolescent Sex Offenders

- Adolescent sex offenders are defined as adolescents from age 13 to 17 who commit illegal sexual behavior as defined by the sex crime statutes of the jurisdiction in which the offense occurred.
- Adolescents do not typically commit sex offenses against adults, although the risk of offending against adults increases slightly after an adolescent reaches age 16.
- Approximately one-third of sexual offenses against children are committed by teenagers. Sexual offenses against young children, under 12 years of age, are typically committed by boys between the ages of 12 to 15 years old.<sup>1,2</sup>
- Adolescent sex offenders are significantly different from adult sex offenders in several ways:
  - Adolescent sex offenders are considered to be more responsive to treatment than adult sex offenders and do not appear to continue re-offending into adulthood, especially when provided with appropriate treatment.<sup>3</sup>
  - Adolescent sex offenders have fewer numbers of victims than adult offenders and, on average, engage in less serious and aggressive behaviors.<sup>4</sup>
  - Most adolescents do not have deviant sexual arousal and/or deviant sexual fantasies that many adult sex offenders have.<sup>4,6</sup>
  - Most adolescents are not sexual predators nor do they meet the accepted criteria for pedophilia.<sup>7</sup>
  - Few adolescents appear to have the same long-term tendencies to commit sexual offenses as some adult offenders.
  - Across a number of treatment research studies, the overall sexual recidivism rate for adolescent sex offenders who receive treatment is low in most US settings as compared to adults. Adolescents who offend against young children tend to have slightly lower sexual recidivism rates than adolescents who sexually offend against other teens.<sup>3</sup>
- Adolescent sex offenders rates for sexual re-offenses (5-14%) are substantially less than their rates of recidivism for other delinquent behavior (8-58%).<sup>9,10,11</sup>



- Adolescent sex offenders commit a wide range of illegal sexual behaviors, ranging from limited exploratory behaviors committed largely out of curiosity to repeated aggressive assaults.
- The characteristics of adolescent sex offenders are also very diverse.<sup>12</sup>
  - Some are otherwise well-functioning youth with limited behavioral or psychological problems.
  - Some are youth with multiple non-sexual behavior problems or prior non-sexual juvenile offenses.
  - Some are youth with major psychiatric disorders.
  - Some come from well-functioning families; others come from highly chaotic or abusive backgrounds.
- Contrary to common assumption, most adolescent sex offenders have not been victims of childhood sexual abuse.<sup>13,14</sup>

### Community Safety and Supervision Issues

- There is general agreement that adolescent sex offenders should be processed through the juvenile justice system as it can provide documentation for future use and provide broader sentencing options.
- Adolescent sex offenders should be subjected to the normal juvenile probation supervision requirements.
- Most adolescent sex offenders pose a manageable level of risk to the community. They can be safely maintained in the community under supervision by probation officers and be treated in outpatient treatment programs.<sup>3</sup> However, a minority pose a danger to the community and require residential or custodial placement to ensure community safety.
- It is important to identify higher risk youth in order to make the most effective placement decisions. There is currently no scientifically validated system or test to determine exactly which adolescent sex offenders pose a high risk for recidivism. Mental health professionals and treatment staff typically overestimate the possibility of recidivism in evaluations, labeling far more teenagers as high risk than is actually accurate.<sup>15, 16</sup> In predicting risk to the community, it is usually appropriate to assume that an adolescent sex offender is relatively low risk unless there is significant evidence to suggest otherwise. Low risk does not imply the absence of risk, and low-risk offenders still need supervision and treatment. The following factors are important to consider in evaluating risk:
  - A history of multiple sexual offenses, especially if any occurs after adequate treatment.
  - A history of repeated non-sexual juvenile offenses.
  - Clear and persistent sexual interest in children.
  - Failure to comply with an adolescent sexual offender treatment program.
  - Self-evident risk signs such as out-of-control behavior, statements of intent to re-offend, etc.
  - Family resistance regarding supervision and compliance, (e.g., the youth needs to be supervised by appropriate adults in the home and community and the adults need to make certain the youth complies with probation and treatment requirements).
- Decisions about whether an adolescent sex offender should remain in the same home with the victim of his or her offense should be made carefully on a case-by-case basis. The decision may involve input from a variety of professionals within and outside of the juvenile justice system (e.g., child protection workers, therapists, etc.).
- For the adolescent sex offender who commits sexual offenses against young children, additional supervision requirements should be considered. The following suggested rules should be adapted for the specific adolescent's family:
  - No baby-sitting under any circumstances.
  - No access to young children or potential victims without direct supervision by a responsible adult who is aware of the problem.
  - No authority or supervisory role over young children (e.g., in school, church or job activities).
  - No possession or use of sexually explicit, "x-rated," or pornographic materials.

- These rules do not preclude most ordinary daily activities, such as going to school, church, stores, or restaurants with family, or involvement in age-appropriate and appropriately supervised peer activities.

Although there are safety and supervision issues that need to be addressed with this population, it is crucial to remember that adolescent sex offenders are different from adult sex offenders. The National Center on Sexual Behavior of Youth will continue to develop information on the subject of adolescent sex offenders and also on children with sexual behavior problems for professionals who work with these specialized populations.

Additional information about adolescent sex offenders and children with sexual behavior problems is available from the National Center on Sexual Behavior of Youth, [www.ncsby.org](http://www.ncsby.org).

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## NCSBY Fact Sheet

### Children with Sexual Behavior Problems: Common Misconceptions vs. Current Findings

Children with sexual behavior problems (SBPs) are children 12 years and under who demonstrate developmentally inappropriate or aggressive sexual behavior. This definition includes self-focused sexual behavior, such as excessive masturbation, and aggressive sexual behavior towards others that may include coercion or force. Recognizing these children and understanding the causes, impact, and treatment of the sexual behavior problems is a relatively new area of research and clinical practice. Some early assumptions about children with SBPs have not been supported by current research. This Fact Sheet will examine common misconceptions of children with SBPs along with the most recent findings.

#### COMMON MISCONCEPTIONS

1. All sexual behavior between children is normal, acceptable play.
  
2. Sexual acts between children are not harmful.

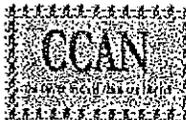
#### CURRENT FINDINGS

Some sexual behavior between children is not appropriate.

Sexual behavior between children is considered problematic when the sexual behavior: a) occurs at a high frequency; b) interferes with child's social or cognitive development; c) occurs with coercion, intimidation, or force; d) is associated with emotional distress; e) occurs between children of significantly different ages and/or developmental abilities; or f) repeatedly reoccurs in secrecy after intervention by caregivers.<sup>1,2</sup>

Sexual acts between children can be significantly harmful.

Some sexual play between young children close in age, such as playing doctor or looking at private parts, is not considered to be harmful.<sup>3,4</sup> However, some children display intrusive, aggressive, or coercive sexual behaviors which are potentially harmful to the other children involved.<sup>5,6,10,12</sup>



## COMMON MISCONCEPTIONS

3. Children with SBPs have been sexually abused.

4. Children who have been sexually abused later act out sexually with other children.

5. Girls rarely have sexual behavior problems.

6. Children with SBPs should not live in a home with other children.

7. Children with SBPs should be placed in specialized inpatient or residential treatment facilities.

## CURRENT FINDINGS

Many children with SBPs have not been sexually abused.

Research on children with SBPs has shown that highly inappropriate or aggressive sexual behavior is not always an indicator that a child has been sexually abused. In separate groups of children with SBPs, between 4% and 62% have no known history of sexual abuse.<sup>7,8,9</sup> It appears that sexual behavior problems in children have multiple origins. Family sexuality patterns, exposure to sexual material, other non-sexual behavior problems, exposure to family violence, and physical abuse can be important contributors to childhood sexual behavior problems.<sup>13,14</sup>

Most children who have been sexually abused do not have sexual behavior problems.

Children who have been sexually abused have been found to exhibit more frequent and intrusive sexual behaviors than children with no history of sexual abuse.<sup>12,15,21</sup> However, research suggests that most children who have been sexually abused do not have sexual behavior problems.<sup>12,15</sup>

Many children with SBPs are female.

In research on school-age children with SBPs, about one-third were female,<sup>7,8</sup> while a recent study on preschool children found that a majority were girls (65%).<sup>9</sup>

With appropriate treatment and careful supervision, most children with SBPs can live safely with other children.

Although research has not directly dealt with this issue to date, clinical experience indicates that many children with SBPs can remain in their home or a foster home with other children without problematic sexual behavior. However, children who continue to exhibit highly intrusive or aggressive sexual behavior despite treatment and close supervision should not live with other young children until this behavior is resolved.<sup>6,16</sup>

Outpatient treatment can be successful for most children with SBPs.

Most children can be successfully treated and managed on an outpatient basis while living at home.<sup>6</sup> Inpatient treatment should be reserved for unusually severe and serious cases, such as a child with other psychiatric disorders and/or highly aggressive sexual behavior which recurs despite appropriate outpatient treatment and close supervision.<sup>16</sup>

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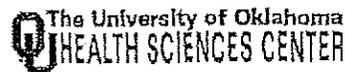
### Adolescent Sex Offenders: Common Misconceptions vs. Current Evidence

Adolescent sex offenders (ASOs) are defined as adolescents from 13 to 17 who commit illegal sexual behavior as defined by the sex crime statutes of the jurisdiction in which the offense occurred. This fact sheet will inform juvenile justice professionals, child welfare personnel, educators, policymakers, clinicians, parents, and the general public about the current information on this population.

#### COMMON MISCONCEPTIONS

#### CURRENT EVIDENCE

- |   |   |
|---|---|
| 1. Few sex crimes are committed by adolescents.                             | ASOs commit a substantial number of sex crimes, including 17% of all arrests for sex crimes <sup>1</sup> and approximately 1/3 of all sex offenses against children. <sup>2</sup>   |
| 2. Only adolescent males commit sex offenses.                               | Females under the age of 18 account for 1% of forcible rapes committed by juveniles and 7% of all juvenile arrests for sex offenses, excluding the category of prostitution. <sup>3</sup>   |
| 3. ASOs are curious about sexuality and do not commit serious sex offenses. | While some illegal sexual behavior by ASOs is limited, such as touching a child over the clothes, other ASOs have extensive, aggressive sexual behavior including forced anal or vaginal intercourse. <sup>4</sup>                    |
| 4. ASOs come from highly dysfunctional families.                            | There is no specific family profile for ASOs.<br><br>No unique family pattern has been identified for ASOs. <sup>4</sup> The characteristics of ASO families are diverse and may or may not be considered dysfunctional. <sup>5</sup> |



## COMMON MISCONCEPTIONS

## CURRENT EVIDENCE

5. ASOs were molested as children.

Many ASOs were not sexually victimized as children.<sup>4,7,8</sup>

The self reported rates of sexual victimization of ASOs range from 20%<sup>9</sup> to 55%.<sup>4</sup> Several studies have shown higher rates of self-reported physical abuse than sexual abuse.<sup>5</sup>

6. ASOs will become adult sexual offenders.

Current research shows that the sexual re-offense rate for ASOs who receive treatment is low in most US settings.<sup>9</sup>

Studies suggest that the rates of sexual re-offense (5 – 14%) are substantially lower than the rates for other delinquent behavior (8 – 58%).<sup>10,11</sup> The assumption that the majority of ASOs will become adult sex offenders is not supported by the current literature.<sup>12</sup>

7. ASOs need long-term (3–5 years) intensive therapy (2–5 sessions per week).

Many ASOs are successfully treated in shorter, less intensive treatment programs.

Many ASOs are seen in outpatient group treatment programs that meet once a week for 8 to 28 months.<sup>13</sup>

8. ASOs should be placed in secure, residential treatment facilities.

Most ASOs can safely remain in the community during treatment.<sup>4</sup>

Some ASOs need residential placement; however, there is some professional consensus that most ASOs can be treated on an outpatient basis. Decisions about placement in residential or incarcerated settings should depend on community safety and treatment issues. The possible negative effects of out-of-home placement, such as increased risk of socialization into a delinquent lifestyle, negative peer influences, weakening of family ties, absence of parental involvement in treatment, and disruption of normal adolescent social development, should be considered.

9. ASOs have other serious psychological disorders.

Many ASOs do not have other major psychological problems.

Some ASOs have serious psychological problems, including conduct disorders, depression, and learning disabilities that need to be addressed during treatment.<sup>4</sup>

10. ASOs should not attend public schools.

Many ASOs can safely attend public schools and participate in school activities such as sports programs, the band, or the school newspaper.<sup>14</sup>

## COMMON MISCONCEPTIONS      CURRENT EVIDENCE

11. There are instruments that can determine whether or not an adolescent is at high risk to re-offend.      There is currently no test or scientifically validated instrument that can reliably determine if an adolescent will commit a subsequent sex offense.<sup>15</sup> There are instruments (J-SOAP-II, ERASOR-2) under development to assess, with reliability and validity, the risk for future sex offenses by adolescents.
12. ASOs are similar in most ways to adult sex offenders.      Most ASOs differ from adult sex offenders in several ways.
- ASOs are different from adult sex offenders in that they have lower recidivism rates, engage in fewer abusive behaviors over shorter periods of time, and have less aggressive sexual behavior.<sup>16</sup>

Additional information about adolescent sex offenders and children with sexual behavior problems is available from the National Center on Sexual Behavior of Youth, [www.ncsby.org](http://www.ncsby.org).

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- <sup>15</sup>Bonner, B. L., Marx, B. P., Thompson, J. M., & Michaelson, P. (1998). Assessment of adolescent sexual offenders. *Child Maltreatment*, 3, 374-383.
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## APPENDIX B

### 42 U.S.C. § 2241 Aggravated sexual abuse

(a) By Force or Threat.— Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly causes another person to engage in a sexual act—

(1) by using force against that other person; or

(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(b) By Other Means.— Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly—

(1) renders another person unconscious and thereby engages in a sexual act with that other person; or

(2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby—

(A) substantially impairs the ability of that other person to appraise or control conduct; and

(B) engages in a sexual act with that other person;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(c) With Children.— Whoever crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or knowingly engages in a sexual act under the circumstances described in subsections (a) and (b) with another person who has attained the age of 12 years but has not attained the age of 16 years (and is at least 4 years younger than the person so engaging), or attempts to do so, shall be fined under this title and imprisoned for not less than 30 years or for life. If the defendant has previously been convicted of another Federal offense under this subsection, or of a State offense that would have been an offense under either such provision had the offense occurred in a Federal prison, unless the death penalty is imposed, the defendant shall be sentenced to life in prison.

(d) State of Mind Proof Requirement.— In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.

## APPENDIX C

### QUICK REFERENCE GUIDE FOR JUVENILE SEX OFFENSE/CHILD-VICTIM ADJUDICATIONS FROM JULY 1, 2007 THROUGH DECEMBER 31, 2007

Created by the Ohio Judicial Conference in cooperation with Erin Rosen, Senior Assistant Ohio Attorney General; David J. Diroll, Director of the Ohio Criminal Sentencing Commission; Judge Thomas R. Lipps, Hamilton County Ohio Juvenile Court; Judge Robert P. Ringland, Clermont County Ohio Common Pleas Court; Leah Dugan, Legal Advisor, Hamilton County Ohio Juvenile Court; and Christine Julian, Senior Assistant Prosecuting Attorney for Franklin County, Ohio.

This reference guide addresses recent changes to Ohio's SORN Law implemented pursuant to the federal Adam Walsh Child Safety and Protection Act of 2006 (AWA). The guide applies to delinquent children who, on or after July 1, 2007 and on or before December 31, 2007, are classified as juvenile offender registrants relative to a sexually oriented offense or child-victim oriented offense.

- 1. Determine whether the juvenile will be committed to the custody of DYS.
  - Juvenile committed to the custody of DYS.
    - Commit the juvenile in accordance with the laws, practices, and procedures in effect until January 1, 2008 (pre-AWA). **DO NOT** take any of the additional steps described below.
  - Juvenile **NOT** committed to the custody of DYS.
    - Conduct the adjudication in accordance with the laws, practices, and procedures in effect until January 1, 2008 (pre-AWA) **AND**, when classifying the child a juvenile offender registrant, take the additional steps described below (ORC 2950.032(C) and (D)).
  
- 2. Determine whether the juvenile is a Public Registry Qualified Juvenile Offender Registrant (PRQJOR) subject to automatic Tier III classification. A juvenile is a PRQJOR subject to automatic Tier III classification if **BOTH** of the following apply (ORC 2152.86):
  - The juvenile was 14 or older at the time of committing the act.
  - The juvenile is adjudicated delinquent **AND** classified a serious youth offender (SYO) for committing, attempting to commit, conspiring to commit or complicity in committing any of the following acts:
    - Rape (ORC 2907.02).
    - Sexual battery (ORC 2907.03).
    - Gross sexual imposition (ORC 2907.05(B) – new).
    - Aggravated murder with sexual motivation (ORC 2903.01).
    - Murder with sexual motivation (ORC 2903.02).
    - Kidnapping with sexual motivation (ORC 2905.01).
  
- 3. Identify the juvenile as a Tier I, Tier II, or Tier III sex offender/child-victim offender on the basis of the juvenile's underlying offense (refer to offense tier charts, below).

**NOTE: A PUBLIC REGISTRY QUALIFIED JUVENILE OFFENDER REGISTRANT IS AUTOMATICALLY A TIER III SEX OFFENDER/CHILD-VICTIM OFFENDER REGISTRANT REGARDLESS OF THE UNDERLYING OFFENSE.**

4. If the juvenile is a Tier III sex offender/child-victim offender, determine whether the juvenile will be subject to the victim and community notification requirements of ORC 2950.10 and 2950.11. Make this determination on the basis of whether the juvenile is a public registry qualified juvenile offender registrant, as follows:

Juvenile is a public registry qualified juvenile offender registrant.

→ Impose the victim and community notification requirements (ORC 2950.10(B) and 2950.11(F)).

Juvenile is a Tier III sex offender/child victim offender, but is NOT a public registry qualified juvenile offender registrant.

→ Victim and community notification requirements may be imposed at the court's discretion (ORC 2152.82(B)).

5. Provide the juvenile with ALL of the following (ORC 2950.032(C) and (D)):

(A) The notices required under the law as it currently exists (pre-AWA) regarding the juvenile's duties under ORC Chapter 2950.

(B) The changes to ORC Chapter 2950. that will take effect January 1, 2008 (AWA).\*

(C) The juvenile's classification as a Tier I, Tier II, or Tier III sex offender/child victim offender under ORC Chapter 2950. as it will exist on January 1, 2008 (AWA); the juvenile's duties under that law as so changed; and the duration of those duties.\*

(D) Written notice that clearly indicates that the juvenile is required to comply with the duties described in (A) above until January 1, 2008 and will be required to comply with the duties described in (C) above on and after January 1, 2008.

6. Require that the juvenile read and sign a form stating that all of the information described in (4) above has been explained to the juvenile. If the juvenile is unable to read, certify on the form that the juvenile was specifically informed of all of that information and the juvenile indicated an understanding of it. Require that the juvenile's parent, guardian, or custodian also sign the form.\*

\* Use form entitled "Explanation of Duties to Register as a Juvenile Offender Registrant or Child Victim Offender," which is available online at the Ohio Judicial Conference's official website, [www.ohiojudges.org](http://www.ohiojudges.org).

7. After the juvenile has signed the form described in (6) above or the court has certified the form as described in (6) above, do ALL of the following (ORC 2950.032(D)):

Give one copy of the form to the juvenile.\*\*

No later than three days after the juvenile signs the form or the court certifies the form:

Send one copy of the form to the Bureau of Criminal Identification and Investigation.

Send one copy of the form to the sheriff of the county in which the juvenile expects to reside.

Send one copy of the form to the prosecutor who handled the case.

\*\* It is advisable to also provide a copy to the juvenile's parent, guardian, or custodian because that individual is subject to criminal prosecution if the juvenile fails to comply with the registration requirements.

SEXUALLY ORIENTED OFFENSES WITH TIERS (R.C. 2950.01(E), (F), and (G))

Tier I Sex Offender	Tier II Sex Offender	Tier III Sex Offender
2907.06 Sexual Imposition	2907.21 Compelling Prostitution	2907.02 Rape
2907.07 Importuning	2907.321 Pandering Obscenity involving Minor	2907.03 Sexual Battery
2907.08 Voyeurism	2907.322 Using Minor in Sexual Material	2907.05(B) Gross Sexual Imposition- Touching genitalia of victim under 12
2907.32 Pandering Obscenity	2907.04 Adults Only	2903.01 Agg Murder with sexual motivation
2907.04 Adults Only	2907.05(A)(4) Gross Sexual Imposition Victim under 13	2903.02 Murder with sexual motivation
2907.05(A)(1,2,3,5) Gross Sexual Imposition	2907.323(A)(1 or 2) Nudity – Minor	2903.11 Fel Assault with sexual motivation
2907.323(A)(3) Nudity-Minor	2905.01(A)(1,2,3,5) sexual motivation Kidnapping with sexual motivation	2903.04(A) Invol Mans when felony is committed with sexual motivation
2903.211(A)(3) Menacing By Stalking with sexual motivation	2905.01(A)(4) Kidnapping to engage in sexual activity against will of victim over 18	2905.01(A)(4) Kidnapping to engage in sexual activity with victim under 18
2905.03(B) Unlawful Restraint with sexual motivation	2905.02(B) Abduction with SM	2905.01(B) Kidnapping when victim under 18 & offender is not parent; does not require sexual motivation or sexual activity
2905.05(B) Child Enticement with sexual motivation	2919.22(B)(5) Child Endangering – child in porno	
Attempt, Conspiracy or Complicity of any Tier I sex offense	Attempt, Conspiracy or Complicity of any Tier II sex offense	Attempt, conspiracy or complicity of any Tier III sex offense
	Sex offense committed after classified a Tier I offender	Sex offense committed after classified a Tier II or III offender
	A pre-SB 10 habitual offender unless reclassified after 2950.031 or .2950.032 hearing	A pre-SB 10 predator unless reclassified after 2950.031 or 2950.032 hearing
		2971.03(F) Sexually Violent Predator specification (adults)
Any comparable offense from another jurisdiction falls within the same tier as the Ohio offense.		

Prepared by Allen R. Miller, Deputy Chief Magistrate; Hamilton County Juvenile Court, 9-21-07

**CHILD VICTIM OFFENSES WITH TIERS (R.C. 2950.01(C))**

The victim must be less than 18 years old and not the offender's own child.

Tier I Child Victim Offender	Tier II Child Victim Offender	Tier III Child Victim Offender
2905.01(A)(1,2,3 or 5) <b>Kidnapping</b> (no sexual motivation or sexual activity)		
2905.02(A) <b>Abduction</b> (no sexual motivation)		
2905.03(B) <b>Unlawful Restraint</b> (no sexual motivation)		
2905.05(A) <b>Child Enticement</b> (no sexual motivation)		
Attempt, Conspiracy or Complicity of any Tier I offense		
	CVO offense committed after classified as a Tier I sex or CVO offender	CVO offense committed after classified a Tier II or III sex or CVO offender
	A pre-SB10 Habitual CVO unless reclassified after 2950.031 or 2950.032 hearing	A pre-SB10 CVO Predator unless reclassified after 2950.031 or 2950.032 hearing
Any comparable offense from another jurisdiction falls within the same tier as the Ohio offense.		

*Prepared by Allen R. Miller, Deputy Chief Magistrate; Hamilton County Juvenile Court, 9-21-07*



**STATE OF OHIO**  
**Office of the Attorney General**

Ohio's Adam Walsh Act Compliance  
Guide to Ohio's Sex Offender  
Registration and Notification Laws  
"SORN" 2008 Update  
Following Passage of  
the Adam Walsh Act



# Guide to Ohio's Sex Offender Registration and Notification Laws

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## Purpose and History

The 1994 Federal Crime Act contained a provision called “The Jacob Wetterling Act”, which required all states to pass a sex offender registration and notification law or face the loss of millions of dollars in federal crime prevention funds.<sup>1</sup> The law was enacted partly in response to the disappearance of 11-year old Jacob Wetterling, who was abducted at gunpoint as he rode his bike home from a convenience store in 1989. The crime remains unsolved. The Wetterling Act sets out the minimum standards for the states’ sex offender and child victim offender registration programs. For instance, the basic requirements included registering offenders for at least 10 years, taking registration information from offenders and informing them of their obligation to register upon release, and requiring addresses to be verified periodically. All 50 states now have sex offender registration laws; the majority—including Ohio—also require some form of community and victim notification.

Ohio’s Sex Offender Registration and Notification law (SORN), is designed to provide the public with adequate notice and information about those convicted sex offenders and child-victim oriented offenders that have returned to the community.<sup>2</sup> SORN has been amended several times since its original enactment in 1996. One of the first significant changes was under Senate Bill 3, which extended SORN laws to juvenile offenders as of January 1, 2002. If a child committed an offense on or after that date and was between 14 and 17 years of age at the time of the offense, they may be subject to registration requirements.<sup>3</sup>

Substantial modifications were again made to the SORN laws as a result of Senate Bill 5, which went into effect July 31, 2003. For instance, the bill added a new category of offenses known as “child-victim oriented offenses”; created a class of offenses that are presumed not to require registration; prohibited registered offenders from living within 1,000 feet of any school premises; and increased the penalties for registration violations.<sup>4</sup> The legislature also directed the Attorney General’s Office to establish and maintain a public database on the Internet that

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<sup>1</sup> Jacob Wetterling crimes against children and sexually violent offender registration program, 42 USCS sec. 14071

<sup>2</sup> See O.R.C. 2950.02 which sets forth the legislative determinations and intent to provide information to protect public safety.

<sup>3</sup> Laws pertaining specifically to juvenile offenders can be found at R.C. 2152.82-.86; additional duties are set forth in the adult provisions, R.C. 2950.01 et seq.

<sup>4</sup> Ohio’s SORN laws for adult offenders can be found at R.C. 2950.01 et seq.

contains information on registered offenders.<sup>5</sup> Known as “eSORN”, the database can be searched by name, county, zip code and school district.

More changes were made in April 29, 2005. These addressed registration duties of homeless offenders, authorized local prosecutors to evict offenders violating residency restrictions, and clarified the “sexually violent predator” sentencing law.<sup>6</sup>

**Most recently** in 2007, the Ohio state legislature passed Senate Bill 10 (S.B. 10), which implemented the Adam Walsh Child Protection and Safety Act of 2006, a federal law which requires the classification of sex offenders into three tiers based on offense of conviction. Offenders are categorized based on the severity of the offense as designated by S.B. 10. S.B. 10 has repealed the previous seven-category classification that existed in Ohio. Risk-assessment has been removed as a method to categorize offenders, although repeat offender status may influence the tier in which a sex offender is assigned. New changes have been made with respect to juvenile sex offenders, most notably in the creation of a new category of juvenile offenders designated as Public Registry-Qualified Juvenile Offender Registrants (“PRQJORS”). These offenders have registration requirements more similar to adult registrants and appear on eSORN.

S.B. 10 has also made changes by broadening the category of offenses that qualify as sex offenses. Child enticement, unlawful restraint, menacing by stalking, and abduction offenses have been amended to include a sexual motivation element that would require offenders to register. Additionally, as of January 1, 2008, possession of child pornography will now qualify as a registration offense.

Finally, S.B. 10 has also changed the actual registration and notification process by requiring additional information to be gathered from the registrants and changed the frequency and duration of registration.

In addition to the SORN laws, there are also administrative rules that set forth certain procedures and responsibilities of law enforcement, school administrators, and agencies charged with carrying out the SORN laws.<sup>7</sup>

Although these laws have undergone a number of changes over the years, it is important to remember that SORN only applies to those Ohio adult offenders

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<sup>5</sup> O.R.C. 2950.13(A)(11); eSORN can be accessed through the AG’s website at <http://www.ag.state.oh.us/citizen/esorn.asp>.

<sup>6</sup> see H.B. No. 473

<sup>7</sup> See OAC 109:5-2-02 through 109:5-2-06

that were incarcerated, under supervision, or convicted of an offense on or after July 1, 1997. Any adult offender who completely served their sentence prior to that date is not subject to SORN requirements. Additionally, SORN only applies to Ohio juveniles that committed an offense on or after January 1, 2002 and were at least 14 years of age at the time of the offense.

Newly-enacted provisions have not yet been fully litigated, so it is unclear how a court may interpret such statutes. If there is a question as to a provision's meaning or intent, final authority lies with the local prosecuting attorney—although the Attorney General's Office can issue a formal opinion on a specific issue upon request. This manual is intended to provide a brief, helpful overview of the SORN laws and rules as they apply to juvenile and adult offenders and to give guidance to law enforcement to ensure compliance with SORN.<sup>8</sup>

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<sup>8</sup> Pertinent legislation can be found on the Ohio General Assembly's website, <http://www.legislature.state.oh.us>.

# Offender Classifications

There are two types of offenders that must comply with SORN:

1). **Sex Offender** - is a person who has been convicted of, or pleaded guilty to, adjudicated delinquent by reason of committing an offense which is either inherently sexual, or which involved a sexual motivation.

Rape, Sexual Battery, Gross Sexual Imposition, Importuning, and a wide array of offenses committed with a sexual motivation, such as Kidnapping, are sexually oriented offenses. Furthermore, "equivalent offenses" from other jurisdictions outside of Ohio, and Attempt, Conspiracy, or Complicity to commit one of these offenses are also sexually oriented offenses.<sup>9</sup> An offender will automatically be classified as a sexually oriented offender upon being convicted of a qualifying offense.

2). **Child Victim Offender** - is defined as a person convicted of, or pleaded guilty to, adjudicated delinquent by reason of committing a "child-victim oriented offense." Child victim-oriented offenses are specified offenses committed against children under the age of 18 with no sexual motivation. Specifically, they are : kidnapping, abduction, unlawful restraint, criminal child enticement or child stealing. This classification also includes attempt, conspiracy, and complicity to commit one of these offenses, and equivalent offenses from other jurisdictions.<sup>10</sup> However, it does not apply to a parent who commits an offense against his or her own child.<sup>11</sup> Like the classification for sexually oriented offenders, classification as a child-victim oriented offender is by operation of law once an offender is convicted of a qualifying offense.<sup>12</sup>

The offender is then classified into one of the three tiers described in S.B. 10. The offender's tier classification is determined by their convicted offense. Each tier has different registration requirements.

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<sup>9</sup> O.R.C. 2950.01(A)

<sup>10</sup> R.C. 2950.01(C)

<sup>11</sup> According to the definition under R.C. 2950.01(C), the victim must not be "child of the person who commits the violation".

<sup>12</sup> See State v. Alexander, 2005 Ohio 635, 2005 Ohio App. LEXIS 645 .

## Tier Classifications

### A. Tier III Offender

*Tier III Sex Offender* is defined as a person who has been convicted of, or pleaded guilty to, or adjudicated delinquent by reason of committing a sexually oriented offense *that is punishable by imprisonment for more than one year*. The description also includes any sexual offense that occurs after the offender is classified as a Tier II or Tier III offender. Tier III offenders include pre-Adam Walsh Act “sexual predators.”

Tier III offenders are subject to strict address verification, and the community and victim receive notification whenever such an offender relocates to a new address.

#### **The following are Tier III Sexually Oriented offenses:**

1. 2907.02 Rape
2. 2907.03 Sexual Battery
3. 2903.01 Aggravated Murder with Sexual Motivation
4. 2903.02 Murder with Sexual Motivation
5. 2903.04(A) Unlawful Death or termination of pregnancy as a result of committing or attempt to commit a felony with sexual motivation.
6. 2905.01(A)(4) Kidnapping of minor to engage in sexual activity
7. 2905.01(B) Kidnapping of minor, not by parent
8. 2907.05(B) Gross Sexual Imposition, victim under 12 years old
9. 2903.11 Felonious Assault with sexual motivation
10. 2907.12 Felonious sexual penetration (former law).
11. Pre-Adam Walsh Act “sexual predators”
12. Attempt, complicity, or conspiracy to commit any of these offenses.

Tier III Child Victim oriented offenses include the following: any child victim oriented offense that occurs after the offender is classified as a Tier II or III Child Victim Oriented offender; pre-AWA child victim oriented predators; attempt, complicity, or conspiracy to commit any of these offenses.

Tier III Sex Offenders and Child Victim Oriented Offenders are subject to registration and verification requirements every ninety (90) days for life.

## B. Tier II Offender

*Tier II Sex Offender* is defined as a person who has been convicted of, or pleaded guilty to, or adjudicated delinquent by reason of committing a sexually oriented offense that is not a Tier III offense, but is punishable by more than one year in prison. Tier II offenders also include any pre-Adam Walsh Act "habitual offenders."

The following are Tier II Sex offenses:

1. 2907.21 Compelling Prostitution
2. 2907.321 Pandering Obscenity Involving a Minor
3. 2907.322 Pandering Sexually Oriented Material Involving a Minor
4. 2907.323(A)(1)(2) Illegal Use of a Minor in Nudity-oriented Material or Performance
5. 2907.04 When offender is at least 4 years older; or when then offender is less than 4 years older and has prior conviction of Rape, Sexually Battery
6. 2907.05(A)(4) Gross Sexual Imposition victim under 13
7. 2919.22(B)(5) Child Endangering
8. 2905.01(A)(1)-(3),(5) Kidnapping with Sexual Motivation
9. 2905.01(A)(4) Kidnapping victim over 18
10. 2905.02(B) Abduction with sexual motivation
11. Any sexual offense that occurs after the offender has been classified as a Tier I offender.
12. Attempt, complicity, or conspiracy to commit any of these offenses.

Tier II Child Victim oriented offenses include the following: any child victim oriented offense that occurs after the offender has been classified as a Tier I Child Victim Oriented offender; an attempt, complicity or conspiracy to commit any of these offenses; pre-AWA habitual child victim oriented offenders.

Tier II Sex Offenders and Child Victim Oriented Offenders are subject to registration and verification requirements every six months for a period of 25 years; Tier II Juveniles register for 20 years, unless modified by the Juvenile Court.

### C. Tier I Offender

*Tier I Sex Offender* is defined as a person who has been convicted of, or pleaded guilty to, or adjudicated delinquent by reason of committing a sexually oriented offense that is not a Tier II or Tier III offense.

The following are Tier I sex offenses:

1. 2907.07 Importuning
2. 2907.04 Unlawful Sexual Conduct with a Minor, nonconsensual and offender less than 4 years older than victim, not previously convicted of 2907.02, 2907.04, or former 2907.12.
3. 2907.08 Voyeurism
4. 2907.06 Sexual Imposition
5. 2907.05(A)(1)-(3),(5) Gross Sexual Imposition
6. 2907.323(A)(3) Illegal Use of a Minor in Nudity-oriented Material or Performance
7. 2905.05(B) Child Enticement with Sexual Motivation
8. 2907.32 Pandering Obscenity
9. 2903.211(A)(3) Menacing by Stalking with Sexual Motivation
10. 2905.03(B) Unlawful Restraint with Sexual Motivation
11. Attempt, complicity, or conspiracy to commit any of these offenses.

Tier I Child Victim Oriented offenses include the following:

1. 2905.01 (A) (1), (2), (3) or (5) Kidnapping [no sexual motivation]
2. 2905.02 (A) Abduction [no sexual motivation]
3. 2905.03(A) Unlawful Restraint [no sexual motivation]
4. 2905.05 (A) Child Enticement [no sexual motivation]
5. Attempt, complicity, or conspiracy to commit any of these offenses.

Tier I Sex Offenders and Child Victim Oriented offenders are subject to registration and verification requirements once every twelve months for a period of 15 years; Tier I Juveniles register for 10 years, unless modified by the Juvenile Court.

# Registration Duties

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## “Notice of Registration Duties” Form

All adult sexually oriented offenders and all adult child victim oriented offenders must register their home, school, and work addresses, report changes in addresses, and periodically verify addresses with the sheriff in each respective county.<sup>13</sup> Offenders subject to registration will be provided with a “Notice of Registration Duties” form prior to their release into the community outlining these responsibilities—duties may vary depending on an offender’s classification. (A separate notice form is used for juveniles.) Typically, the sentencing judge or DRC official will provide this notice to the offender. Once the notice form is completed and signed by the offender, copies must be sent within 3 days to BCI and to the county where the offender expects to reside.<sup>14</sup> Failure to comply with registration duties is a criminal offense.

## Duty to Register

### Initial Registration

All sex offenders and child victim oriented offenders must register with the sheriff within **three days** of arrival in the county he/she plans to live in or is temporarily domiciled in for more than three days, attends school in, or is employed in for three or more consecutive days or fourteen aggregate days in a calendar year. Adult offenders and certain juvenile offender registrants attending school or working out of state must register with the sheriff or any other appropriate person of another state upon entering that state, regardless of whether the offender or juvenile resides or has a temporary domicile in this state or another state.<sup>15</sup>

1. A sex offender or child-victim oriented offender is required to register in person with the sheriff of each county in which he/she establishes a residence, employment, attends school, or a place of higher education.
2. A sex offender or child-victim oriented offender is also required to register with the sheriff of any of the following events:

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<sup>13</sup> Non-Public Qualified Juvenile Offender Registrants need only register their residential address.

<sup>14</sup> R.C. 2950.03(B)(3) and (C)

<sup>15</sup> See discussion of Public Registry Qualified Juvenile Offender registrants.

- Release from a jail, workhouse, state correctional institution, or any other institution in which the offender was serving a prison term, term of imprisonment, or confinement.
- Sentencing by the court when the court's sentence does not include a prison term, term of imprisonment, or confinement.
- Relocation to Ohio from another state.
- Out-of-state offenders subject to registration in another jurisdiction entering Ohio to attend school full-time or part-time, or to work.

Registration information shall include, but is not limited to, the registrant's residence address, school and work address, if applicable, and a photograph of the registrant.

### Change of Address

Once an offender has initially registered in Ohio, before he or she can move or switch schools, notice *must* be given to both the sheriff in the current county and to the sheriff in the new county. This is to ensure that offenders subject to registration do not "fall through the cracks". Failure to communicate with either sheriff before relocating is a criminal offense.

1. At least 20 days prior to moving to a new residence address an offender must give written notice of this change to the sheriff with whom the offender has most recently registered and to the sheriff in county where the offender intends to reside.
2. Adult offenders and certain juvenile offender registrants similarly must give 20-day written notice to the sheriff with whom he or she most recently registered and the expectant county sheriff before changing a school address, and must notify both sheriffs not later than 3 days after changing the place of employment.
3. If the offender is moving out of state, the sheriff must promptly forward the new address to BCI; if the offender is moving within Ohio, the sheriff must promptly send notice to the sheriff in the new county where the offender is expected to reside.

4. The sheriffs enter the change of address information electronically on eSORN, which updates the state registry maintained by BCI.<sup>16</sup>
5. The duty to provide notice of change of address applies even if the offender will be living, working, or attending school at a new location in the same county.
6. It is a criminal offense to fail to send proper written notice of a change of address or to fail to register a new address.

### Homeless/Transient Offenders

On a number of occasions, homeless offenders have challenged the constitutionality of the registration laws as applied to them, arguing that their inability to secure stable housing made it impossible for them to comply with the law<sup>17</sup>. Transient offenders that move to a location other than a “fixed address” must provide the sheriff with a detailed description of the place or places they intend to stay, which shall be considered the offenders’ residence address until more permanent housing can be found.<sup>18</sup> The law now also provides that an offender can raise the affirmative defense to a charge of failing to report a change of address if they did not know of the new address or did not have the opportunity to report the change – for instance, due to eviction.<sup>19</sup> Sudden changes in address must be immediately reported to the sheriff in order for the offender to raise this defense.

### Periodic Address Verification

1. A Tier III offender must verify a current residence, school, and work address every **90 days from the first registration date** by personally reporting to the respective sheriff’s office.
  - A Tier III offender must provide accurate information to the sheriff for the completion of the sex offender’s registration requirements.
  - A Tier III offender must continue to verify registration information every 90 days for life.

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<sup>16</sup> See OAC 109:5-2-02

<sup>17</sup> For instance, see *St v. Parrish*, 2000 Ohio App. LEXIS 5995; *State v. Beasley*, 2001 Ohio App. LEXIS 4353; *State v. Ascoine*, 2003 Ohio 4145.

<sup>18</sup> O.R.C. 2950.05(A)

<sup>19</sup> O.R.C. 2950.05(G)

2. Tier II offenders must verify registration information **every 6 months after the initial registration date.**
  - The Tier II offender must report in person to the sheriff of the county where the offender's residence address is located.
  - A Tier II offender must provide accurate information to the sheriff for the completion of the registration.
  - Tier II adult offenders must continue to verify registration information every 180 days for 25 years; Tier II juvenile offenders verify every 180 days for 20 years.
  
3. Tier I offenders must verify registration information **once every year after the initial registration date.**
  - The Tier I offender must report in person to the sheriff of the county where the offender's residence address is located.
  - A Tier I offender must provide accurate information to the sheriff for the completion of the registration.
  - Tier I adult offenders must continue to verify registration information once every year for 15 years; Tier I juvenile offenders verify once a year for 10 years.

# Responsibilities of the Sentencing Court

Pursuant to O.R.C. 2950.03 (A)(2), the Sentencing Court is tasked with providing the Notice of Duty to Register immediately after sentencing. The Court must complete the Notice of Duties to Register Form and:

- Ensure that the offender reads, understands, and signs the Notice of Duties to Register Form provided by BCI&I.
- Give the **Green** copy of the explanation of duties to Register form to the offender/juvenile/juvenile's parents.
- Send the **Pink** copy to the sheriff of the county in which the offender expects to reside upon release.
- Send the **Yellow** copy to the sheriff of the county in which the offender was convicted or adjudicated.
- Send the **White** copy to BCI & I.
- Retain the **Gold** copy.
- If not incarcerated, advise the offender or juvenile to report in person and register with the sheriff of the county in which the offender or juvenile expects to reside within three days.
- If not incarcerated, advise the offender to report in person and register with the sheriff of the county in which the offender is employed within three days of employment.
- If not incarcerated, advise the offender to report in person and register with the sheriff of the county in which the offender attends school (or a place of higher education) within three days upon enrollment.
- If the offender or juvenile is being incarcerated, a law enforcement office must be present to escort the offender or juvenile to the sheriff's office for pre-registration.

# Responsibilities of the Ohio Department of Rehabilitation And Correction and Department of Youth Services

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## Responsibilities at Time of Offender's or Juvenile's Release<sup>20</sup>

1. Complete the explanation of duties to register form 10 days prior to release.
  - Ensure that the offender reads, understands, and signs the Form.
  - Give the **Green** copy of the explanation of duties to register form to the offender or juvenile.
  - Send the **Pink** copy to the sheriff of the county in which the offender or juvenile expects to reside upon release.
  - Send the **Yellow** copy to the sheriff of the county in which the offender was convicted or the county in which the juvenile was adjudicated.
  - Send the **White** copy to BCI & I.
  - Retain the **Gold** copy.
  - Advise the offender or juvenile to report in person and register with the sheriff of the county in which the offender or juvenile expects to reside within three days.
  - Advise the offender or public registry qualified juvenile offender to report in person and register with the sheriff of the

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<sup>20</sup> This only applies to Juveniles for whom the Court has already determined them to have a duty to register. See section on Juveniles for more detailed explanation.

county in which the offender is employed within three days of employment.

- Advise the offender or public registry qualified juvenile offender to report in person and register with the sheriff of the county in which the offender attends school (or a place of higher education) within three days upon enrollment.
2. Complete a red sex offender fingerprint card.
- Provide all requested information and obtain offender's fingerprints.
  - Attach the sex offender fingerprint card and the offender's or juvenile's photograph to the copy of the explanation of duties to register form being sent to BCI & I.
  - Attach another sex offender fingerprint card and photograph to the copy of the explanation of duties to register form being sent to the sheriff of the county in which the offender or juvenile expects to reside.
3. Three (3) days after release, a parole officer is to verify that the offender or juvenile is registered pursuant to ORC 2950.04 or 2950.041.<sup>21</sup>

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<sup>21</sup> See ORC 2950.042.

# Responsibilities of the Sheriff

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## Responsibilities Upon Initial Registration

1. The sheriff must:
  - Complete a criminal history check to ensure the offender is required to register.
  - Complete the sex offender fingerprint card.
  - Ensure that the sex offender reads and signs the card.
  - Ensure that the sex offender fingerprint card has both a BCI&I and an FBI number.
  - If the offender does not have a FBI number, complete the FBI fingerprint card and forward it to BCI&I along with the BCI&I sex offender fingerprint card and photograph.
  - Submit fingerprints and photograph to BCI&I electronically through e-SORN.
  - The sheriff does not have to complete the explanation of duties to register form if the sex offender and sheriff have both received a copy from either the Department of Rehabilitation and Correction or the Court.
  - The sheriff may periodically verify that the offender's address exists or that the offender actually resides at the registered address.

## Responsibilities Upon Periodic Verification of Address

1. The sex offender is required to periodically verify his or her current address.
  - A Tier III offender must report in person to the sheriff every 90 days from his/her initial registration date and verify that the information on file at the sheriff's office is current.
  - A Tier II offender must report in person to the sheriff every 180 days from his/her initial registration date and verify that the information on file at the sheriff's office is current.

- A Tier I offender must report in person to the sheriff once every year on the anniversary date of his/her initial registration date and verify that the information on file at the sheriff's office is current.
2. The sheriff must:
    - Obtain a new photograph, (it is not necessary to complete a new fingerprint card).
    - Forward the offender's photo and updated information electronically to BCI&I through e-SORN.
  3. The sheriff may periodically verify that the offender's current address exists or that the offender actually resides at the current address.

### **Responsibilities Upon Offender's Failure to Comply with Registration Requirement**

- 1) A sex offender must report in person and register with the sheriff within **three days** of any of the following events:
  - Release from a jail, workhouse, state correctional institution, or any other institution in which the offender was serving a prison term, term of imprisonment, or confinement
  - Sentencing by the court when the court's sentence does not include a prison term, term of imprisonment, or confinement.
  - Relocation to Ohio from another state.
  - A permanent change of residence, or a temporary change of residence of more than five days. (Registration is five days prior to the move.) (Notification in person at the sheriff's office requires a 20 day notice.)
  - Quarterly address verification date for Tier III offenders.
  - Semi annual address verification date for Tier II offenders.
  - Annual address verification date for Tier I offenders.
- 2) If a sex offender fails to register within five days of any of the above-described events, the sheriff must send a warning letter to the offender.
  - The letter must notify the sex offender of the offender's duty to register a new address or to verify a current address.
  - The letter must advise the offender that failure to register or verify the offender's address with the sheriff, within seven days of the date of the letter, will result in the offender being arrested for failure to register, failure

to provide a change of address, or failure to periodically verify current address.

- The letter must be sent to the last address reported by the offender by non-forwardable mail.
- 3) If a sex offender fails to register within seven days of the date of the warning letter, the sheriff must:
- Obtain a warrant for the arrest of the sex offender.
  - Forward to BCI&I a copy of the warrant issued for the sex
    - (i) offender's arrest and a copy of the warning letter that the sheriff sent to the sex offender.

# Responsibilities of the Ohio Bureau of Criminal Identification and Investigation

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## Responsibilities

- Operate the state of Ohio central repository for sex offenders.
- Distribute forms for sex offender registration
- Serve as the State of Ohio contact for the National Sex Offender Registry
- Enter sex offender information into the states electronic fingerprint system
- Inactivate names from the state and federal registration following termination of the registration requirement
- Notify another state when a sex offender indicates his/her intention to change address to another state
- Notify the sheriff when a sex offender indicates that he/she is moving into the sheriff's county from another county or from another state
- Create a statewide website of all sexually oriented-offenders
- Must also create a law enforcement-only database of all registration-data on all Ohio offenders

# When the Offender Fails to Comply

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## Offenses for Failure to Register, Failure to Provide Change of Address, Failure to Verify, or Giving False Registration Data

S.B. 97 requires that all failures to register offenses are to be treated as felonies of the fourth degree or higher. Examples of the offenses are listed below:

### Failure to register – O.R.C. 2950.04(E)

The defendant, John Doe, being a person required to register with the \_\_\_\_\_ County Sheriff's Office in \_\_\_\_\_ County, Ohio, within three days of coming into this county in which he/she resides or is temporarily domiciled for more than three days, pursuant to O.R.C. 2950.04, did fail to so register between the dates of \_\_\_\_\_ and \_\_\_\_\_.

### Failure to provide change of address – O.R.C. 2950.05(F)(1)

The defendant, John Doe, being a person required to register with the \_\_\_\_\_ County Sheriff's Office in \_\_\_\_\_ County, Ohio pursuant to O.R.C. 2950.04, did fail to provide written notice of a residence address change to the sheriff's office in \_\_\_\_\_ County, Ohio, the office with whom he/she had most recently registered, at least twenty days prior to changing his/her address, between the dates of \_\_\_\_\_ and \_\_\_\_\_.

### Failure to provide change of address – O.R.C. 2950.05(F)(2)

The defendant, John Doe, being a person required to provide a notice of a new residence address pursuant to O.R.C. 2950.05(B) did fail to provide written notice of a residence address change to the County Sheriff's Office in \_\_\_\_\_ County, Ohio, the county in which the offender's new residence address is located, at least twenty days prior to changing his/her residence address, between the dates of \_\_\_\_\_ and \_\_\_\_\_.

## **Failure to verify – O.R.C. 2950.06(F)**

The defendant, John Doe, being a person required to verify a current residence with the County Sheriff's Office of \_\_\_\_\_, Ohio in \_\_\_\_\_ County, Ohio address pursuant to O.R.C. 2950.06 by \_\_\_\_\_, the date required for verification, did fail to so verify on that date, and did continue to fail to verify after the sheriff sent a written seven day warning to the defendant at his/her last known address pursuant to O.R.C. 2950.06(G).

## **Penalties Pursuant to O.R.C. 2950.99**

A violation of any of the above duties is assessed based on the degree of the most serious original registration offense committed by the offender. If the most serious original crime was a felony of the first, second, third or fourth degree, a violation of the above duties is a felony of the same degree as the original crime. If the most serious original registration offense was a felony of the fifth degree or a misdemeanor, a violation of the above duties is a felony of the fourth degree.

For subsequent Failure to Register offenses, if the most serious original crime was a felony of the first, second or third degree, a violation of the above duties is a felony of the same degree as the original crime. If the most serious original registration offense was a felony of the fourth or fifth degree, a violation of the above duties is a felony of the third degree. If the most serious original registration offense was a misdemeanor, a violation of the above duties is a felony of the fourth degree.

A second Failure to Register conviction results in a mandatory minimum three (3) year prison sentence. A prior juvenile adjudication for failure to register can be considered for this enhanced penalty.

## **Providing False Information**

If the offender does register, notify of a change of address, or verifies his/her address, but provides false information, please consult with you local county prosecutor about possible charges of falsification (O.R.C. 2921.13) or obstructing official business (O.R.C. 2921.31), in addition to failure to register (O.R.C. 2950.04(E)) and/or failure to provide change of address (O.R.C. 2950.05(F)(1), (2)).

# JUVENILE OFFENDER REGISTRANTS (JOR)

The laws pertaining to juvenile sex offenders and child-victim oriented offenders (“JSORN”), can be found at R.C. 2152.82 et seq. and also overlap with the adult provisions under 2950.01 et seq. Juveniles adjudicated delinquent are subject to the similar registration and notification requirements as adult offenders. However, there are differences intended to afford juveniles certain rights and protections not available to adults, in keeping with the purpose of juvenile dispositions.<sup>22</sup> There are two main differences between adult and juvenile registrants. The first of these differences is the length of the registration period for tier I and II offenders. A juvenile adjudicated a tier I offender must register for 10 years as opposed to an adult who must register for 15 years. A juvenile adjudicated a tier II offender must register for 20 years as opposed to an adult who must register for 25 years. A juvenile adjudicated a tier III offender must register for life. The second main difference between juvenile and adult registrants is that juveniles can petition the juvenile court judge to have their classifications modified or terminated. The process for modifying or terminating classification is discussed below. The juvenile courts have exclusive jurisdiction over juvenile offender registrants—even once the offender turns 18.

## JUVENILES SUBJECT TO SORN REGISTRATION DUTIES:

Juveniles will **only** be subject to SORN registration duties if:

- The juvenile has been adjudicated delinquent of a qualifying offense. Qualifying offenses for juveniles are the same as those for adults.<sup>23</sup>
- The juvenile was at least 14 years of age at the time of the offense, and
- The offense was committed on or after January 1, 2002.

## DISCRETIONARY VS. AUTOMATIC CLASSIFICATION:

Whether or not a juvenile is automatically subject to registration duties depends on the age of the juvenile and whether the juvenile has previously committed a sexually oriented or child-victim oriented offense. There will be a separate

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<sup>22</sup> O.R.C. 2152.01

<sup>23</sup> O.R.C 2950.01(A), (C)

category of juvenile registrants known as Public Registry Qualified Juvenile Offender Registrants (PRQJORS), under 2152.86, which is automatic classification based upon offense, discussed later.

### Initial Classification (NON-PRQJORS)

#### *Discretionary Classification: Youthful First Offenders*

The juvenile court judge has discretion to impose registration duties on a juvenile adjudicated delinquent of a qualifying offense if:

- The juvenile was 14 or 15 years of age at the time of the offense, and
- The juvenile has never been adjudicated delinquent or convicted of a sexually oriented or child-victim oriented offense,<sup>24</sup> and
- The court is not required to classify as a JOR or a JOR and a PRQJOR.

A hearing to determine whether or not to classify a juvenile will be held at the time of disposition, or upon the juvenile's release from a secure facility. Factors for the court to consider in making the determination include:

- The nature of the offense;
- Whether the child has shown any remorse for the offense;
- The public interest and safety;
- The results of any treatment and any professional assessments submitted to the court.<sup>25</sup>
- Factors in 2950.11(K); "offender" shall be construed as "delinquent child" for purposes of this section [these are the factors the court considers for removing the community notification requirements.]
- Factors in 2929.12(B) and (C); felony sentencing factors

At this hearing, the juvenile court can either: 1) decline to classify the juvenile as a JOR; or 2) issue an order that classifies the juvenile as a JOR.

This hearing is separate from the hearing held under 2152.831 determining the juvenile's Tier classification. A Tier classification hearing will be held **only** if the juvenile court issues an order classifying the juvenile as a JOR. (Discussed more later).

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<sup>24</sup> R.C. 2152.83(B)

<sup>25</sup> R.C. 2152.83(E)

If classified as a JOR, the court must provide written notice of the juvenile's registration duties to the juvenile and the juvenile's parents, guardian or custodian. Parents, guardians or custodians may be prosecuted for the offense of contributing to the delinquency of a minor if the juvenile fails to comply with SORN.

### *Automatic Classification: Older First Offenders and Repeat Offenders*

A juvenile adjudicated delinquent of a qualifying offense will automatically be classified as a registrant if all of the following apply:

- The juvenile was 16 or 17 years of age at the time of the offense;
- The offense was committed on or after January 1, 2002;
- The court is not required to classify the juvenile as a PRQJOR.<sup>26</sup>

OR

- The juvenile was 14, 15, 16, or 17 years of age at the time of the offense;
- The offense was committed on or after January 1, 2002
- The juvenile was previously convicted of, pleaded guilty to, or was adjudicated delinquent 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.<sup>27</sup>
- The court is not required to classify the juvenile as a PRQJOR.

An order classifying a juvenile as a JOR under these circumstances shall be issued at the time of disposition if the juvenile is a repeat offender.<sup>28</sup> If the juvenile is a first time offender, age 16 or 17, the JOR classification can be made at disposition or upon release from DYS.<sup>29</sup> The court shall conduct a hearing under R.C. 2152.831 to determine what Tier classification will be imposed.

If classified as a JOR, the court must provide written notice of the juvenile's registration duties to the juvenile and the juvenile's parents, guardian or custodian. Parents, guardians or custodians may be prosecuted for the offense of contributing to the delinquency of a minor if the juvenile fails to comply with SORN.

### *Tier Classification Hearing under R.C. 2152.831*

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<sup>26</sup> O.R.C. 2152.82(A)(1)(c)

<sup>27</sup> R.C. 2152.82 and 2152.83(A)(1)

<sup>28</sup> R.C. 2152.82(A)

<sup>29</sup> R.C. 2152.82(B)

If the juvenile is classified as a JOR, but not a PRQJOR, the court shall conduct a hearing to determine which Tier classification will be imposed. Tier classification is based solely on the offense for which the juvenile is adjudicated and is the same as for adults. (See Tier chart). The definitions for “tier I sex offender/child victim offender,” “tier II sex offender/child victim offender,” and “tier III sex offender/child victim offender” are located in the new section of 2950.01. The court does not have discretion on which tier classification to impose. If classified tier III JOR, non PRQJOR, the court may choose to impose victim and community notification.<sup>30</sup>

### **Re-Classification**

#### **Mandatory Hearing (Non- PRQJORS)**

After the initial classification hearing, the juvenile court judge must hold a reclassification hearing at the end of disposition. At the hearing the judge must:

- review the effectiveness of disposition and any treatment provided
- determine the risk of re-offending
- determine whether to continue, modify, or terminate the juvenile’s classification.
- Consider factors in RC 2152.83(D) and 2152.831(C)

At the conclusion of that hearing, the Court must do one of the following:

1. continue the original classification order
2. if the classification was initially a discretionary order under R.C. 2152.83(B), terminate classification and duty to register
3. if the classification was initially an order under R.C. 2152.82 or 2152.83(A) or (B), enter an order that continues classification as a JOR, but modifies the Tier classification to a **lower** Tier level, if applicable
  - a. In determining whether to modify the Tier classification, the court shall consider all relevant factors, including but not limited to those listed in 2152.83(D), see above.

If the court modifies the original order, the court must notify BCI of any change in classification; BCI will then promptly notify the sheriff in the county where the juvenile resides.

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<sup>30</sup> R.C. 2950.10(B)(1)(c) and 2950.11(F)(1)(c)

If a juvenile is de-classified, SORN registration duties terminate upon the court's entry of the determination. The juvenile and the juvenile's parents, guardian, or custodian shall also receive notice of any change in classification and associated change in registration duties.

### Re-Classification Hearing on Petition (Non- PROJORS)

After the first re-classification hearing the juvenile may come back to court requesting further re-classification or de-classification. Petitions on rehearing may be filed at the following intervals:

- Not earlier than 3 years after the mandatory reclassification hearing after disposition;
- Not earlier than 3 years after the judge has entered an order ruling on the first petition;
- Thereafter, the juvenile may file a subsequent petition upon the expiration of 5 years after the judge has entered an order ruling on the second petition.

At each subsequent hearing the judge may consider all relevant factors, including the prior classification hearing history, in determining whether to deny or grant a petition. Juvenile offender registrants may be declassified or reclassified, in the same manner as described under the mandatory reclassification hearing, above.

If no change is made in classification, the juvenile must continue registration for the designated period. Registration duties are not affected by the juvenile turning age 18 or 21.

### **PUBLIC REGISTRY- QUALIFIED JUVENILE OFFENDER REGISTRANTS:**

SB 10 creates a new section, R.C. 2152.86, dealing with public registry qualified juvenile offender registrants (PRQJORS). This section applies to a juvenile that is 14 or older at the time of committing the act, classified as a "serious youth offender" ("SYO") and adjudicated delinquent for committing, attempting to commit, conspiring to commit or complicity in committing any of the following acts:

1. Rape (2907.02)
2. Sexual Battery (2907.03)
3. Gross Sexual Imposition (2907.05(B))
4. Aggravated Murder with sexual motivation (2903.01)
5. Murder with sexual motivation (2903.02)
6. Kidnapping with sexual motivation (2905.01)

This is a mandatory classification at the time of disposition,<sup>31</sup> or, if the juvenile is released from DYS after 1/1/08 and has not yet been classified.<sup>32</sup> The PRQJOR is automatically classified as a Tier III offender with registration and notification requirements the same as adult Tier III offenders. The PRQJOR is also required to be posted on the AG and Sheriff's websites. PRQJORs whose offenses were committed after January 1, 2008, are not eligible for reclassification or declassification under 2152.84 or 2152.85.

However, PRQJORs are eligible, after 25 years of a "clean record" to petition the court for a termination of their registration duties. The PRQJOR would file a motion under 2950.15(D) and provide the court with the following information with their petition:

1. A certified copy of the judgment entry and any other documentation of the sentence or disposition given for the offense or offenses for which the eligible offender was convicted, pleaded guilty, or was adjudicated a delinquent child;
2. Documentation of the date of discharge from supervision or release, whichever is applicable;
3. Evidence that the eligible offender has completed a sex offender or child-victim offender treatment program certified by the department of rehabilitation and correction or the department of youth services pursuant to section 2950.16 of the Revised Code;
4. Evidence that the eligible offender has not been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any subsequent sexually oriented offense, child-victim oriented offense, or other criminal offense, except for a minor misdemeanor traffic offense;
5. Evidence that the eligible offender has paid any financial sanctions imposed upon the offender pursuant to section 2929.18 or 2929.28 of the Revised Code.

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<sup>31</sup> R.C. 2152.86(A)(1)

<sup>32</sup> R.C. 2152.86(A)(2)

The motion and supporting documentation is then sent to the probation department to investigate the merits of the petition. Within 60 days of receiving the motion and petition, the probation department must submit a written report on its investigation and findings.

The motion is also served upon the prosecutor who handled the underlying adjudication. The prosecutor must notify the victim of the filing of the motion. The victim may submit a written statement to the court pertaining to the eligible offender's conduct since classification. A hearing date shall be set within 180 days of the filing of the motion. At least 7 days prior to the hearing, the prosecutor may submit an objection to the motion and must serve the eligible offender or his counsel with said objection.

In determining whether to grant the motion, in addition to the motion and supporting documentation, the report from the probation department, any objection filed by the prosecutor and any statements filed by the victim, the court shall consider the following:<sup>33</sup>

1. Whether the eligible offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege has ever been suspended;
2. Whether the eligible offender has maintained financial responsibility for a motor vehicle as required by section 4509.101 of the Revised Code.
3. Whether the eligible offender has satisfied any child or spousal support obligations, if applicable;
4. Whether the eligible offender has paid all local, state, and federal income taxes, and has timely filed all associated income tax returns, as required by local, state, or federal law;
5. Whether there is evidence that the eligible offender has adequately addressed sex offending or child-victim offending behaviors;
6. Whether the eligible offender has maintained a residence for a substantial period of time;
7. Whether the eligible offender has maintained employment or, if the eligible offender has not been employed while under a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code, whether the eligible offender has satisfied the offender's financial obligations through other manners of support such as disability payments, a pension, spousal or child support, or scholarships or grants;

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<sup>33</sup> R.C. 2950.15(G)

8. Whether the eligible offender has adequately addressed any drug or alcohol abuse or addiction;
9. Letters of reference;
10. Documentation of the eligible offender's service to the community or to specific individuals in need.

The court, without a hearing, can rule on the motion under two circumstances;<sup>34</sup>

1. The court can deny the motion without a hearing, based upon the probation department's investigative report, the supporting documents submitted with the Motion, and considering the factors outlined above.
2. If the prosecutor fails to submit an objection, and the court may grant the motion without a hearing, based upon the probation department's investigative report, the supporting documents submitted with the Motion, and considering the factors outlined above.

In all other cases, the court shall hold a hearing on the merits of the Motion, at which the eligible offender has the burden to go forward and prove by a preponderance of the evidence that the motion should be granted.

If a motion is granted, the court must send a copy of the order granting the Motion to BCI, who is to update all records and notify the appropriate sheriffs.

**ESORN:**

SB 10 limits the posting of juveniles on the sheriffs' sites to PRQJORs, who will also be posted on the state's public website administered by BCI (eSORN).

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<sup>34</sup> R.C. 2950.15(H)

# Victim Notification

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Victims of sex offenders who are subject to community notification by the sentencing court are entitled to receive notice of the offender's address.

Sex offenders who are subject to community notification include:

1. Tier III adult sex offenders
2. Tier II adult sex offenders who previously had community notification requirements
3. Juvenile offenders classified as PRQJORs
4. Tier III JORs who are not PRQJORs but for whom the sentencing court has imposed a community notification requirement.

## Responsibilities of a Victim

1. If the sex offender who is subject to community notification is serving a prison term in a state correctional institution, the victim must send a letter to the Department of Rehabilitation and Correction requesting notice of the offender's anticipated county of residence upon release.
2. If the sex offender who is subject to community notification is not sentenced to a prison term in a state correctional institution, the victim must send a letter to the sentencing judge requesting notice of the offender's county of residence.
  - The request must include the offender's name and the case docket number
  - The letter requesting notice of the offender's county of residence must be sent to the sentencing judge within seven days of sentencing.
3. Upon receiving notice of the offender's county of residence from the Department of Rehabilitation and Correction or from the sentencing judge, the victim must send a written request for the offender's address to the sheriff of the county where the offender must register his or her residence address.
4. The victim is responsible for notifying the Department of Rehabilitation and Correction, the sentencing judge, or the sheriff of any change in the victim's address.

## **Responsibilities of the Department of Rehabilitation and Correction**

1. If the Department of Rehabilitation and Correction has received a letter from the victim requesting notice, the department must notify the victim, in writing, of the offender's anticipated county of residence upon release.
2. The notice must be sent prior to the offender's release but after the offender completes the explanation of duties to register as a sex offender form.
3. The notice to the victim must contain the following:
  - The name of the county where the offender will live upon release.
  - The name and address of sheriff of the county where the offender will live upon release.
  - The date by which the offender must register with the sheriff.

## **Responsibilities of the Sentencing Judge**

1. If the sentencing judge has received a letter from the victim requesting notice, the sentencing judge must notify the victim, by regular mail, of the offender's county of residence within the following time frames:
  - If the offender is confined or incarcerated in a local facility, the sentencing judge must notify the victim prior to the offender's release from the local facility.
  - If the offender is not confined or incarcerated in a local facility, the sentencing judge must notify the victim within 72 hours of receiving the victim's request.
2. The notice to the victim must contain the following:
  - The name of the county where the offender will live upon release.
  - The name and address of the sheriff of the county where the offender will live upon release.

## **Responsibilities of the Sheriff**

1. Upon receiving a victim's written request for notice of the address of a sex offender who is subject to community notification, the sheriff of the county where the offender has registered must notify the victim, 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.

2. The sheriff must provide notice to the victim of any new residence address when the offender files a change of residence form with the sheriff. This must be done in writing, within 5 days after the offender files the change.
3. If any notice that is mailed to the victim's most recent address is returned to the sheriff as undeliverable, the sheriff has no further responsibility to notify the victim of any new residence address of the offender.

# Community Notification

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Only Tier III offenders and certain juvenile offenders are subject to the community notification provisions. Offenders newly-classified as Tier III offenders who were not subject to community notification prior to the passage of S.B. 10 may be exempt from this requirement only upon court approval.

1. When 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 the sheriff must provide notice as soon as practicable but no later than five days after the offender sends the notice of intent to reside and again no later than five days after the offender registers with the sheriff.
2. Notice is sent to the following:<sup>35</sup>
  - 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.
    - 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.
    - 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.

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<sup>35</sup> O.R.C. § 2950.11(A).

- A sheriff may provide notice 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. One written notice per unit is deemed as providing notice to all occupants of that unit.
- b. 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.
- c. 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.
- The principal of the school within the specified geographical notification area and within the county served by the sheriff that the delinquent child attends
- d. 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.
- Regardless of the location of the school, the appointing or hiring officer of a chartered nonpublic school that the delinquent child attends
- e. 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.
- f. 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.

- g. 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.
- h. The sheriff of each county that includes any portion of the specified geographical notification area.
  - The sheriff who receives this notification must in turn provide notice to all the entities described in (a)-(g) , (i), (j) of this section located in the specified geographical notification area and within the county served by the sheriff.
- i. 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.
- j. Volunteer organizations in which contact with minors or other vulnerable individuals might occur or any organization, company, or individual who requests notification (a new provision added by SB 10).

3. Notice<sup>36</sup>

- a. The notice must contain the following information:
  - The offender's name.
  - The address or addresses of the offender's or PRQJOR's residence, school, institution of higher education, or place of employment
  - The sexually oriented offense or child-victim oriented offense of which the offender was convicted, pleaded guilty or adjudicated.
  - A statement that identifies the offender's Tier classification.
  - The offender's photograph.
- b. Timing<sup>37</sup>
  - i) The Sheriff must provide this notice as soon as practicable, but

<sup>36</sup> O.R.C. § 2950.11(B).

<sup>37</sup> O.R.C. § 2950.11(D).

in the case of persons described in section 2a (residents), and 2g and 2h (law enforcement personnel), such notice must be provided no later than five days after the offender sends the notice of intent to reside to the sheriff, or after the sheriff is provided such notice pursuant to section 2h.

- ii) In the case of all other persons described in section 2b-2g and 2j, the Sheriff must provide notice no later than seven days after the offender sends the notice of intent to reside to the sheriff, or after the sheriff is provided such notice pursuant to section 2h.

4. Assistance of the department of job and family services.<sup>38</sup>

- i) A sheriff may request the department of job and family services, department of education, or Ohio board of regents to provide the sheriff or his designee with the names, addresses, and telephone numbers of the persons entitled to notice
- ii) 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.

5. Confirming compliance at the offender's residence<sup>39</sup>

- a) The Sheriff may contact the person who owns, leases, or has custody, control, or supervision of the premises at the address provided by the offender to confirm whether the offender currently resides at the address. The Sheriff is not limited in the amount of times he may inquire.

i) This section applies to residences, including a private residence, a multi-unit residential facility, a halfway house, a homeless shelter, or any other type of residential premises. It is not meant to apply to the offender's place of work or education.

- b) The person who owns, leases, or otherwise controls the premises, or his agent must comply with the request and inform the sheriff whether or not the offender currently resides on the premises.

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<sup>38</sup> O.R.C. § 2950.11(G).

<sup>39</sup> O.R.C. § 2950.111.

# Public Records and eSORN

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Any statements, information, photographs, fingerprints, or materials provided by an offender in accordance to his duties to register, which are in possession of a *county sheriff* are public records that are open to public inspection.<sup>40</sup> However, the sheriff shall *not* disseminate *by the Internet* any of the above information regarding juvenile offenders that are *not classified as PRQJORs*.

The information contained in the *BCI records* regarding the offender are not public records and are not open to the public.<sup>41</sup>

Under Ohio Revised Code Section 2950.08, this includes the statements, information, photographs, fingerprints required under Ohio law in compliance with the offender's duty to register.

However, the following persons are allowed to inspect such records:

1. A regularly employed peace officer or other law enforcement officer.
2. An authorized employee of BCI.
3. An employee of the Bureau of Motor Vehicles for the purpose of verifying and updating any of the information provided, upon the request of BCI.

Furthermore, these restrictions do not apply to any information currently contained on the eSORN public website on Ohio Attorney General's Office website, available at: <http://www.esorn.ag.state.oh.us/Secured/pl.aspx>.

The easiest way for the public to obtain information about sex offenders in their area is by accessing the eSORN public website, noted above. The public database includes the offender's name, addresses of school, work and residence, the crime for which the offender was convicted, and the offender's classification. The database is searchable by name, county, zip code, and school district, and can provide a map showing all offenders living within one mile of a specified address.

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<sup>40</sup> O.R.C. § 2950.081.

<sup>41</sup> O.R.C. § 2950.08.

Members of the public may also sign up to be automatically emailed whenever a registered offender moves within one mile of a specified address.

The bureau shall NOT include on the public database the offender's social security number, the name of any school or institution of higher education attended by any offender or public registry-qualified juvenile offender registrant, the name of the place of employment of any offender or public registry-qualified juvenile offender registrant, any tracking or identification number used by BCI or the FBI, or driver's license/CDL number.

There is a law enforcement only version of eSORN, accessible to law enforcement only through the Ohio Law Enforcement Gateway (OHLEG). This law enforcement only site is mandated by ORC §2950.13 (A)(13). Pursuant to this section of the Revised Code: "The database is not a public record open for inspection under section 149.43 of the Revised Code and shall be available only to law enforcement representatives as described in this division. Information obtained by local law enforcement representatives through use of this database is not open to inspection by the public or by any person other than a person identified in division (A) of section 2950.08 of the Revised Code."

## FREQUENTLY ASKED QUESTIONS

### Registration

- Q: Do only sex offenders register under SORN?
- A: No. Offenders who commit certain non-sexual offenses against children, such as kidnapping, are also required to register. This type of offender is labeled a "Child-Victim Offender," and is subject to the same registration and restrictions as a Sexually Oriented Offender.
- Q: If an offender is subsequently convicted of a qualifying offense while they are still subject to registration duties for an earlier offense, will that offender now have to register separately for each offense?
- A: Yes, under 2950.07(C)(1) subsequent offenses have their own registration dates that must be independently complied with.
- Q: If an offender is re-incarcerated during the registration period, how does that affect the offender's registration duties?
- A: Under R.C. 2950.07(D), the duty to register is tolled during the time the offender or juvenile is returned to confinement, and resumes upon the offender's release into the community.

### Out-of-State Offenders

- Q: Must an out-of-state offender convicted of an offense prior to 1997 register in Ohio upon moving here?
- A: If an offender moves to Ohio or enters this state for school or work purposes on or after July 1, 1997 (for adults) or January 1 2002 (for juveniles), then the offender must register in this state if they were under a duty to register in the other jurisdiction and their offense is comparable to a registration offense in Ohio.

### Juvenile Registrants

- Q: Can information on juvenile offender registrants be posted on the internet database once the juvenile turns age 18?
- A: No. Even if the juvenile is still required to register upon turning age 18, he or she is still considered to be a "juvenile adjudicated delinquent", not an adult offender. The only juveniles that appear on the website are the Public Registry Qualified Juvenile Offender Registrants.



U.S. Department of Justice

Office of Justice Programs

*Office of Sex Offender Sentencing, Monitoring,  
Apprehending, Registering, and Tracking*

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Washington, D.C. 20531

January 16, 2009

Nancy H. Rogers  
Attorney General  
State of Ohio  
30 E. Broad St., 17<sup>th</sup> Floor  
Columbus, OH 43215

Re: SORNA Compliance Review

Dear Attorney General Rogers:

On behalf of the SMART Office, thank you for submitting Ohio's official SORNA Compliance Package for review. The efforts that Ohio have put forth towards meeting the minimum standards set by SORNA are significant. The work your jurisdiction has completed, to protect children and vulnerable adults, is to be applauded.

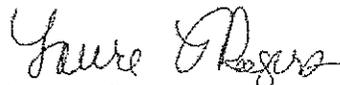
SMART has conducted a thorough review of the materials submitted for consideration. At this time, Ohio has not achieved the minimum standards for SORNA compliance. Please see the enclosed memoranda to identify the specific areas that require additional work.

Please feel free to contact us if we can provide any further guidance or assistance as your jurisdiction takes the next steps towards achieving the minimum standards for SORNA substantial compliance. If you disagree with any part of our analysis, please do not hesitate to call and discuss the issues included in the enclosed memoranda.

Again, thank you for all of the good work that Ohio has completed. Your efforts are an integral component to the creation of the comprehensive national protection system that the creators of the Adam Walsh Child Protection and Safety Act of 2006 anticipated.

We look forward to working with your jurisdiction to complete your efforts toward achieving substantial compliance. We are looking forward to receiving supplemental material to complement the current submission.

Sincerely,

A handwritten signature in cursive script that reads "Laura L. Rogers".

Laura L. Rogers, J.D.  
Director

Enclosures

## Ohio Statutes

The OJP SMART Office has completed the review of Ohio's statutes submission pertaining to classification of registration tier levels for sex offenders within the state. This submission was made in order to meet the requirements of the Adam Walsh Act.

The OJP SMART Office has reviewed all statutes identified in the submission for compliance and has identified Ohio's placement of these statutes within the SORNA three tier levels as: meets the requirements of SORNA; exceeds the requirements of SORNA; or does not meet the requirements of SORNA.

Please note that the purpose of this review is to ensure compliance with the standards of SORNA, which are considered minimum standards. Jurisdictions may choose to exceed the standards set forth by SORNA.

Unless indicated in the notes herein, the SMART office has not reviewed any statutes (or subsections) which were not included in the legislation provided by Ohio. It is possible that other offenses will need to be included in Ohio's sex offender registry to come in to compliance with SORNA.

As an opening note, Ohio has properly included attempts and conspiracies to commit sex offenses as required by SORNA.

### Tier I Offenders

With respect to Tier I under SORNA, a specific itemization of statutes is not provided. Rather, Tier I is a residual/catch-all tier for crimes not included under tiers II or III.

#### § 2903.211 Menacing by Stalking with Sexual Motivation

Placement of this statute in Tier I meets SORNA's requirements.

#### § 2905.03(B) Unlawful Restraint with Sexual Motivation

Placement of this statute in Tier I meets SORNA's requirements.

#### § 2907.32 Pandering Obscenity

Assuming that 'Obscenity' will not encompass what could be defined as "child pornography", placement of this statute in Tier I meets SORNA's requirements.

#### § 2907.323(A)(3) Illegal Use of a Minor in Nudity-Oriented Material or Performance

Placement of this statute in Tier I meets SORNA's requirements.

§ 2907.04 Unlawful Sexual Conduct With a Minor

§ 2907.04(B)(2): Placement of this statute in Tier I meets SORNA's requirements.

§ 2907.04(B)(1) and (3): Placement of this statute in Tier I does not meet SORNA's requirements. This statute will encompass acts which would require a Tier III (II if cons) classification, namely, "sexual acts" as defined under federal law and (per the chart provided) those acts would be non-consensual, making it comparable to 18 U.S.C. §2241.

§ 2907.04(B)(4):

§ 2907.05(A)(1)-(3), (5) Gross Sexual Imposition

Placement of this statute in Tier I does not meet SORNA's requirements. This statute will encompass acts which would require a Tier III classification, namely, forceable "sexual acts" as defined under federal law making it comparable to 18 U.S.C. §2241.

§ 2907.05(B) Child Enticement with Sexual Motivation

Placement of this statute in Tier I does not meet SORNA's requirements.

This statute will encompass acts that would require a Tier II classification, namely, abusive sexual contact as described in 18 U.S.C. §2244.

§ 2907.06 Sexual Imposition

Placement of this statute in Tier I meets SORNA's requirements.

§ 2907.07 Importuning

Placement of this statute in Tier I does not meet SORNA's requirements.

This statute will encompass acts which would require a tier II classification, namely, soliciting a minor to engage in 'sexual activity' which, as defined in § 2707.01(c) will include 'sexual acts' as defined under federal law and, as such, will be comparable to 18 U.S.C. §2422(b).

§ 2907.08 Voyeurism

Placement of this statute in Tier I meets SORNA's requirements.

## Tier II Offenders

§ 2905.01(A)(1-3), (5) Kidnapping with Sexual Motivation

Placement of this statute in Tier II does not meet SORNA's requirements if the victim is under the age of 18. In that case, a Tier III designation would be required (42 U.S.C. §16911(B)(4)).

Where the victim is 18 years of age or older, placement of this statute in tier II exceeds SORNA's requirements.

**§ 2905.01 (A)(4) Kidnapping, Victim > 18**

Placement of this statute in Tier II exceeds SORNA's requirements.

**§ 2905.02(B) Abduction with Sexual Motivation**

This statute reads as very similar to a classic common-law kidnapping statute. As such, placement of this statute in Tier II does not meet SORNA's requirements if the victim is under the age of 18. In that case, a Tier III designation would be required (42 U.S.C. §16911(B)(4)).

Where the victim is 18 years of age or older, placement of this statute in tier II exceeds SORNA's requirements.

**§ 2907.04 Unlawful Sexual Conduct with a Minor**

Placement of this statute in Tier II meets SORNA's requirements (so long as consensual).

**§ 2907.05(A)(4) Gross Sexual Imposition, Victim <13**

Placement of this statute in Tier II does not meet SORNA's requirements.

This statute will encompass acts which would require a tier III classification, namely, having 'sexual contact' with a person under 13; as defined in § 2707.01(b) will include 'sexual acts' and 'sexual contact' as defined under federal law and, as such, will be comparable to 18 U.S.C. §2241 or §2242.

**§ 2907.21 Compelling Prostitution**

Placement of this statute in Tier II meets SORNA's requirements.

**§ 2907.321 Pandering Obscenity Involving a Minor**

Placement of this statute in Tier II meets SORNA's requirements.

**§ 2907.322 Pandering Sexually Oriented Material Involving a Minor**

Placement of this statute in Tier II meets SORNA's requirements.

**§ 2907.323(A)(1) and (2) Illegal Use of a Minor in Nudity-Oriented Material**

Placement of this statute in Tier II meets SORNA's requirements.

**§ 2919.22(B)(5) Child Endangering**

Placement of this statute in Tier II meets SORNA's requirements.

Recidivist Offenders

Tier III Offenders

§2903.01 Aggravated Murder with Sexual Motivation

Placement of this statute in Tier III meets SORNA's requirements.

§2903.02 Murder with Sexual Motivation

Placement of this statute in Tier III meets SORNA's requirements.

§2903.04(A) Unlawful Death...as a Result of an Attempt to Commit a Felony with Sexual Motivation

Placement of this statute in Tier III meets SORNA's requirements.

§2903.11 Felonious Assault with Sexual Motivation

Placement of this statute in Tier III meets SORNA's requirements.

§2905.01(B) Non-Parental Kidnapping of a Minor

Placement of this statute in Tier III meets SORNA's requirements.

§2907.02 Rape

Placement of this statute in Tier III meets SORNA's requirements.

§2907.03 Sexual Battery

Placement of this statute in Tier III meets SORNA's requirements.

§2907.05(B) Gross Sexual Imposition

Placement of this statute in Tier III meets SORNA's requirements.

Recidivist Offenders

Review for Additional Statutes

In the course of this tiering review, the SMART office found the following statutes that will require registration under the SORNA standards.

## SORNA Compliance Review State of Ohio

The SMART Office would like to thank the State of Ohio (Ohio) for the extensive work and effort that has gone into its effort to bring Ohio's sex offender registration and notification system into compliance with Title I of the Adam Walsh Act, Sex Offender Registration and Notification Act (SORNA). The SMART Office has completed its review of the Ohio's SORNA compliance packet. Please be advised that the SORNA Final Guidelines were issued on July 1, 2008. The final guidelines have been taken in to consideration in determining Ohio's substantial compliance with SORNA.

Those areas in which there is not compliance are as follows, as broken down in the SMART Substantial Implementation Checklist.

### I. Terminology

Ohio covered the terminology required by this portion of the checklist.

### II. Offenses the Must Be Included in the Registry

There are a number of areas which need improvement in this section.

a. Federal Convictions. First, SORNA gives a detailed list of federal convictions which will require a sex offender to register. (42 U.S.C. §16911(5)(iii)) Ohio has included many of these offenses by way of cross-references found in §§2905.01(E), (F), and (G). The language in those code sections, however, only will embrace offenses "substantially equivalent" to sex offenses requiring registration under Ohio's laws. While it appears that the tier determinations will be made on an ongoing basis by the Attorney General's Office, the question of initially capturing all of the required Federal convictions remains. There are many Federal offenses which do not have "substantially equivalent" counterparts under Ohio's code, and offenders convicted of those crimes will also need to be included in Ohio's registration scheme.

§2905.041(A)(4) does capture any offender required to register under the law of another *jurisdiction*. It does not appear that the definition of *jurisdiction*, however, would encompass convictions in Federal Courts. Inclusion of Federal Court convictions in that definition would resolve this issue.

For more guidance, please refer to 42 U.S.C. §16911(5)(A)(iii), and Section IV(c) (page 17) of the SORNA Final Guidelines.

b. Foreign Convictions. SORNA requires that sex offenders convicted in certain foreign countries be subject to registration. Ohio has made no provisions for convictions which occur outside of the United States.

For more guidance, please refer to 42 U.S.C. §16911(5)(B), and Section IV(B) (page 16) of the SORNA Final Guidelines.

Ohio's treatment of juveniles who are classified as "PRQJOR's" is in compliance with SORNA's standards.

### **III. Tiering of Offenses**

The SMART Office review of Ohio's sex offense statutes and tiering is attached to this compliance review. There is a detailed analysis contained therein regarding this subsection of the compliance review. Where that report notes that Ohio's placement of an offense "exceeds" the SORNA requirements, Ohio may, at its discretion, leave the assignment at that tier level, or lower it, so long as SORNA's requirements are still met.

### **IV. Required Registration Information**

SORNA requires that the information maintained in Ohio's sex offender registry be digitized (available in digital format) and maintained in an electronic database. Ohio has met this requirement.

SORNA requires sex offender registration information under 20 primary categories. Each is listed below, with notes regarding the level of Ohio's compliance. For more guidance on specific items of required registration information, see 42 U.S.C. §16914 and Section VI (pages 26-33).

1. Criminal History: §2950.13(A)(1)(e) provides that there be an offense and delinquency history provided for purposes of registration. Ohio will need to ensure that this includes the following information in addition to that already required:
  - i. Date of all arrests; and
  - ii. Date of all convictions;
  
2. Name: §2950.04(c)(4) will meet SORNA's requirements with regards to names, so long as ethnic and tribal names are also included.

### **V. Where Registration is Required**

Ohio appropriately requires registration in any jurisdiction where a sex offender is a resident, employed, or a student (§89.03(b)). SORNA will also require initial registration to take place in the following two circumstances: if Ohio is the

Conviction Jurisdiction: if an offender is convicted in Ohio, but does not plan on being a resident, employed, or in school on Ohio, they would still need to register initially in Ohio; or

Incarceration Jurisdiction: if an offender is not convicted in Ohio, but is incarcerated and released from custody in Ohio, Ohio would need to make provisions for an initial registration, as well.

For more guidance, please see 42 U.S.C. §16913, Part VII (page 41) and Part IX (Page 48) of the Final Guidelines.

## **VI. Initial Registration: Generally**

### **Duties of Initial Registration Jurisdiction**

Ohio needs to ensure that upon entry of a sex offender's information on to its registry (or any subsequent updating of that information), Ohio immediately forwards that information to all other jurisdictions in which the sex offender is required to register.

From our correspondence with Ohio,<sup>1</sup> it appears that any gap in these provisions can be made via administrative regulation.

For more guidance as to the transmission of initial registration information, please see 42 U.S.C. 19121(b)(3) and Part IX (page 44) of the Final Guidelines.

## **VII. Initial Registration: Retroactive Classes of Offenders**

To be found in compliance, Ohio will need to devise a procedure to 'pick up' and register sex offenders who reenter Ohio's criminal justice system because of conviction for some other crime, are currently on or subsequently placed on probation, or are currently on or subsequently incarcerated.

Per our correspondence, Ohio has already endeavored to 'capture' offenders who are currently registering or are incarcerated for an offense requiring registration.

For more guidance for the registration of the retroactive class of offenders, see Part IX (pages 45-47) of the Final Guidelines.

## **VIII. Keeping the Registration Current**

### **When an Offender Resides in Ohio**

Ohio properly requires in-person updating of a sex offender's residence, employment school, or termination of residence. Ohio will also need to ensure that any changes to an offender's name are immediately reported, in person.

a. Immediate Notification of other Changes: Ohio will also need to ensure that the following information is updated immediately upon any changes, though an in-person appearance is not required:

1. Temporary Lodging Information

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<sup>1</sup> See Email, August 12, 2008, from Erin Rosen to Lori McPherson.

b. Transmission of Updated Registration Information: Ohio must make provisions to immediately immediately notify all other jurisdictions in which an offender is required to register, or will be temporarily lodged, of any changes to that offender's registration information.

From our correspondence with Ohio,<sup>2</sup> it appears that any gap in these provisions can be made via administrative regulation.

c. Notice to Jurisdiction of Intended Residence, Employment, or School: Ohio must make provisions to immediately immediately notify all jurisdictions where the offender intends to reside, work, or attend school that Ohio has received notice of the same.

From our correspondence with Ohio,<sup>3</sup> it appears that any gap in these provisions can be made via administrative regulation.

d. Foreign Relocation: if Ohio is notified that the offender intends to commence residence, school, or employment outside of the United States, it must

1. immediately notify any changes to other jurisdictions where the offender is required to register;
2. immediately notify the U.S. Marshals' Service; and
3. Update NSOR

#### When an Offender is Employed, but does not Reside in, Ohio

Ohio appears to require the same registration information from non-residents employed in Ohio as it does from Ohio residents. This will meet SORNA's requirements, provided the following is addressed:

Transmission of Updated Registration Information: Ohio must make provisions to immediately notify all other jurisdictions in which an offender is required to register of any changes to that offender's registration information.

From our correspondence with Ohio,<sup>4</sup> it appears that any gap in these provisions can be made via administrative regulation.

#### When an Offender Goes to School, but does not Reside in, Ohio

Ohio appears to require the same registration information from non-residents attending school in Ohio as it does from Ohio residents. This will meet SORNA's requirements, provided the following is addressed:

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<sup>2</sup> See Email, August 12, 2008, from Erin Rosen to Lori McPherson.

<sup>3</sup> See Email, August 12, 2008, from Erin Rosen to Lori McPherson.

<sup>4</sup> See Email, August 12, 2008, from Erin Rosen to Lori McPherson.

Transmission of Updated Registration Information: Ohio must make provisions to immediately notify all other jurisdictions in which an offender is required to register of any changes to that offender's registration information.

From our correspondence with Ohio,<sup>5</sup> it appears that any gap in these provisions can be made via administrative regulation.

For more information about keeping registration information current, please see Part X (pages 49-54) of the Final Guidelines and the statutes cited therein.

#### **IX. Verification/Appearance Requirements**

Ohio will need to ensure that the sex offender reviews all of the current registration information for accuracy at every regular in-person appearance, and allow for a photograph to be taken at those in-person visits.

Reduction in Registration Period: Ohio will need to ensure that a sex offender has successfully completed, *without revocation*, any period of supervised release, probation, or parole in order to qualify for a registration period reduction.

#### **X. Registry Website Requirements**

In order to fully review Ohio's compliance, the SMART Office reviewed the Ohio Sex Offender Registry Website in addition to legislative and regulatory provisions.

Exclusion of Registry Information: Ohio properly excludes certain items of information from the public registry website as required by SORNA. Any passport and/or immigration document information, and any arrests not resulting in conviction, will also need to be excluded, once registration of that information is required.

For more guidance, please refer to Part VII (page 35) of the Final Guidelines.

#### **XI. Community Notification**

Reviewing Ohio's public registry website, code, and reading in conjunction with the administrative procedures submitted, the following requirements still need to be addressed:

Notification of Other Registration Jurisdictions: see the comments in section VIII, above.

Notification of Law Enforcement, Supervision, and National Child Protection Act agencies: §89.10(d) covers many of these agencies already. Ohio will need to insure that the transmission of information happens within three business days, and not simply on the first week of every month. Ohio will also need to be sure that all of the agencies covered under 42 U.S.C. 5119a (3) are included, as well.

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<sup>5</sup> See Email, August 12, 2008, from Erin Rosen to Lori McPherson.

For more guidance on this topic, please refer to Part VII (pages 38-41) of the Final Guidelines.

**XII. Failure to Register as a Sex Offender: State Penalty**

Ohio meets this standard.

**XIII. When a Sex Offender Fails to Appear for Registration**

SORNA requires that when Ohio is notified that a sex offender intends to commence residence, employment, or school in Ohio—and then fails to appear for registration—that Ohio must immediately notify the jurisdiction which sent that notice of the failure to appear.

See Part XIII (page 59) of the Final Guidelines for additional guidance on this topic.

**XIV. When a Jurisdiction has Information that a Sex Offender may have Absconded**

There are specific procedures that SORNA requires when a sex offender is suspected to have absconded from their registration requirements. It does not appear that Ohio has put any of these required procedures in place.

For additional information and guidance on this requirement, please see 42 U.S.C. §42122 and Part XIII (pages 58-60) of the Final Guidelines.

**CONCLUSION:**

Ohio has put forth exceptional work and effort for the purposes of enhancing the sex offender registration and notification system that is currently in place.

Please feel free to contact the SMART Office should you have questions with respect to the decisions above.