

IN THE SUPREME COURT OF OHIO

STATE OF OHIO)	CASE NO. 2009-0893
)	
Plaintiff-Appellant,)	
)	
vs.)	
)	
STEPHEN MCCONVILLE)	
)	
Defendant-Appellee.)	

ON APPEAL FROM THE COURT OF COMMON PLEAS, LORAIN COUNTY, OHIO
CASE NUMBER 07CR075079

MERIT BRIEF OF APPELLANT

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FILED
OCT 20 2009
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
OCT 20 2009
CLERK OF COURT
SUPREME COURT OF OHIO

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STATEMENT OF THE CASE & FACTS

On December 27, 2007, the Lorain County Grand Jury indicted Appellee on one (1) count of Rape, a violation of R.C. 2907.02, a felony of the first degree and one (1) count of Gross Sexual Imposition, a violation of R.C. 2907.05, a felony of the fourth degree. (Appendix A, B, respectively).

On July 18, 2008, Appellee entered a plea of guilty to the indictment before Judge James M. Burge of the Lorain County Court of Common Pleas. On July 18, 2008, Appellee was sentenced to a four (4) year term of incarceration on count one (1); no sentence was imposed on count two (2) as it was determined to be an allied offense of count one (1).

Appellee was also notified of his duties to register as a Tier III sex offender. The trial court, *sua sponte*, removed community notification from Appellee's duties to register as a Tier III sex offender.

On July 23, 2008, the trial court revisited this issue at Appellant's request. Appellant argued that pursuant to the Adam Walsh Act, hereinafter "AWA", the trial court lacked the authority to remove the community notification requirement from Appellee's duties to register as a sex offender as Appellee's sentencing occurred after the effective date of the Adam Walsh Act. The trial court disagreed. The trial court refused to order community notification as part of Appellee's duties to register as a Tier III sex offender despite Appellee being sentenced after the effective date of the Adam Walsh Act. (Appendix C).

On August 1, 2008, Appellant filed notice of appeal with the Ninth District Court of Appeals. On April 13, 2009, the Ninth District Court of Appeals upheld the decision of the trial court. State v. McConville, 9th Dist. No. 08CA009444, 2009 Ohio 1713. (Appendix D). In May 2009, the State of Ohio filed a discretionary appeal with this Honorable Court. (Appendix E). On August 26, 2009, this Court accepted jurisdiction over the instant appeal.

LAW & ARGUMENT

FIRST PROPOSITION OF LAW

- I. R.C. 2950.11(F) MAY ONLY BE UTILIZED TO REMOVE COMMUNITY NOTIFICATION REQUIREMENTS FROM A SEXUAL OFFENDER'S REGISTRATION DUTIES IF THE OFFENDER WAS SENTENCED BEFORE JANUARY 1, 2008.**

SECOND PROPOSITION OF LAW

- II. R.C. 2950.11(H) IS THE MECHANISM BY WHICH A SEXUAL OFFENDER SENTENCED ON OR AFTER JANUARY 1, 2008 MAY PETITION A COURT TO REMOVE COMMUNITY NOTIFICATION REQUIREMENT FROM THEIR DUTIES TO REGISTER AS A TIER II OR TIER III SEX OFFENDER.**

Appellant urges this Honorable Court to hold that R.C. 2950.11(F) may only be utilized by sexual offenders sentenced before January 1, 2008 to remove community notification requirements from the duties to register as a sexual offender, provided the criteria as established by the section is met. In making this holding, this Court will also hold that R.C. 2950.11(H) is the mechanism by which a sexual offender sentenced on or after January 1, 2008 may petition a court to remove community notification requirements from their duty to register as a Tier III sex offender.

S.B. 10 modified former R.C. Chapter 2950 ("Megan's Law") so that it would be in conformity with the federal AWA. Guildersleeve v. State, 8th Dist. No. Nos. 91515, 91516, 91517, 91518, 91519 and 91521, 91522, 91523, 91524, 91525, 91526, 91527, 91528, 91529, 91530, 91531, 91532, 2009 Ohio 2031. The changes made to R.C. Chapter 2950 by S.B. 10 altered the sexual offender classification system. Id. Under pre-S.B. 10, depending on the crime committed and the findings by the trial court at the sexual classification hearing, an offender who committed a sexually oriented offense could be labeled a sexually oriented offender, a habitual sex offender, or a sexual predator. Id. See former R.C. 2950.09. (Appendix F). Each classification required registration and notification requirements. Id.

Under Megan's Law, a sexually oriented offender was required to register with the sheriff in the county of his or her residence, employment, and school annually for ten (10) years. Id. A sexually oriented offender was not subject to "community notification" of this information; i.e., the information a sexually oriented offender was required to provide to the sheriff was not shared with the public. Id. A habitual sex offender was required to register his or her address annually for twenty (20) years and may or may not have been subject to community notification. Id. A sexual predator was required to register every ninety (90) days for life and was subject to community notification. Id.

S.B. 10 abolished those classifications. Id. The new provisions leave little, if any, discretion to the trial court in classifying an offender. Id. See R.C. 2950.01. (Appendix G). Instead, the statute requires the trial court to classify an offender based solely on his or her conviction. Depending on what crime the offenders committed, they are classified as a Tier I, Tier II, or Tier III sex offender. Id. R.C. 2950.01(E)-(G). The

tiers dictate the registration and notification requirements. Id. Tier I is the least restrictive tier, requiring a sex offender to register once annually for fifteen (15) years, but there are no community notification requirements. Id. Tier II requires registration every one hundred eighty (180) days for twenty five (25) years, but it also has no community notification requirements. Id. Tier III, the most restrictive and similar to the former sexual predator finding, requires registration every ninety (90) days for life, and community notification may occur every ninety (90) days for life. Id. See R.C. 2950.07 and 2950.11. (Appendix H, I, respectively).

The stated purpose of S.B. 10 is "**** to provide increased protection and security for the state's residents from persons who have been convicted of, or found to be delinquent children for committing, a sexually oriented offense or a child-victim oriented offense ***." Id., quoting S.B. 10, Section 5. (Appendix J). Similar language is used in the purpose section of the federal act. Id. ("In order to protect the public from sex offenders and offenses against children, *** Congress in this chapter establishes a comprehensive national system for the registration of those offenders ***.") Id. quoting, Section 16901, Title 42, U.S. Code. (Appendix K). Moreover, the Ohio legislature has declared that the purpose of sex offender registration is not punitive, but "to protect the safety and general welfare of the people of this state." Id., quoting R.C. 2950.02(B). (Appendix L). This statement of purpose antedates the present amendment. Id. citing, State v. Ferguson, 120 Ohio St.3d 7, 2008 Ohio 4824, P28. R.C. 2950.02 also provides that a significant goal of Chapter 2950 is that of notification to the general public of sexual offenders whereabouts in order to protect the public at large. The Ohio General Assembly noted that Chapter 2950 was designed to combat overly restrictive

confidentiality and liability laws governing the release of information concerning sexual offenders. See R.C. 2950.02.

Whether or not a trial court has the authority to suspend the community notification requirements of registered sexual offenders is a question of statutory interpretation. State v. McConville, 9th Dist. No. 08CA009444, 2009 Ohio 1713. Statutory interpretation involves a question of law; therefore this matter is subject to a *de novo* review by this Honorable Court. State v. Sufronko (1995), 105 Ohio App.3d 504, 506. A *de novo* review requires an independent review of the trial court's decision without any deference to the trial court's determination. Brown v. Scioto Cty. Bd. of Comm'rs (1993), 87 Ohio App. 3d 704, 711.

This Court has held that the ultimate goal of statutory interpretation is to ascertain the intent of the legislature in enacting the statute. Toledo v. Public Utilities Comm. (1939), 135 Ohio St. 57. In doing so, a court "must first look to the language of the statute itself * * *." Provident Bank v. Wood (1973), 36 Ohio St. 2d 101, 105. In relation to the interpretation of the specific language, R.C. 1.42 states that the words and phrases of a statute must be read in context and construed in accordance with their common usage. (Appendix M).

Likewise, in reviewing a statute, a court cannot pick out one sentence and disassociate it from the context, but must look to the four corners of the enactment to determine the intent of the enacting body." State ex rel Nation Building Technical Academy v. Ohio Department of Education, ___ Ohio St. 3d ___, 2009 Ohio 4084, quoting State v. Wilson (1997), 77 Ohio St.3d 334, 336, 1997 Ohio 35; State v. Jackson, 102 Ohio St.3d 380, 2004 Ohio 3206. To determine this legislative intent, "significance and

effect should be accorded to every word, phrase, sentence and part thereof, if possible."

Id., quoting Wilson, 77 Ohio St.3d at 336-337; R.C. 1.47(B). (Appendix N). With respect to statutory construction, R.C. 1.47(B) states: "The entire statute is intended to be effective." State v. Sterling, 113 Ohio St. 3d 255, 2007 Ohio 1790.

"The object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the law-making body which enacted it.' This court may engage in statutory interpretation when the statute under review is ambiguous." State v. Hairston, 101 Ohio St.3d 308, 2004 Ohio 969, at P11 quoting Slingluff v. Weaver (1902), 66 Ohio St. 621, paragraph one of the syllabus. Conversely, if a statute is not ambiguous, "then we need not interpret it; we must simply apply it." Hairston, at P13, citing Sears v. Weimer (1944), 143 Ohio St. 312, paragraph five of the syllabus ("An unambiguous statute is to be applied, not interpreted.").

R.C. 2950.01(G) provides that a Tier III sex offender is an offender who has been convicted of a violation of R.C. 2907.02 or R.C. 2907.05, or any attempt, complicity, or conspiracy to commit either offense. Appellee is a Tier III offender because he was convicted of both the offense of Rape and the offense of Gross Sexual Imposition.

R.C. 2950.11(A) sets forth the community notification requirement and states in pertinent part:

"Regardless of when the sexually oriented offense * * * was committed, if a person is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense * * * and if the offender * * * is in any category specified in division (F)(1)(a), (b), or (c) of this section, the sheriff with whom the offender * * * has most recently registered * * * and the sheriff to whom the offender * * * most recently sent a notice of intent to reside * * * shall provide a written notice containing the information set forth in division (B) of this section to all of the persons described in division (A)(1) to (10) of this section."

R.C. 2950.11(F)(1) outlines to whom R.C. 2950.11(A) applies, stating:

"Except as provided in division (F)(2) of this section, the duties to provide the notices described in divisions (A) and (C) of this section apply regarding any offender * * * who is in any of the following categories:

"(a) The offender is a tier III sex offender/child victim offender, * * *."

It is clear from the above statutory provisions that community notification requirements are mandatory for all Tier III sex offenders. See R.C. 2950.11. However, provisions have been made for an offender to file a petition/motion for removal of the community notification requirement. R.C. 2950.11(F) and R.C. 2950.11(H).

R.C. 2950.11(F)(2) provides an exception to division (F)(1), stating in part:

"The notification provisions of this section do not apply to a person described in (F)(1)(a), (b), or (c) of this section if a court finds at a hearing after considering the factors described in this division that the person would not be subject to the notification provisions of this section that were in the version of this section that existed immediately prior to the effective date of this amendment." (Emphasis added.)

R.C. 2950.11(H) (1) and (2) provide as follows:

(1) Upon the motion of the offender or the prosecuting attorney of the county in which the offender was convicted of or pleaded guilty to the sexually oriented offense or child-victim oriented offense for which the offender is subject to community notification under this section, or upon the motion of the sentencing judge or that judge's successor in office, the judge may schedule a hearing to determine whether the interests of justice would be served by suspending the community notification requirement under this section in relation to the offender. The judge may dismiss the motion without a hearing but may not issue an order suspending the community notification requirement without a hearing. At the hearing, all parties are entitled to be heard, and the judge shall consider all of the factors set forth in division (K) of this section. If, at the conclusion of the hearing, the judge finds that the offender has proven by clear and convincing evidence that the offender is unlikely to commit in the future a sexually oriented offense or a child-victim oriented offense and if the judge finds that suspending the community notification requirement is in the interests of justice, the judge may suspend the application of this section in relation to the offender. The order shall contain both of these findings.

The judge promptly shall serve a copy of the order upon the sheriff with whom the offender most recently registered under section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code and upon the bureau of criminal identification and investigation.

An order suspending the community notification requirement does not suspend or otherwise alter an offender's duties to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code and does not suspend the victim notification requirement under section 2950.10 of the Revised Code.

(2) A prosecuting attorney, a sentencing judge or that judge's successor in office, and an offender who is subject to the community notification requirement under this section may initially make a motion under division (H)(1) of this section upon the expiration of twenty years after the offender's duty to comply with division (A)(2), (3), or (4) of section 2950.04, division (A)(2), (3), or (4) of section 2950.041 [2950.04.1] and sections 2950.05 and 2950.06 of the Revised Code begins in relation to the offense for which the offender is subject to community notification. After the initial making of a motion under division (H)(1) of this section, thereafter, the prosecutor, judge, and offender may make a subsequent motion under that division upon the expiration of five years after the judge has entered an order denying the initial motion or the most recent motion made under that division.

In relation to R.C. 2950.11(H), this subsection requires the trial court to conduct a hearing and to find after hearing that the interests of justice require the suspension of the community notification requirement. A court may suspend community notification requirements under subsection (H) after an offender has been registering as a sex offender subject to community notification for a period of twenty (20) years. In making either determination, the trial court is to consider the following factors:

- (a) The offender's or delinquent child's age;
- (b) The offender's or delinquent child's prior criminal or delinquency record regarding all offenses, including, but not limited to, all sexual offenses;
- (c) The age of the victim of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made;

- (d) Whether the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made involved multiple victims;
- (e) Whether the offender or delinquent child used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting;
- (f) If the offender or delinquent child previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing an act that if committed by an adult would be, a criminal offense, whether the offender or delinquent child completed any sentence or dispositional order imposed for the prior offense or act and, if the prior offense or act was a sex offense or a sexually oriented offense, whether the offender or delinquent child participated in available programs for sexual offenders;
- (g) Any mental illness or mental disability of the offender or delinquent child;
- (h) The nature of the offender's or delinquent child's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;
- (i) Whether the offender or delinquent child, during the commission of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made, displayed cruelty or made one or more threats of cruelty;
- (j) Whether the offender or delinquent child would have been a habitual sex offender or a habitual child victim offender under definitions of those terms set forth in section 2950.01 of the Revised Code as that section existed prior to the effective date of this amendment;
- (k) Any additional behavioral characteristics that contribute to the offender's or delinquent child's conduct.

See R.C. 2950.11(F)(2)(a)-(k).

However, Appellee had not been registering as a Tier III sex offender for a period of twenty (20) years nor had he been subject to the community notification requirement. To the contrary, Appellee had only been recently sentenced and classified as a Tier III sex offender for his criminal actions and could not meet such a standard at that time.

Here, the appellate court misapplied R.C. 2950.11(F)(2) as written. The appellate court determined that R.C. 2950.11(F)(2) applies to criminal defendants convicted of sexual offenses that are sentenced and classified subsequent to January 1, 2008. The plain text of the statute dictates otherwise. The plain text of the statute indicates that this section is available only to individuals classified as sexual offenders prior to January 1, 2008 that were reclassified by the AWA. If not, no reason exists for the inclusion of the statutory language in Subsection (F) that reads as follows:

(2) The notification provisions of this section do not apply to a person described in division (F)(1)(a), (b), or (c) of this section if a court finds at a hearing after considering the factors described in this division that *the person would not be subject to the notification provisions of this section that were in the version of this section that existed immediately prior to the effective date of this amendment. In making the determination of whether a person would have been subject to the notification provisions under prior law as described in this division, the court shall consider the following factors: **** (Emphasis added).

This language is conspicuously omitted from R.C. 2950.11(H). This omission indicates that the Ohio General Assembly did not intend to allow trial courts to remove community notification provisions from Tier III sex offenders' registration requirements until a period of twenty (20) years had expired for individuals sentenced on or after January 1, 2008, the effective date of the AWA. This is further supported by the declarations of the Ohio General Assembly as codified in R.C. 2950.02.

Appellant's position that R.C. 2950.11(F)(2) applies only to individuals classified as sexual offenders prior to January 1, 2008 that were reclassified by the AWA is further supported by information available for public use on the website of the Ohio Public Defender. See www.opd.ohio.gov, select Adam Walsh Act updates, select Motion for Relief from Community Notification that provides in pertinent part: "If you were previously labeled a sexually oriented offender or a habitual sex offender and were not subject to community notification, and you have now been reclassified a Tier III offender with a community notification requirement, you can file this motion to ask the court to relieve you of the new community notification requirement. (Click here for a Rich Text Format version)".

In light of the two (2) mechanisms contained in R.C. 2950.11, after a careful reading of the statute, the appellate court misapplied R.C. 2950.11(F)(2) as written. The appellate court determined that R.C. 2950.11(F)(2) applies to criminal defendants convicted of sexual offenses that are sentenced and classified subsequent to January 1, 2008. The plain text of the statute dictates otherwise. The plain text of the statute indicates that this section is available only to individuals classified as sexual offenders prior to January 1, 2008 that were reclassified by the AWA. If not, there is no reason to include the "*person would not be subject to the notification provisions of this section that were in the version of this section that existed immediately prior to the effective date of this amendment.*" language as contained in subsection (F)(2). (Emphasis added). It is plain that the language was included to permit a trial court to remove community notification requirements from a previously classified sexual offender under Megan's Law not subject to community notification provisions. Some of these sexual offenders

had their registration periods lengthened from ten (10) years to that of a lifetime by the figurative stroke of a pen. Subsection (F) appears to be the mechanism adopted by the Ohio General Assembly to preserve the *status quo* of those impacted offenders by providing for immediate removal of community notification requirements as no such requirement previously existed.

Likewise, it is equally clear from the plain text of R.C. 2950.11(H)(2) that this section applies to individuals classified as a sexual offender subsequent to January 1, 2008 and serves as a mechanism for those individuals to petition to have a trial court remove such requirements subject to the criteria in the statute after the offender has registered for a period of twenty (20) years in relationship to their lifetime reporting requirements. Contrary to the appellate court's holding, R.C. 2950.11(F)(2) and (H)(2) are not alternate avenues in the same statute to remove community notification requirements. If this were true, (H)(2) would not contain twenty (20) years compliance with the notification requirements prior to removal of such requirements when (F)(2) does not. Moreover, it is unclear why any sexual offender would even bother with availing themselves of (H)(2) and meeting twenty (20) years of compliance with notification requirements prior to removal of such requirements when they could simply avail themselves of (F)(2) for an immediate removal of community notification requirements. Appellant submits (F)(2) and (H)(2) exist because (F)(2) is for individuals not previously subject to community notification requirements under Megan's Law and (H)(2) is designated for individuals classified as sexual offenders on or after January 1, 2008. The plain language of the statute can be read in no other fashion. To hold otherwise essentially judicially removes subsection (H) from R.C. 2950.11.

If allowed to stand, the decision permits criminal defendants sentenced and classified on or after January 1, 2008 to avail themselves of this subsection to remove community notification requirements when legally not permitted to do so by R.C. 2950.11(H). To permit this would be to completely defeat one (1) of the main purposes of the AWA, which is to warn the community about sexual offenders in their midst. The decision of the appellate court misapplies a statutory section that, on its face, clearly expresses an opposite intent. This misapplication significantly impacts public safety by permitting trial courts in a four (4) county area to remove community notification requirements of Tier III sexual offenders prior to the time prescribed by law for offenders sentenced on or after January 1, 2008. Therefore, the State of Ohio strongly urges this Honorable Court to reverse the decision of the appellate court in the instant matter and remand the matter to the trial court for further proceedings consistent with this opinion.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Honorable Court reverse the decision of the appellate court in the instant matter and remand the matter to the trial court for further proceedings consistent with this opinion.

Respectfully Submitted,

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A copy of the foregoing Brief of Appellant was sent by regular U.S. Mail to John
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APPENDIX

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

ORC Ann. 2907.02 (2006)

§ 2907.02. Rape

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

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

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

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

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

(B) Whoever violates this section is guilty of rape, a felony of the first degree. If the offender under division (A)(1)(a) of this section substantially impairs the other person's judgment or control by administering any controlled substance described in *section 3719.41 of the Revised Code* to the other person surreptitiously or by force, threat of force, or deception, the prison term imposed upon the offender shall be one of the prison terms prescribed for a felony of the first degree in *section 2929.14 of the Revised Code* that is not less than five years. Except as otherwise provided in this division, notwithstanding *sections 2929.11 to 2929.14 of the Revised Code*, an offender under division (A)(1)(b) of this section shall be sentenced to a prison term or term of life imprisonment pursuant to *section 2971.03 of the Revised Code*. If an offender is convicted of or pleads guilty to a violation of division (A)(1)(b) of this section, if the offender was less than sixteen years of age at the time the offender committed the violation of that division, and if the offender during or immediately after the commission of the offense did not cause serious physical harm to the victim, the victim was ten years of age or older at the time of the commission of the violation, and the offender has not previously been convicted of or pleaded guilty to a violation of this section or a substantially similar existing or former law of this state, another state, or the United States, the court shall not sentence the offender to a prison term or term of life imprisonment pursuant to *section 2971.03 of the Revised Code*, and instead the court shall sentence the offender as otherwise provided in this division. If an offender under division (A)(1)(b) of this section previously has been convicted of or pleaded guilty to violating division (A)(1)(b) of this section or to violating an existing or former law of this state, another state, or the United States that is substantially similar to division (A)(1)(b) of this section, if the offender during or immediately after the commission of the offense caused serious physical harm to the victim, or if the victim under division (A)(1)(b) of this section is less than ten years of age, in lieu of sentencing the offender to a prison term or term of life imprisonment pursuant to *section 2971.03 of the Revised Code*, the court may impose upon the offender a term of life without parole. If the court imposes a term of life without parole pursuant to this division, division (F) of *section 2971.03 of the Revised Code* applies, and the offender automatically is classified a sexual predator, as described in that division.

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

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

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

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

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

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

HISTORY:

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

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

ORC Ann. 2907.05 (2006)

§ 2907.05. Gross sexual imposition

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

(1) The offender purposely compels the other person, or one of the other persons, to submit by force or threat of force.

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

(3) The offender knows that the judgment or control of the other person or of one of the other persons is substantially impaired as a result of the influence of any drug or intoxicant administered to the other person with the other person's consent for the purpose of any kind of medical or dental examination, treatment, or surgery.

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

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

(B) Whoever violates this section is guilty of gross sexual imposition.

(1) Except as otherwise provided in this section, gross sexual imposition committed in violation of division (A)(1), (2), (3), or (5) of this section is a felony of the fourth degree. If the offender under division (A)(2) of this section substantially impairs the judgment or control of the other person or one of the other persons by administering any controlled substance described in *section 3719.41 of the Revised Code* to the person surreptitiously or by force, threat of force, or deception, gross sexual imposition committed in violation of division (A)(2) of this section is a felony of the third degree.

(2) Gross sexual imposition committed in violation of division (A)(4) of this section is a felony of the third degree. Except as otherwise provided in this division, for gross sexual imposition committed in violation of division (A)(4) of this section there is a presumption that a prison term shall be imposed for the offense. The court shall impose on an offender convicted of gross sexual imposition in violation of division (A)(4) of this section a mandatory prison term equal to one of the prison terms prescribed in *section 2929.14 of the Revised Code* for a felony of the third degree if either of the following applies:

(a) Evidence other than the testimony of the victim was admitted in the case corroborating the violation;

(b) The offender previously was convicted of or pleaded guilty to a violation of this section, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was under thirteen years of age.

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

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

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

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

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

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

HISTORY:

134 v H 511 (Eff 1-1-74); 136 v S 144 (Eff 8-27-75); 137 v H 134 (Eff 8-8-77); 143 v H 208 (Eff 4-11-90); 145 v S 31 (Eff 9-27-93); 147 v H 32. Eff 3-10-98; 151 v H 95, § 1, eff. 8-3-06.

FILED
LORAIN COUNTY



2008 JUL 29 P 2: 29

CLERK OF COMMON PLEAS
RON NABAKOWSKI

LORAIN COUNTY COURT OF COMMON PLEAS

LORAIN COUNTY, OHIO

RON NABAKOWSKI, Clerk
JOURNAL ENTRY
James M Burge, Judge

Date 7-29-08 Case No. 07CR075079

STATE OF OHIO
Plaintiff

THOMAS CAHILL
Plaintiff's Attorney

VS

STEPHEN J. MCCONVILLE
Defendant

JOHN PRUSAK
Defendant's Attorney

VOL _____ PAGE _____

JUDGMENT ENTRY

I

Defendant in court with counsel for hearing to determine defendant's sex offender classification. Upon finding that defendant has been convicted of the offense of rape, R.C.2907.02, therefore, defendant is classified as a Tier III sex offender. R.C.2950.01(G).

II

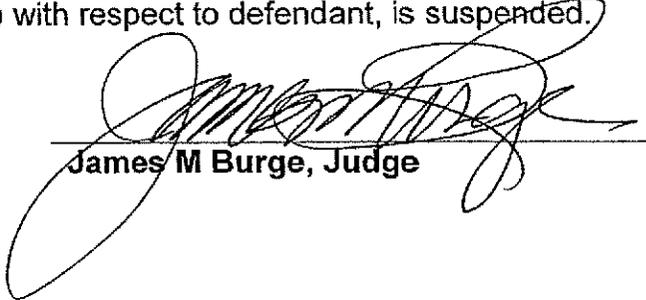
Hearing had upon the court's motion, pursuant to R.C.2950.11(H)(1), to determine whether the interests of justice would be served by suspending the community notification requirements of R.C. 2950.11(F)(1). Upon review of the facts of this matter, as well as the history and character of defendant and after application of the factors set forth in R.C. 2950.11(K), the court finds that defendant is unlikely to commit a sexually oriented offense in the future, and that suspending the community notification requirements of R.C.2950.11(F)(1) is in the interest of justice.



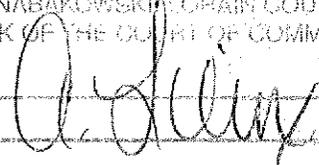
Appendix C-1



It is therefore ordered that the application of the community notification requirement under R.C.2950.11(F)(1) with respect to defendant, is suspended.


James M Burge, Judge

cc: Pros. Cahill
Atty. Prusak

I HEREBY CERTIFY THIS TO BE A TRUE COPY
OF THE ORIGINAL ON FILE IN THIS OFFICE.
RON NABAKOWSKI, LORAIN COUNTY
CLERK OF THE COURT OF COMMON PLEAS
BY  DEPUTY



Appendix C-z

STATE OF OHIO)
) ss
 COUNTY OF LORAIN)
 STATE OF OHIO
 Appellant
 v.
 STEPHEN J. MCCONVILLE
 Appellee

COURT OF APPEALS
 FILED
 LORAIN COUNTY
 IN THE COURT OF APPEALS
 NINTH JUDICIAL DISTRICT
 2009 APR 13 P 12:37
 CLERK OF COMMON PLEAS 08CA009444
 RON NABAKOWSKI
9th APPELLATE DISTRICT
 APPEAL FROM JUDGMENT
 ENTERED IN THE
 COURT OF COMMON PLEAS
 COUNTY OF LORAIN, OHIO
 CASE No. 07CR075079

DECISION AND JOURNAL ENTRY

Dated: April 13, 2009

BELFANCE, Judge.

{¶1} The Appellant, State of Ohio, appeals from the judgment of the Lorain County Court of Common Pleas, that suspended the Appellee, Stephen James McConville’s duty to comply with the community notification requirement of the Adam Walsh Act as part of his classification as a tier III sex offender. This Court affirms.

I.

{¶2} On July 18, 2008, Stephen James McConville pled guilty to one count of rape and one count of gross sexual imposition. On that same date, the trial court sentenced McConville to four years incarceration and notified him that he would be classified as a tier III sexual offender pursuant to the Adam Walsh Act, Ohio Revised Code 2950.01, *et seq.* The court informed McConville of his registering and reporting duties attendant to that classification. However, the trial court informed McConville that it would not impose the community notification

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 OF THE ORIGINAL ON FILE IN THIS OFFICE.
 RON NABAKOWSKI, LORAIN COUNTY
 CLERK OF THE COURT OF COMMON PLEAS
 BY: *[Signature]*

Appendix D-1

requirement and would address that issue at a later date after conducting a presentence investigation.

{¶3} On July 23, 2008, the trial court reconvened for a hearing with respect to the community notification requirement. The trial court determined that it would not impose the community notification requirement at that time. The Appellant, State of Ohio argued at the hearing that the trial court lacked the authority to suspend the community notification requirement. The trial court was not persuaded and the instant appeal followed.

II.

{¶4} In its sole assignment of error, the State argues that the trial court erred when it *sua sponte* removed the community notification requirement from McConville's tier III sex offender classification. The State contends that R.C. 2950.11(F)(2) should be read to allow the trial court to remove the community notification requirement only where the offender had been previously classified under the prior law.

{¶5} Whether or not the trial court has the authority to suspend the community notification requirement is a question of statutory interpretation. Statutory interpretation involves a question of law; therefore, we review this matter *de novo*. *State v. Myers*, 9th Dist. Nos. 3260-M, 3261-M, 2002-Ohio-3195, at ¶14; *Eager v. State*, 9th Dist. No. 08CA0037, 2008-Ohio-6742, at ¶8. "A *de novo* review requires an independent review of the trial court's decision without any deference to the trial court's determination." *Rusov v. Ansley*, 9th Dist. No. 23748, 2007-Ohio-7022, at ¶12, quoting *Kane v. O'Day*, 9th Dist. No. 23225, 2007-Ohio-702, at ¶6.

{¶6} Initially, we consider whether the specific language of the statute at issue is ambiguous. *Myers* at ¶14, quoting *Roxane Laboratories, Inc. v. Tracy* (1996), 75 Ohio St.3d 125, 127. A statute is ambiguous when the words used are susceptible to more than one

reasonable interpretation. *In re Guardianship of A.L.K and A.K.*, 9th Dist. Nos. 23338, 23339, 2007-Ohio-509, at ¶10, quoting *Donnelly v. Kashnier*, 9th Dist. No. 02CA0051-M, 2003-Ohio-639, at ¶26. If the language is unambiguous, we must apply the clear meaning of the words used, applying the rules of grammar and common usage. *Id.* at ¶9; R.C. 1.42. “A court may interpret a statute only where the statute is ambiguous.” *Myers* at ¶15, quoting *State ex rel. Celebrezze v. Allen Cty. Bd. of Commrs.* (1987), 32 Ohio St.3d 24, 27.

{¶7} The statute at issue in the case at bar became effective on January 1, 2008 as part of Ohio’s adoption of the federal Adam Walsh Act (“AWA”). Although AWA amended numerous sections of the Ohio Revised Code, this appeal only concerns the amendments to Chapter 2950, which replaced Ohio’s prior system of sex offender classification and registration requirements. Most notably, AWA provides a systems of tiers into which sex offenders are classified based strictly on the type and number of offenses committed. The trial court no longer has the discretion to classify each sex offender based on a finding of the individual’s likelihood of reoffending. Each tier mandates corresponding duties of registration.

{¶8} A tier I classification attaches to the least serious sex offenses with the lowest level registering requirements in terms of duration and frequency of in-person address verification. A tier III classification attaches to the most serious sex offenses and has the highest level of registering requirements, including the provision for community notification. Rape is a tier III offense. R.C. 2950.01(G)(1)(a). Tier III offenders are the only offenders subject to community notification. R.C. 2950.11(F)(1)(a).

{¶9} R.C. 2950.11(A) sets forth the community notification requirement and states in pertinent part:

“Regardless of when the sexually oriented offense * * * was committed, if a person is convicted of, pleads guilty to, has been convicted of, or has pleaded

guilty to a sexually oriented offense * * * and if the offender * * * is in any category specified in division (F)(1)(a), (b), or (c) of this section, the sheriff with whom the offender * * * has most recently registered * * * and the sheriff to whom the offender * * * most recently sent a notice of intent to reside * * * shall provide a written notice containing the information set forth in division (B) of this section to all of the persons described in division (A)(1) to (10) of this section.”

R.C. 2950.11(F)(1) outlines to whom R.C. 2950.11(A) applies, stating:

“*Except as provided in division (F)(2) of this section*, the duties to provide the notices described in divisions (A) and (C) of this section apply regarding any offender * * * who is in any of the following categories:

“(a) The offender is a tier III sex offender/child victim offender, * * *.”
(Emphasis added.)

R.C. 2950.11(F)(2) provides an exception to division (F)(1), stating in part:

“The notification provisions of this section *do not apply* to a person described in (F)(1)(a), (b), or (c) of this section if a court finds at a hearing after considering the factors described in this division that the person would not be subject to the notification provisions of this section that were in the version of this section that existed immediately prior to the effective date of this amendment.” (Emphasis added.)

{¶10} R.C. 2950.11(F)(2) outlines the factors for the sentencing court to evaluate when deciding whether the offender would have been subject to the community notification provisions of the prior law. The factors the sentencing court shall consider include: the age of the offender; the offender’s prior criminal history as a juvenile or an adult; the age of the victim of the current sexual offense; the number of victims of the current sexual offense; whether the offender used drugs or alcohol to impair the victim; if the offender previously committed a sexual offense, whether the offender participated at that time in any programs for sexual offenders; any mental disease or disability the offender may have; in considering the sexual conduct of the offender toward the current victim, whether such conduct demonstrates a pattern of abuse; any cruelty or threats toward the current victim; whether the offender would have been classified as a habitual sex offender or habitual child victim offender as defined in the version of the statute that existed

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immediately prior to January 1, 2008; and any of the offender's behavioral characteristics that contributed to the conduct. R.C. 2950.11(F)(2)(a) – (k).

{¶11} In summary, due to McConville's rape conviction, R.C. 2950.01 automatically classifies him as a tier III offender. Based on that classification, R.C. 2950.11(A) and 2950.11(F)(1)(a) provide that certain members of the community must receive notice that McConville resides, or intends to reside in their neighborhood. However, R.C. 2950.11(F)(2) provides that this requirement does not apply to McConville if the court finds after a hearing that he would not have been subject to the community notification requirement pursuant to the law in effect immediately prior to the current statute. R.C. 2950.11(F)(2)(a) – (k) delineate the factors the trial court must consider to determine if McConville would have been subjected to the community notification requirement under the prior law.

{¶12} This Court does not conclude that the above quoted statutory text is ambiguous or susceptible to more than one interpretation. Accordingly, we must apply the statute as written without further interpretation. *In re Guardianship of A.L.K and A.K.* at ¶9. Although division (F)(1) defines which offenders may be subject to community notification, division (F)(2) states that the notification provisions of division (F)(1) do not apply if the judge conducts a hearing and makes the circumscribed findings. The statute does not establish when such a hearing may be held and does not prohibit the hearing to be conducted in conjunction with sentencing. It also does not forbid the court from commencing the hearing *sua sponte*.

{¶13} The State contends that the trial court did not have discretion to suspend the community notification requirement because the community notification requirement is automatic and mandatory once McConville is classified as a tier III offender and R.C. 2950.11(F)(2) does not apply to McConville. The State argues that R.C. 2950.11(F)(2) applies

only to sex offenders previously classified under the prior version of the law. In the State's view, R.C. 2950.11(H) is the only means by which McConville could be relieved of the community notification requirement.

{¶14} R.C. 2950.11(H) allows a motion to be made to remove the community notification requirement from an offender's sentence. This motion may be made by the offender, the prosecutor, the judge, or the judge's successor. R.C. 2950.11(H)(1). R.C. 2950.11(H)(2) provides that this motion may initially be made twenty years after the offender's duty to register and verify his or her address commences. After such motion, the judge may conduct a hearing, or may dismiss the motion without hearing. R.C. 2950.11(H)(1). In order to suspend the community notification requirement, the judge must find that the offender has proven by clear and convincing evidence that he or she is not likely to commit a future sexually oriented offense and that the suspension of the community notification requirement is in the interests of justice. *Id.* In making this determination, the judge must consider the ten factors enumerated in R.C. 2950.11(K). The ten factors in division (K) are identical to ten of the eleven factors in division (F)(2).

{¶15} We do not deem the State's arguments to be well taken. Although the State contends that R.C. 2950.11(F)(2) is meant to apply to offenders already classified under the prior law, we fail to see how that meaning can be gleaned from a plain reading of the statute given that the text of the statute does not limit the application of division (F)(2) to prior offenders classified or convicted pursuant to the previous version of Chapter 2950. Rather, R.C. 2950.11(F)(2) provides that the notification requirements will not apply to a *person* who would not have been subject to the notification requirements under the prior law. If the legislature intended R.C.

2950.11(F)(2) to apply only to persons previously classified under the prior law, then the legislature could have included language imposing such a limitation.

{¶16} Although the State wishes this Court to interpret the statute by going beyond the plain language of the statute, it has not provided any legislative history supporting its suggested interpretation. Given the plain language of the statute, it would appear that the legislature intended to provide the trial court with discretion to determine whether the community notification requirements should apply to certain offenders who would not have been subject to community notification under the prior law.

{¶17} The State has also suggested that R.C. 2950.11(H) is the sole method by which the community notification requirement may be suspended. Again, we do not discern merit in this argument. Instead, we determine that division (H) provides *another* method to relieve an offender from the community notification requirement.¹ The language of division (F) and division (H) are distinct; each merely sets out its own procedure for relief from the community notification requirement. We see no reason to determine that the procedures outlined in divisions (F) and (H) are interrelated or to be read in conjunction with each other.

{¶18} Having determined that the trial court acted within statutory authority, we now consider whether the trial court's determination to remove community notification from McConville's sentence was supported by competent, credible evidence. See, e.g., *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, syllabus; *State v. Hultz*, 9th Dist. No. 07CA0043, 2008-Ohio-4153, at ¶9.

¹ For example, an offender whose sentence included the community notification requirement and who could not meet the requirements of division (F)(2), could employ division (H) to seek relief from the community notification requirement consistent with the terms set forth in division (H).

{¶19} At the plea and sentencing hearing on July 18, 2008, the trial court properly found that McConville was a tier III offender due to his conviction for rape. The trial court then informed McConville of his registration duties consistent with that classification. However, the trial court held its ruling with regard to community notification in abeyance pending a presentence investigation report.

{¶20} On July 23, 2008, the trial court conducted a hearing with respect to the community notification provision. On the record and in its judgment entry, the trial court stated that it considered all the factors of R.C. 2950.11(F)(2) as applied to McConville and concluded that the community notification requirements attendant to a tier III classification did not apply to McConville.

{¶21} Application of R.C. 2950.11(F)(2)(a) – (k) to the instant matter reveals the following: McConville was 19 years old when he committed the offense and the victim, his fiancée at the time, was also 19. His only prior criminal offense was a misdemeanor, which was not sexually oriented. McConville's offense was not against multiple victims and he did not impair the victim with drugs or alcohol. The offense was not alleged to be part of a larger pattern of abuse and did not involve cruelty or threats. McConville reported that he has a mood disorder for which he takes multiple prescribed medications, but that his disorder is well controlled by the medications. Based on the above, McConville would not have been classified as a habitual sex offender or a sexual predator pursuant to the immediately preceding version of R.C. 2950.01, et seq. Therefore, McConville properly falls within the category of offenders to which R.C. 2950.11(F)(2) applies. See *State v. Williams*, 12th Dist. No. CA2008-02-029, 2008-Ohio-6195, at ¶10 (stating that, under prior law, community notification applied to habitual sex offenders and sexual predators).

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{¶22} Accordingly, the trial court did not err in suspending the community notification requirement with respect to McConville.

III.

{¶23} The State of Ohio's sole assignment of error is overruled. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.



EVE V. BELFANCE
FOR THE COURT

WHITMORE, J.
DICKINSON, P. J.
CONCUR

Appendix A-9

APPEARANCES:

DENNIS WILL, Prosecuting Attorney and BILLIE JO BELCHER, Assistant Prosecuting Attorney, for Appellant.

JOHN M. PRUSAK, Attorney at Law, for Appellee.

Appendix A-10

IN THE SUPREME COURT OF OHIO

State of Ohio,	:	
	:	
Appellant,	:	09-0893 On Appeal from the Lorain
	:	County Court of Appeals,
v.	:	Ninth Appellate District
	:	
Stephen J. McConville.	:	Court of Appeals Case Number
	:	08CA009444
Appellee.	:	

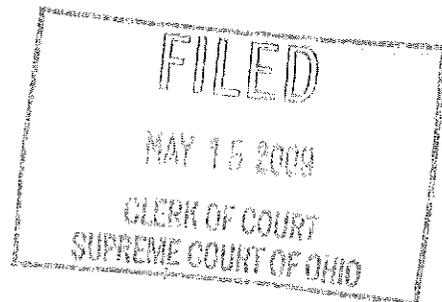
NOTICE OF APPEAL OF APPELLANT STATE OF OHIO

Dennis P. Will (0038129)
 Billie Jo Belcher (0072337) (COUNSEL OF RECORD)
 Lorain County Prosecutor's Office
 225 Court Street, 3rd Floor
 Elyria, Ohio 44035
 (440) 329-5393
 Fax No. (440) 328-2183
 billiejo.belcher@lcprosecutor.org

COUNSEL FOR APPELLANT, STATE OF OHIO

John M. Prusak (0071897) (COUNSEL OF RECORD)
 715 Broadway Avenue
 Lorain, Ohio 44052
 (440) 244-2434

COUNSEL FOR APPELLEE, STEPHEN J. MCCONVILLE



Notice of Appeal of Appellant State of Ohio

Appellant State of Ohio hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Lorain County Court of Appeals, Ninth Appellate District, entered in Court of Appeals case No. 08CA009444 on April 13, 2009.

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

Respectfully submitted,

Billie Jo Belcher, Counsel of Record

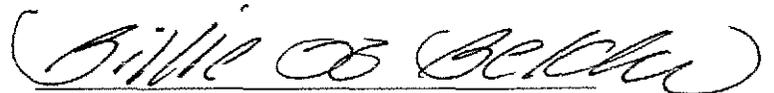


Billie Jo Belcher

COUNSEL FOR APPELLANT,
STATE OF OHIO

Certificate of Service

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to counsel for Appellee, Stephen J. McConville, John M. Prusak, 715 Broadway Ave., Lorain, Ohio 44052, as well the Office of the Ohio Public Defender, 250 E. Broad Street, Suite 1400, Columbus, Ohio 43215, this 10th day of May, 2009.



Billie Jo Belcher

COUNSEL FOR APPELLANT,
STATE OF OHIO

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

ORC Ann. 2950.09 (2006)

§ 2950.09. Classification as sexual predator; determination hearing; petition for removal from classification

(A) If a person is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually oriented offense that is not a registration-exempt sexually oriented offense, and if the sexually oriented offense is a violent sex offense or a designated homicide, assault, or kidnapping offense and the offender is adjudicated a sexually violent predator in relation to that offense, the conviction of or plea of guilty to the offense and the adjudication as a sexually violent predator automatically classifies the offender as a sexual predator for purposes of this chapter. If a person is convicted of or pleads guilty to committing on or after the effective date of this amendment a sexually oriented offense that is a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* and if either the person is sentenced under *section 2971.03 of the Revised Code*, or the court imposes upon the offender a sentence of life without parole under division (B) of *section 2907.02 of the Revised Code*, the conviction of or plea of guilty to the offense automatically classifies the offender as a sexual predator for purposes of this chapter. If a person is convicted of or pleads guilty to committing on or after the effective date of this amendment attempted rape and also is convicted of or pleads guilty to a specification of the type described in *section 2941.1418 [2941.14.18]*, *2941.1419 [2941.14.19]*, or *2941.1420 [2941.14.20]* of the *Revised Code*, the conviction of or plea of guilty to the offense and the specification automatically classify the offender as a sexual predator for purposes of this chapter. If a person is convicted, pleads guilty, or is adjudicated a delinquent child, in a court in another state, in a federal court, military court, or Indian tribal court, or in a court of any nation other than the United States for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, and if, as a result of that conviction, plea of guilty, or adjudication, the person is required, under the law of the jurisdiction in which the person was convicted, pleaded guilty, or was adjudicated, to register as a sex offender until the person's death, that conviction, plea of guilty, or adjudication automatically classifies the person as a sexual predator for the purposes of this chapter, but the person may challenge that classification pursuant to division (F) of this section. In all other cases, a person who is convicted of or pleads guilty to, has been convicted of or pleaded guilty to, or is adjudicated a delinquent child for committing, a sexually oriented offense may be classified as a sexual predator for purposes of this chapter only in accordance with division (B) or (C) of this section or, regarding delinquent children, divisions (B) and (C) of *section 2152.83 of the Revised Code*.

(B) (1) (a) The judge who is to impose sentence on a person who is convicted of or pleads guilty to a sexually oriented offense that is not a registration-exempt sexually oriented offense shall conduct a hearing to determine whether the offender is a sexual predator if any of the following circumstances apply:

(i) Regardless of when the sexually oriented offense was committed, the offender is to be sentenced on or after January 1, 1997, for a sexually oriented offense that is not a registration-exempt sexually oriented offense and that is not a sexually violent offense.

(ii) Regardless of when the sexually oriented offense was committed, the offender is to be sentenced on or after January 1, 1997, for a sexually oriented offense that is not a registration-exempt sexually oriented offense, and that is not a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* committed on or after the effective date of this amendment for which sentence is imposed under *section 2971.03 of the Revised Code* or for which a sentence of life without parole is imposed under division (B) of *section 2907.02 of the Revised Code*, and that is not attempted rape committed on or after the effective date of this amendment when the offender also is convicted of or pleads guilty to a specification of the type described in *section 2941.1418 [2941.14.18]*, *2941.1419 [2941.14.19]*, or *2941.1420 [2941.14.20]* of the *Revised Code*, and either of the following applies: the sexually oriented offense is a violent sex offense other than a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* committed on or after the effective date of this amendment and other than attempted rape committed on or after that date when the offender also is convicted of or pleads guilty to a specification of the type described in *section 2941.1418 [2941.14.18]*, *2941.1419 [2941.14.19]*, or *2941.1420 [2941.14.20]* of the *Revised Code*, and a sexually violent predator specification was not included in the indictment, count in the indictment, or information charging the violent sex offense; or the sexually oriented offense is a designated homicide, assault, or kidnapping offense and either a sexual motivation specification or

a sexually violent predator specification, or both such specifications, were not included in the indictment, count in the indictment, or information charging the designated homicide, assault, or kidnapping offense.

(iii) Regardless of when the sexually oriented offense was committed, the offender is to be sentenced on or after May 7, 2002, for a sexually oriented offense that is not a registration-exempt sexually oriented offense, and that offender was acquitted of a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging the sexually oriented offense.

(b) The judge who is to impose or has imposed an order of disposition upon a child who is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense that is not a registration-exempt sexually oriented offense shall conduct a hearing as provided in this division to determine whether the child is to be classified as a sexual predator if either of the following applies:

(i) The judge is required by section 2152.82 or division (A) of *section 2152.83 of the Revised Code* to classify the child a juvenile offender registrant.

(ii) Division (B) of *section 2152.83 of the Revised Code* applies regarding the child, the judge conducts a hearing under that division for the purposes described in that division, and the judge determines at that hearing that the child will be classified a juvenile offender registrant.

(2) Regarding an offender, the judge shall conduct the hearing required by division (B)(1)(a) of this section prior to sentencing and, if the sexually oriented offense for which sentence is to be imposed is a felony and if the hearing is being conducted under division (B)(1)(a) of this section, the judge may conduct it as part of the sentencing hearing required by *section 2929.19 of the Revised Code*. Regarding a delinquent child, the judge may conduct the hearing required by division (B)(1)(b) of this section at the same time as, or separate from, the dispositional hearing, as specified in the applicable provision of *section 2152.82 or 2152.83 of the Revised Code*. The court shall give the offender or delinquent child and the prosecutor who prosecuted the offender or handled the case against the delinquent child for the sexually oriented offense notice of the date, time, and location of the hearing. At the hearing, the offender or delinquent child and the prosecutor shall have an opportunity to testify, present evidence, call and examine witnesses and expert witnesses, and cross-examine witnesses and expert witnesses regarding the determination as to whether the offender or delinquent child is a sexual predator. The offender or delinquent child shall have the right to be represented by counsel and, if indigent, the right to have counsel appointed to represent the offender or delinquent child.

(3) In making a determination under divisions (B)(1) and (4) of this section as to whether an offender or delinquent child is a sexual predator, the judge shall consider all relevant factors, including, but not limited to, all of the following:

(a) The offender's or delinquent child's age;

(b) The offender's or delinquent child's prior criminal or delinquency record regarding all offenses, including, but not limited to, all sexual offenses;

(c) The age of the victim of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made;

(d) Whether the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made involved multiple victims;

(e) Whether the offender or delinquent child used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting;

(f) If the offender or delinquent child previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing an act that if committed by an adult would be, a criminal offense, whether the offender or delinquent child completed any sentence or dispositional order imposed for the prior offense or act and, if the prior offense or act was a sex offense or a sexually oriented offense, whether the offender or delinquent child participated in available programs for sexual offenders;

(g) Any mental illness or mental disability of the offender or delinquent child;

(h) The nature of the offender's or delinquent child's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;

(i) Whether the offender or delinquent child, during the commission of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made, displayed cruelty or made one or more threats of cruelty;

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

(4) After reviewing all testimony and evidence presented at the hearing conducted under division (B)(1) of this section and the factors specified in division (B)(3) of this section, the court shall determine by clear and convincing evidence whether the subject offender or delinquent child is a sexual predator. If the court determines that the subject offender or delinquent child is not a sexual predator, the court shall specify in the offender's sentence and the judgment of conviction that contains the sentence or in the delinquent child's dispositional order, as appropriate, that the court has determined that the offender or delinquent child is not a sexual predator and the reason or reasons why the court determined that the subject offender or delinquent child is not a sexual predator. If the court determines by clear and convincing evidence that the subject offender or delinquent child is a sexual predator, the court shall specify in the offender's sentence and the judgment of conviction that contains the sentence or in the delinquent child's dispositional order, as appropriate, that the court has determined that the offender or delinquent child is a sexual predator and shall specify that the determination was pursuant to division (B) of this section. In any case in which the sexually oriented offense in question is an aggravated sexually oriented offense, the court shall specify in the offender's sentence and the judgment of conviction that contains the sentence that the offender's offense is an aggravated sexually oriented offense. The offender or delinquent child and the prosecutor who prosecuted the offender or handled the case against the delinquent child for the sexually oriented offense in question may appeal as a matter of right the court's determination under this division as to whether the offender or delinquent child is, or is not, a sexual predator.

(5) A hearing shall not be conducted under division (B) of this section regarding an offender if any of the following applies:

(a) The sexually oriented offense in question is a sexually violent offense, the indictment, count in the indictment, or information charging the offense also included a sexually violent predator specification, and the offender is convicted of or pleads guilty to that sexually violent predator specification.

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

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

(C) (1) If a person was convicted of or pleaded guilty to a sexually oriented offense that is not a registration-exempt sexually oriented offense prior to January 1, 1997, if the person was not sentenced for the offense on or after January 1, 1997, and if, on or after January 1, 1997, the offender is serving a term of imprisonment in a state correctional institution, the department of rehabilitation and correction shall do whichever of the following is applicable:

(a) If the sexually oriented offense was an offense described in division (D)(1)(c) of *section 2950.01 of the Revised Code* or was a violent sex offense, the department shall notify the court that sentenced the offender of this fact, and the court shall conduct a hearing to determine whether the offender is a sexual predator.

(b) If division (C)(1)(a) of this section does not apply, the department shall determine whether to recommend that the offender be adjudicated a sexual predator. In making a determination under this division as to whether to recommend that the offender be adjudicated a sexual predator, the department shall consider all relevant factors, including, but not limited to, all of the factors specified in divisions (B)(2) and (3) of this section. If the department determines that it will recommend that the offender be adjudicated a sexual predator, it immediately shall send the

recommendation to the court that sentenced the offender. If the department determines that it will not recommend that the offender be adjudicated a sexual predator, it immediately shall send its determination to the court that sentenced the offender. In all cases, the department shall enter its determination and recommendation in the offender's institutional record, and the court shall proceed in accordance with division (C)(2) of this section.

(2) (a) If the department of rehabilitation and correction sends to a court a notice under division (C)(1)(a) of this section, the court shall conduct a hearing to determine whether the subject offender is a sexual predator. If, pursuant to division (C)(1)(b) of this section, the department sends to a court a recommendation that an offender be adjudicated a sexual predator, the court is not bound by the department's recommendation, and the court shall conduct a hearing to determine whether the offender is a sexual predator. In any case, the court shall not make a determination as to whether the offender is, or is not, a sexual predator without a hearing. The court may hold the hearing and make the determination prior to the offender's release from imprisonment or at any time within one year following the offender's release from that imprisonment.

(b) If, pursuant to division (C)(1)(b) of this section, the department sends to the court a determination that it is not recommending that an offender be adjudicated a sexual predator, the court shall not make any determination as to whether the offender is, or is not, a sexual predator but shall determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the department made its determination or previously has been convicted of or pleaded guilty to a child-victim oriented offense.

The court may conduct a hearing to determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense or a child-victim oriented offense but may make the determination without a hearing. However, if the court determines that the offender previously has been convicted of or pleaded guilty to such an offense, it shall not impose a requirement that the offender be subject to the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code* without a hearing. In determining whether to impose the community notification requirement, the court, in the circumstances described in division (E)(2) of this section, shall apply the presumption specified in that division. The court shall include in the offender's institutional record any determination made under this division as to whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense or child-victim oriented offense, and, as such, whether the offender is a habitual sex offender.

(c) Upon scheduling a hearing under division (C)(2)(a) or (b) of this section, the court shall give the offender and the prosecutor who prosecuted the offender for the sexually oriented offense, or that prosecutor's successor in office, notice of the date, time, and place of the hearing. If the hearing is scheduled under division (C)(2)(a) of this section to determine whether the offender is a sexual predator, the prosecutor who is given the notice may contact the department of rehabilitation and correction and request that the department provide to the prosecutor all information the department possesses regarding the offender that is relevant and necessary for use in making the determination as to whether the offender is a sexual predator and that is not privileged or confidential under law. If the prosecutor makes a request for that information, the department promptly shall provide to the prosecutor all information the department possesses regarding the offender that is not privileged or confidential under law and that is relevant and necessary for making that determination. A hearing scheduled under division (C)(2)(a) of this section to determine whether the offender is a sexual predator shall be conducted in the manner described in division (B)(1) of this section regarding hearings conducted under that division and, in making a determination under this division as to whether the offender is a sexual predator, the court shall consider all relevant factors, including, but not limited to, all of the factors specified in divisions (B)(2) and (3) of this section. After reviewing all testimony and evidence presented at the sexual predator hearing and the factors specified in divisions (B)(2) and (3) of this section, the court shall determine by clear and convincing evidence whether the offender is a sexual predator. If the court determines at the sexual predator hearing that the offender is not a sexual predator, it also shall determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the hearing is being conducted.

Upon making its determinations at the sexual predator hearing, the court shall proceed as follows:

(i) If the court determines that the offender is not a sexual predator and that the offender previously has not been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the hearing is being conducted and previously has not been convicted of or pleaded guilty to a child-victim oriented offense, it shall include in the offender's institutional record its determinations and the reason or reasons why it determined that the offender is not a sexual predator.

(ii) If the court determines that the offender is not a sexual predator but that the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the hearing is being conducted or previously has been convicted of or pleaded guilty to a child-victim oriented offense, it shall include in the offender's institutional record its determination that the offender is not a sexual predator but is a habitual sex offender and the reason or reasons why it determined that the offender is not a sexual predator, shall attach the determinations and the reason or reasons to the offender's sentence, shall specify that the determinations were pursuant to division (C) of this section, shall provide a copy of the determinations and the reason or reasons to the offender, to the prosecuting attorney, and to the department of rehabilitation and correction, and may impose a requirement that the offender be subject to the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code*. In determining whether to impose the community notification requirements, the court, in the circumstances described in division (E)(2) of this section, shall apply the presumption specified in that division. The offender shall not be subject to those community notification provisions relative to the sexually oriented offense in question if the court does not so impose the requirement described in this division. If the court imposes that requirement, the offender may appeal the judge's determination that the offender is a habitual sex offender.

(iii) If the court determines by clear and convincing evidence that the offender is a sexual predator, it shall enter its determination in the offender's institutional record, shall attach the determination to the offender's sentence, shall specify that the determination was pursuant to division (C) of this section, and shall provide a copy of the determination to the offender, to the prosecuting attorney, and to the department of rehabilitation and correction. The offender and the prosecutor may appeal as a matter of right the judge's determination under divisions (C)(2)(a) and (c) of this section as to whether the offender is, or is not, a sexual predator.

If the hearing is scheduled under division (C)(2)(b) of this section to determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense or a child-victim oriented offense or whether to subject the offender to the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code*, upon making the determination, the court shall attach the determination or determinations to the offender's sentence, shall provide a copy to the offender, to the prosecuting attorney, and to the department of rehabilitation and correction and may impose a requirement that the offender be subject to the community notification provisions. In determining whether to impose the community notification requirements, the court, in the circumstances described in division (E)(2) of this section, shall apply the presumption specified in that division. The offender shall not be subject to the community notification provisions relative to the sexually oriented offense in question if the court does not so impose the requirement described in this division. If the court imposes that requirement, the offender may appeal the judge's determination that the offender is a habitual sex offender.

(3) The changes made in divisions (C)(1) and (2) of this section that take effect on July 31, 2003, do not require a court to conduct a new hearing under those divisions for any offender regarding a sexually oriented offense if, prior to July 31, 2003, the court previously conducted a hearing under those divisions regarding that offense to determine whether the offender was a sexual predator. The changes made in divisions (C)(1) and (2) of this section that take effect on July 31, 2003, do not require a court to conduct a hearing under those divisions for any offender regarding a sexually oriented offense if, prior to July 31, 2003, and pursuant to those divisions, the department of rehabilitation and correction recommended that the offender be adjudicated a sexual predator regarding that offense, and the court denied the recommendation and determined that the offender was not a sexual predator without a hearing, provided that this provision does not apply if the sexually oriented offense in question was an offense described in division (D)(1)(c) of *section 2950.01 of the Revised Code*.

(D) (1) Division (D)(1) of this section does not apply to any person who has been convicted of or pleaded guilty to a sexually oriented offense. Division (D) of this section applies only to delinquent children as provided in Chapter 2152. of the Revised Code. A person who has been adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense and who has been classified by a juvenile court judge a

juvenile offender registrant or, if applicable, additionally has been determined by a juvenile court judge to be a sexual predator or habitual sex offender, may petition the adjudicating court for a reclassification or declassification pursuant to *section 2152.85 of the Revised Code*.

A judge who is reviewing a sexual predator determination for a delinquent child under *section 2152.84* or *2152.85 of the Revised Code* shall comply with this section. At the hearing, the judge shall consider all relevant evidence and information, including, but not limited to, the factors set forth in division (B)(3) of this section. The judge shall not enter a determination that the delinquent child no longer is a sexual predator unless the judge determines by clear and convincing evidence that the delinquent child is unlikely to commit a sexually oriented offense in the future. If the judge enters a determination under this division that the delinquent child no longer is a sexual predator, the judge shall notify the bureau of criminal identification and investigation of the determination and shall include in the notice a statement of the reason or reasons why it determined that the delinquent child no longer is a sexual predator. Upon receipt of the notification, the bureau promptly shall notify the sheriff with whom the delinquent child most recently registered under *section 2950.04* or *2950.05 of the Revised Code* of the determination that the delinquent child no longer is a sexual predator.

(2) If an offender who has been convicted of or pleaded guilty to a sexually oriented offense is classified a sexual predator pursuant to division (A) of this section or has been adjudicated a sexual predator relative to the offense as described in division (B) or (C) of this section, subject to division (F) of this section, the classification or adjudication of the offender as a sexual predator is permanent and continues in effect until the offender's death and in no case shall the classification or adjudication be removed or terminated.

(E) (1) If a person is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually oriented offense that is not a registration-exempt sexually oriented offense, the judge who is to impose sentence on the offender shall determine, prior to sentencing, whether the offender previously has been convicted of or pleaded guilty to, or adjudicated a delinquent child for committing, a sexually oriented offense or a child-victim oriented offense and is a habitual sex offender. The judge who is to impose or has imposed an order of disposition upon a child who is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense that is not a registration-exempt sexually oriented offense shall determine, prior to entering the order classifying the delinquent child a juvenile offender registrant, whether the delinquent child previously has been convicted of or pleaded guilty to, or adjudicated a delinquent child for committing, a sexually oriented offense or a child-victim oriented offense and is a habitual sex offender, if either of the following applies:

(a) The judge is required by *section 2152.82* or division (A) of *section 2152.83 of the Revised Code* to classify the child a juvenile offender registrant;

(b) Division (B) of *section 2152.83 of the Revised Code* applies regarding the child, the judge conducts a hearing under that division for the purposes described in that division, and the judge determines at that hearing that the child will be classified a juvenile offender registrant.

(2) If, under division (E)(1) of this section, the judge determines that the offender or delinquent child previously has not been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing, a sexually oriented offense or a child-victim oriented offense or that the offender otherwise does not satisfy the criteria for being a habitual sex offender, the judge shall specify in the offender's sentence or in the order classifying the delinquent child a juvenile offender registrant that the judge has determined that the offender or delinquent child is not a habitual sex offender.

If, under division (E)(1) of this section, the judge determines that the offender or delinquent child previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing, a sexually oriented offense or a child-victim oriented offense and that the offender satisfies all other criteria for being a habitual sex offender, the offender or delinquent child is a habitual sex offender or habitual child-victim offender and the court shall determine whether to impose a requirement that the offender or delinquent child be subject to the community notification provisions contained in *sections 2950.10* and *2950.11 of the Revised Code*. In making the determination regarding the possible imposition of the community notification requirement, if at least two of the sexually oriented offenses or child-victim oriented offenses that are the basis of the habitual sex offender or habitual child-victim offender determination were committed against a victim who was under eighteen years of age, it is presumed that subjecting the offender or delinquent child to the community notification provisions is necessary in order to comply with the determinations, findings, and declarations of the general assembly regarding sex offenders and child-victim offenders

that are set forth in *section 2950.02 of the Revised Code*. When a judge determines as described in this division that an offender or delinquent child is a habitual sex offender or a habitual child-victim offender, the judge shall specify in the offender's sentence and the judgment of conviction that contains the sentence or in the order classifying the delinquent child a juvenile offender registrant that the judge has determined that the offender or delinquent child is a habitual sex offender and may impose a requirement in that sentence and judgment of conviction or in that order that the offender or delinquent child be subject to the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code*. Unless the habitual sex offender also has been adjudicated a sexual predator relative to the sexually oriented offense in question or the habitual sex offender was convicted of or pleaded guilty to an aggravated sexually oriented offense, the offender or delinquent child shall be subject to those community notification provisions only if the court imposes the requirement described in this division in the offender's sentence and the judgment of conviction or in the order classifying the delinquent child a juvenile offender registrant. If the court determines pursuant to this division or division (C)(2) of this section that an offender is a habitual sex offender, the determination is permanent and continues in effect until the offender's death, and in no case shall the determination be removed or terminated.

If a court in another state, a federal court, military court, or Indian tribal court, or a court in any nation other than the United States determines a person to be a habitual sex offender in that jurisdiction, the person is considered to be determined to be a habitual sex offender in this state. If the court in the other state, the federal court, military court, or Indian tribal court, or the court in the nation other than the United States subjects the habitual sex offender to community notification regarding the person's place of residence, the person, as much as is practicable, is subject to the community notification provisions regarding the person's place of residence that are contained in *sections 2950.10 and 2950.11 of the Revised Code*, unless the court that so subjected the person to community notification determines that the person no longer is subject to community notification.

(F) (1) An offender or delinquent child classified as a sexual predator may petition the court of common pleas or, for a delinquent child, the juvenile court of the county in which the offender or delinquent child resides or temporarily is domiciled to enter a determination that the offender or delinquent child is not an adjudicated sexual predator in this state for purposes of the registration and other requirements of this chapter or the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code* if all of the following apply:

(a) The offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing, a sexually oriented offense that is not a registration-exempt sexually oriented offense in another state, in a federal court, a military court, or Indian tribal court, or in a court of any nation other than the United States.

(b) As a result of the conviction, plea of guilty, or adjudication described in division (F)(1)(a) of this section, the offender or delinquent child is required under the law of the jurisdiction under which the offender or delinquent child was convicted, pleaded guilty, or was adjudicated to register as a sex offender until the offender's or delinquent child's death.

(c) The offender or delinquent child was automatically classified a sexual predator under division (A) of this section in relation to the conviction, guilty plea, or adjudication described in division (F)(1)(a) of this section.

(2) The court may enter a determination that the offender or delinquent child filing the petition described in division (F)(1) of this section is not an adjudicated sexual predator in this state for purposes of the registration and other requirements of this chapter or the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code* only if the offender or delinquent child proves by clear and convincing evidence that the requirement of the other jurisdiction that the offender or delinquent child register as a sex offender until the offender's or delinquent child's death is not substantially similar to a classification as a sexual predator for purposes of this chapter. If the court enters a determination that the offender or delinquent child is not an adjudicated sexual predator in this state for those purposes, the court shall include in the determination a statement of the reason or reasons why it so determined.

(G) If, prior to July 31, 2003, an offender or delinquent child was adjudicated a sexual predator or was determined to be a habitual sex offender under this section or *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code* and if, on and after July 31, 2003, the sexually oriented offense upon which the classification or determination was based no longer is considered a sexually oriented offense but instead is a child-victim oriented offense, notwithstanding the redesignation of that offense, on and after July 31, 2003, all of the following apply:

(1) Divisions (A)(1) or (2) or (E)(1) and (2) of *section 2950.091 [2950.09.1] of the Revised Code* apply regarding the offender or child, and the judge's classification or determination made prior to July 31, 2003, shall be considered for all purposes to be a classification or determination that classifies the offender or child as described in those divisions.

(2) The offender's or child's classification or determination under divisions (A)(1) or (2) or (E)(1) and (2) of *section 2950.091 [2950.09.1] of the Revised Code* shall be considered, for purposes of *section 2950.07 of the Revised Code* and for all other purposes, to be a continuation of the classification or determination made prior to July 31, 2003.

(3) The offender's or child's duties under this chapter relative to that classification or determination shall be considered for all purposes to be a continuation of the duties related to that classification or determination as they existed prior to July 31, 2003.

HISTORY:

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

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

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§ 2950.01. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) "Tier 1 sex offender/child-victim offender" means any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

oriented offense or child-victim oriented offense for which the offender was classified a tier II sex offender/child-victim offender or a tier III sex offender/child-victim offender.

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

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

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

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

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

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

(7) A sex offender or child-victim offender who is convicted of, pleads guilty to, was convicted of, pleaded guilty to, is adjudicated a delinquent child for committing, or was adjudicated a delinquent child for committing a sexually oriented offense or child-victim offense in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States if both of the following apply:

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

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

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

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

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

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

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

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

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

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

(N) "Public registry-qualified juvenile offender registrant" means a person who is adjudicated a delinquent child and on whom a juvenile court has imposed a serious youthful offender dispositional sentence under *section 2152.13 of the Revised Code* before, on, or after January 1, 2008, and to whom all of the following apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORY:

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

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

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§ 2950.07. Commencement of duty to register; duration

(A) The duty of an offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense and the duty of a delinquent child who is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or who is an out-of-state juvenile offender registrant to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* commences on whichever of the following dates is applicable:

(1) If the offender's duty to register is imposed pursuant to division (A)(1)(a) of section 2950.04 or division (A)(1)(a) of *section 2950.041 [2950.04.1] of the Revised Code*, the offender's duty to comply with those sections commences immediately after the entry of the judgment of conviction.

(2) If the delinquent child's duty to register is imposed pursuant to division (A)(1)(b) of section 2950.04 or division (A)(1)(b) of *section 2950.041 [2950.04.1] of the Revised Code*, the delinquent child's duty to comply with those sections commences immediately after the order of disposition.

(3) If the offender's duty to register is imposed pursuant to division (A)(2) of section 2950.04 or division (A)(2) of *section 2950.041 [2950.04.1] of the Revised Code*, subject to division (A)(7) of this section, the offender's duty to comply with those sections commences on the date of the offender's release from a prison term, a term of imprisonment, or any other type of confinement, or if the offender is not sentenced to a prison term, a term of imprisonment, or any other type of confinement, on the date of the entry of the judgment of conviction of the sexually oriented offense or child-victim oriented offense.

(4) If the offender's or delinquent child's duty to register is imposed pursuant to division (A)(4) of section 2950.04 or division (A)(4) of *section 2950.041 [2950.04.1] of the Revised Code*, the offender's duty to comply with those sections commences regarding residence addresses on the date that the offender begins to reside or becomes temporarily domiciled in this state, the offender's duty regarding addresses of schools, institutions of higher education, and places of employment commences on the date the offender begins attending any school or institution of higher education in this state on a full-time or part-time basis or becomes employed in this state, and the delinquent child's duty commences on the date the delinquent child begins to reside or becomes temporarily domiciled in this state.

(5) If the delinquent child's duty to register is imposed pursuant to division (A)(3) of section 2950.04 or division (A)(3) of *section 2950.041 [2950.04.1] of the Revised Code*, if the delinquent child's classification as a juvenile offender registrant is made at the time of the child's disposition for that sexually oriented offense or child-victim oriented offense, whichever is applicable, and if the delinquent child is committed for the sexually oriented offense or child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department, the delinquent child's duty to comply with those sections commences on the date of the delinquent child's discharge or release from custody in the department of youth services secure facility or from the secure facility not operated by the department as described in that division.

(6) If the delinquent child's duty to register is imposed pursuant to division (A)(3) of section 2950.04 or division (A)(3) of *section 2950.041 [2950.04.1] of the Revised Code* and if either the delinquent child's classification as a juvenile offender registrant is made at the time of the child's disposition for that sexually oriented offense or child-victim oriented offense, whichever is applicable, and the delinquent child is not committed for the sexually oriented offense or child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department or the child's classification as a juvenile offender registrant is made pursuant to section 2152.83 or division (A)(2) of *section 2152.86 of the Revised Code*, subject to divisions (A)(7) of this section, the delinquent child's

duty to comply with those sections commences on the date of entry of the court's order that classifies the delinquent child a juvenile offender registrant.

(7) If the offender's or delinquent child's duty to register is imposed pursuant to division (A)(2), (3), or (4) of *section 2950.04* or *section 2950.041 [2950.04.1]* of the Revised Code and if the offender or delinquent child prior to January 1, 2008, has registered a residence, school, institution of higher education, or place of employment address pursuant to *section 2950.04, 2950.041 [2950.04.1],* or *2950.05* of the Revised Code as they existed prior to that date, the offender or delinquent child initially shall register in accordance with *section 2950.04* or *2950.041* of the Revised Code, whichever is applicable, as it exists on and after January 1, 2008, not later than the earlier of the dates specified in divisions (A)(7)(a) and (b) of this section. The offender's or delinquent child's duty to comply thereafter with *sections 2950.04, 2950.041 [2950.04.1], 2950.05,* and *2950.06* of the Revised Code as they exist on and after January 1, 2008, commences on the date of that initial registration. The offender or delinquent child initially shall register under *section 2950.04* or *2950.041 [2950.04.1]* of the Revised Code as it exists on and after January 1, 2008, not later than the earlier of the following:

(a) The date that is six months after the date on which the offender or delinquent child received a registered letter from the attorney general under division (A)(2) or (B) of *section 2950.031 [2950.03.1]* of the Revised Code;

(b) The earlier of the date on which the offender or delinquent child would be required to verify a previously registered address under *section 2950.06* of the Revised Code as it exists on and after January 1, 2008, or, if the offender or delinquent child has changed a previously registered address, the date on which the offender or delinquent child would be required to register a new residence, school, institution of higher education, or place of employment address under *section 2950.05* of the Revised Code as it exists on and after January 1, 2008.

(8) If the offender's or delinquent child's duty to register was imposed pursuant to *section 2950.04* or *2950.041 [2950.04.1]* of the Revised Code as they existed prior to January 1, 2008, the offender's or delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05,* and *2950.06* of the Revised Code as they exist on and after January 1, 2008, is a continuation of the offender's or delinquent child's former duty to register imposed prior to January 1, 2008, under *section 2950.04* or *2950.041 [2950.04.1]* of the Revised Code and shall be considered for all purposes as having commenced on the date that the offender's duty under that section commenced.

(B) The duty of an offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense and the duty of a delinquent child who is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or who is an out-of-state juvenile offender registrant to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05,* and *2950.06* of the Revised Code continues, after the date of commencement, for whichever of the following periods is applicable:

(1) Except as otherwise provided in this division, if the person is an offender who is a tier III sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, if the person is a delinquent child who is a tier III sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, or if the person is a delinquent child who is a public registry-qualified juvenile offender registrant relative to the sexually oriented offense, the offender's or delinquent child's duty to comply with those sections continues until the offender's or delinquent child's death. Regarding a delinquent child who is a tier III sex offender/child-victim offender relative to the offense but is not a public registry-qualified juvenile offender registrant relative to the offense, if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to *section 2152.84* or *2152.85* of the Revised Code that the delinquent child no longer is a tier III sex offender/child-victim offender, the delinquent child's duty to comply with those sections continues for the period of time that is applicable to the delinquent child under division (B)(2) or (3) of this section, based on the reclassification of the child pursuant to *section 2152.84* or *2152.85* of the Revised Code as a tier I sex offender/child-victim offender or a tier II sex offender/child-victim offender. In no case shall the lifetime duty to comply that is imposed under this division on an offender who is a tier III sex offender/child-victim offender be removed or terminated. A delinquent child who is a public registry-qualified juvenile offender registrant may have the lifetime duty to register terminated only pursuant to *section 2950.15* of the Revised Code.

(2) If the person is an offender who is a tier II sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the offender's duty to comply with those sections continues for twenty-five years. Except as otherwise provided in this division, if the person is a delinquent child who is a tier II sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the delinquent child's duty to comply with those sections continues for twenty years. Regarding a delinquent child who is a tier II sex offender/child-victim offender relative to the offense but is not a public registry-qualified juvenile offender registrant relative to the offense, if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is a tier II sex offender/child-victim offender but remains a juvenile offender registrant, the delinquent child's duty to comply with those sections continues for the period of time that is applicable to the delinquent child under division (B)(3) of this section, based on the reclassification of the child pursuant to *section 2152.84 or 2152.85 of the Revised Code* as a tier I sex offender/child-victim offender.

(3) Except as otherwise provided in this division, if the person is an offender who is a tier I sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the offender's duty to comply with those sections continues for fifteen years. Except as otherwise provided in this division, if the person is a delinquent child who is a tier I sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the delinquent child's duty to comply with those sections continues for ten years. Regarding a delinquent child who is a juvenile offender registrant and a tier I sex offender/child-victim offender but is not a public registry-qualified juvenile offender registrant, if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is to be classified a juvenile offender registrant, the delinquent child's duty to comply with those sections terminates upon the court's entry of the determination. A person who is an offender who is a tier I sex offender/child-victim offender may have the fifteen-year duty to register terminated only pursuant to *section 2950.15 of the Revised Code*.

(C) (1) If an offender has been convicted of or pleaded guilty to a sexually oriented offense and the offender subsequently is convicted of or pleads guilty to another sexually oriented offense or a child-victim oriented offense, if an offender has been convicted of or pleaded guilty to a child-victim oriented offense and the offender subsequently is convicted of or pleads guilty to another child-victim oriented offense or a sexually oriented offense, if a delinquent child has been adjudicated a delinquent child for committing a sexually oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant and the child subsequently is adjudicated a delinquent child for committing another sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant relative to that offense or subsequently is convicted of or pleads guilty to another sexually oriented offense or a child-victim oriented offense, or if a delinquent child has been adjudicated a delinquent child for committing a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant and the child subsequently is adjudicated a delinquent child for committing another child-victim oriented offense or a sexually oriented offense and is classified a juvenile offender registrant relative to that offense or subsequently is convicted of or pleads guilty to another child-victim oriented offense or a sexually oriented offense, the period of time for which the offender or delinquent child must comply with the sections specified in division (A) of this section shall be separately calculated pursuant to divisions (A)(1) to (8) and (B)(1) to (3) of this section for each of the sexually oriented offenses and child-victim oriented offenses, and the offender or delinquent child shall comply with each separately calculated period of time independently.

If a delinquent child has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense, is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant relative to that offense, and, after attaining eighteen years of age, subsequently is convicted of or pleads guilty to another sexually oriented offense or child-victim oriented offense, the subsequent conviction or guilty plea does not limit, affect, or supersede the duties imposed upon the delinquent child under this chapter relative to the delinquent child's classification as a juvenile offender registrant or as an out-of-state juvenile offender registrant, and the delinquent child shall comply with both those duties and the duties imposed under this chapter relative to the subsequent conviction or guilty plea.

(2) If a delinquent child has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant relative to the offense and if the juvenile judge or the judge's successor in office subsequently reclassifies the offense tier in which the child is classified pursuant to *section 2152.84 or 2152.85 of the Revised Code*, the judge's subsequent determination to reclassify the child does not affect the date of commencement of the delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* as determined under division (A) of this section. The child's duty to comply with those sections after the reclassification is a continuation of the child's duty to comply with the sections that was in effect prior to the reclassification, and the duty shall continue for the period of time specified in division (B)(1), (2), or (3) of this section, whichever is applicable.

If, prior to January 1, 2008, an offender had a duty to comply with the sections specified in division (A) of this section as a result of a conviction of or plea of guilty to a sexually oriented offense or child-victim oriented offense as those terms were defined in *section 2950.01 of the Revised Code* prior to January 1, 2008, or a delinquent child had a duty to comply with those sections as a result of an adjudication as a delinquent child for committing one of those offenses as they were defined prior to January 1, 2008, the period of time specified in division (B)(1), (2), or (3) of this section on and after January 1, 2008, for which a person must comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* applies to the person, automatically replaces the period of time for which the person had to comply with those sections prior to January 1, 2008, and is a continuation of the person's duty to comply with the sections that was in effect prior to the reclassification. If, prior to January 1, 2008, an offender or a delinquent child had a duty to comply with the sections specified in division (A) of this section, the offender's or delinquent child's classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender for purposes of that period of time shall be determined as specified in *section 2950.031 [2950.03.1] or 2950.032 [2950.03.2] of the Revised Code*, as applicable.

(D) The duty of an offender or delinquent child to register under this chapter is tolled for any period during which the offender or delinquent child is returned to confinement in a secure facility for any reason or imprisoned for an offense when the confinement in a secure facility or imprisonment occurs subsequent to the date determined pursuant to division (A) of this section. The offender's or delinquent child's duty to register under this chapter resumes upon the offender's or delinquent child's release from confinement in a secure facility or imprisonment.

(E) An offender or delinquent child who has been or is convicted, has pleaded or pleads guilty, or has been or is adjudicated a delinquent child, in a court in another state, in a federal court, military court, or Indian tribal court, or in a court of any nation other than the United States for committing a sexually oriented offense or a child-victim oriented offense may apply to the sheriff of the county in which the offender or delinquent child resides or temporarily is domiciled, or in which the offender attends a school or institution of higher education or is employed, for credit against the duty to register for the time that the offender or delinquent child has complied with the sex offender or child-victim offender registration requirements of another jurisdiction. The sheriff shall grant the offender or delinquent child credit against the duty to register for time for which the offender or delinquent child provides adequate proof that the offender or delinquent child has complied with the sex offender or child-victim offender registration requirements of another jurisdiction. If the offender or delinquent child disagrees with the determination of the sheriff, the offender or delinquent child may appeal the determination to the court of common pleas of the county in which the offender or delinquent child resides or is temporarily domiciled, or in which the offender attends a school or institution of higher education or is employed.

HISTORY:

146 v H 180 (Eff 7-1-97); 147 v H 565 (Eff 3-30-99); 149 v S 3 (Eff 1-1-2002); 149 v H 485. Eff 6-13-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

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

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§ 2950.11. Community notification provisions

(A) Regardless of when the sexually oriented offense or child-victim oriented offense was committed, if a person is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense or a person is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, and if the offender or delinquent child is in any category specified in division (F)(1)(a), (b), or (c) of this section, the sheriff with whom the offender or delinquent child has most recently registered under *section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code* and the sheriff to whom the offender or delinquent child most recently sent a notice of intent to reside under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code*, within the period of time specified in division (C) of this section, shall provide a written notice containing the information set forth in division (B) of this section to all of the persons described in divisions (A)(1) to (10) of this section. If the sheriff has sent a notice to the persons described in those divisions as a result of receiving a notice of intent to reside and if the offender or delinquent child registers a residence address that is the same residence address described in the notice of intent to reside, the sheriff is not required to send an additional notice when the offender or delinquent child registers. The sheriff shall provide the notice to all of the following persons:

(1) (a) Any occupant of each residential unit that is located within one thousand feet of the offender's or delinquent child's residential premises, that is located within the county served by the sheriff, and that is not located in a multi-unit building. Division (D)(3) of this section applies regarding notices required under this division.

(b) If the offender or delinquent child resides in a multi-unit building, any occupant of each residential unit that is located in that multi-unit building and that shares a common hallway with the offender or delinquent child. For purposes of this division, an occupant's unit shares a common hallway with the offender or delinquent child if the entrance door into the occupant's unit is located on the same floor and opens into the same hallway as the entrance door to the unit the offender or delinquent child occupies. Division (D)(3) of this section applies regarding notices required under this division.

(c) The building manager, or the person the building owner or condominium unit owners association authorizes to exercise management and control, of each multi-unit building that is located within one thousand feet of the offender's or delinquent child's residential premises, including a multi-unit building in which the offender or delinquent child resides, and that is located within the county served by the sheriff. In addition to notifying the building manager or the person authorized to exercise management and control in the multi-unit building under this division, the sheriff shall post a copy of the notice prominently in each common entryway in the building and any other location in the building the sheriff determines appropriate. The manager or person exercising management and control of the building shall permit the sheriff to post copies of the notice under this division as the sheriff determines appropriate. In lieu of posting copies of the notice as described in this division, a sheriff may provide notice to all occupants of the multi-unit building by mail or personal contact; if the sheriff so notifies all the occupants, the sheriff is not required to post copies of the notice in the common entryways to the building. Division (D)(3) of this section applies regarding notices required under this division.

(d) All additional persons who are within any category of neighbors of the offender or delinquent child that the attorney general by rule adopted under *section 2950.13 of the Revised Code* requires to be provided the notice and who reside within the county served by the sheriff;

(2) The executive director of the public children services agency that has jurisdiction within the specified geographical notification area and that is located within the county served by the sheriff;

(3) (a) The superintendent of each board of education of a school district that has schools within the specified geographical notification area and that is located within the county served by the sheriff;

(b) The principal of the school within the specified geographical notification area and within the county served by the sheriff that the delinquent child attends;

(c) If the delinquent child attends a school outside of the specified geographical notification area or outside of the school district where the delinquent child resides, the superintendent of the board of education of a school district that governs the school that the delinquent child attends and the principal of the school that the delinquent child attends.

(4) (a) The appointing or hiring officer of each chartered nonpublic school located within the specified geographical notification area and within the county served by the sheriff or of each other school located within the specified geographical notification area and within the county served by the sheriff and that is not operated by a board of education described in division (A)(3) of this section;

(b) Regardless of the location of the school, the appointing or hiring officer of a chartered nonpublic school that the delinquent child attends.

(5) The director, head teacher, elementary principal, or site administrator of each preschool program governed by Chapter 3301. of the Revised Code that is located within the specified geographical notification area and within the county served by the sheriff;

(6) The administrator of each child day-care center or type A family day-care home that is located within the specified geographical notification area and within the county served by the sheriff, and the provider of each certified type B family day-care home that is located within the specified geographical notification area and within the county served by the sheriff. As used in this division, "child day-care center," "type A family day-care home," and "certified type B family day-care home" have the same meanings as in *section 5104.01 of the Revised Code*.

(7) The president or other chief administrative officer of each institution of higher education, as defined in *section 2907.03 of the Revised Code*, that is located within the specified geographical notification area and within the county served by the sheriff, and the chief law enforcement officer of the state university law enforcement agency or campus police department established under *section 3345.04 or 1713.50 of the Revised Code*, if any, that serves that institution;

(8) The sheriff of each county that includes any portion of the specified geographical notification area;

(9) If the offender or delinquent child resides within the county served by the sheriff, the chief of police, marshal, or other chief law enforcement officer of the municipal corporation in which the offender or delinquent child resides or, if the offender or delinquent child resides in an unincorporated area, the constable or chief of the police department or police district police force of the township in which the offender or delinquent child resides;

(10) Volunteer organizations in which contact with minors or other vulnerable individuals might occur or any organization, company, or individual who requests notification as provided in division (J) of this section.

(B) The notice required under division (A) of this section shall include all of the following information regarding the subject offender or delinquent child:

(1) The offender's or delinquent child's name;

(2) The address or addresses of the offender's or public registry-qualified juvenile offender registrant's residence, school, institution of higher education, or place of employment, as applicable, or the residence address or addresses of a delinquent child who is not a public registry-qualified juvenile offender registrant;

(3) The sexually oriented offense or child-victim oriented offense of which the offender was convicted, to which the offender pleaded guilty, or for which the child was adjudicated a delinquent child;

(4) A statement that identifies the category specified in division (F)(1)(a), (b), or (c) of this section that includes the offender or delinquent child and that subjects the offender or delinquent child to this section;

(5) The offender's or delinquent child's photograph.

(C) If a sheriff with whom an offender or delinquent child registers under *section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code* or to whom the offender or delinquent child most recently sent a notice of intent to reside under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* is required by division (A) of this section to provide notices regarding an offender or delinquent child and if, pursuant to that requirement, the sheriff provides a notice to a sheriff of one or more other counties in accordance with division (A)(8) of this section, the sheriff of each of the other counties who is provided notice under division (A)(8) of this section shall provide the notices described in divisions (A)(1) to (7) and (A)(9) and (10) of this section to each person or entity identified within those divisions that is located within the specified geographical notification area and within the county served by the sheriff in question.

(D) (1) A sheriff required by division (A) or (C) of this section to provide notices regarding an offender or delinquent child shall provide the notice to the neighbors that are described in division (A)(1) of this section and the notices to law enforcement personnel that are described in divisions (A)(8) and (9) of this section as soon as practicable, but no later than five days after the offender sends the notice of intent to reside to the sheriff and again no later than five days after the offender or delinquent child registers with the sheriff or, if the sheriff is required by division (C) of this section to provide the notices, no later than five days after the sheriff is provided the notice described in division (A)(8) of this section.

A sheriff required by division (A) or (C) of this section to provide notices regarding an offender or delinquent child shall provide the notices to all other specified persons that are described in divisions (A)(2) to (7) and (A)(10) of this section as soon as practicable, but not later than seven days after the offender or delinquent child registers with the sheriff or, if the sheriff is required by division (C) of this section to provide the notices, no later than five days after the sheriff is provided the notice described in division (A)(8) of this section.

(2) If an offender or delinquent child in relation to whom division (A) of this section applies verifies the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address, as applicable, with a sheriff pursuant to *section 2950.06 of the Revised Code*, the sheriff may provide a written notice containing the information set forth in division (B) of this section to the persons identified in divisions (A)(1) to (10) of this section. If a sheriff provides a notice pursuant to this division to the sheriff of one or more other counties in accordance with division (A)(8) of this section, the sheriff of each of the other counties who is provided the notice under division (A)(8) of this section may provide, but is not required to provide, a written notice containing the information set forth in division (B) of this section to the persons identified in divisions (A)(1) to (7) and (A)(9) and (10) of this section.

(3) A sheriff may provide notice under division (A)(1)(a) or (b) of this section, and may provide notice under division (A)(1)(c) of this section to a building manager or person authorized to exercise management and control of a building, by mail, by personal contact, or by leaving the notice at or under the entry door to a residential unit. For purposes of divisions (A)(1)(a) and (b) of this section, and the portion of division (A)(1)(c) of this section relating to the provision of notice to occupants of a multi-unit building by mail or personal contact, the provision of one written notice per unit is deemed as providing notice to all occupants of that unit.

(E) All information that a sheriff possesses regarding an offender or delinquent child who is in a category specified in division (F)(1)(a), (b), or (c) of this section that is described in division (B) of this section and that must be provided in a notice required under division (A) or (C) of this section or that may be provided in a notice authorized under division (D)(2) of this section is a public record that is open to inspection under *section 149.43 of the Revised Code*.

The sheriff shall not cause to be publicly disseminated by means of the internet any of the information described in this division that is provided by a delinquent child unless that child is in a category specified in division (F)(1)(a), (b), or (c) of this section.

(F) (1) Except as provided in division (F)(2) of this section, the duties to provide the notices described in divisions (A) and (C) of this section apply regarding any offender or delinquent child who is in any of the following categories:

(a) The offender is a tier III sex offender/child-victim offender, or the delinquent child is a public registry-qualified juvenile offender registrant, and a juvenile court has not removed pursuant to *section 2950.15 of the Revised Code* the delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*.

(b) The delinquent child is a tier III sex offender/child-victim offender who is not a public-registry qualified juvenile offender registrant, the delinquent child was subjected to this section prior to the effective date of this amendment as a sexual predator, habitual sex offender, child-victim predator, or habitual child-victim offender, as those terms were defined in *section 2950.01 of the Revised Code* as it existed prior to the effective date of this amendment, and a juvenile court has not removed pursuant to *section 2152.84 or 2152.85 of the Revised Code* the delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*.

(c) The delinquent child is a tier III sex offender/child-victim offender who is not a public registry-qualified juvenile offender registrant, the delinquent child was classified a juvenile offender registrant on or after the effective date of this amendment, the court has imposed a requirement under *section 2152.82, 2152.83, or 2152.84 of the Revised Code* subjecting the delinquent child to this section, and a juvenile court has not removed pursuant to *section 2152.84 or 2152.85 of the Revised Code* the delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*.

(2) The notification provisions of this section do not apply to a person described in division (F)(1)(a), (b), or (c) of this section if a court finds at a hearing after considering the factors described in this division that the person would not be subject to the notification provisions of this section that were in the version of this section that existed immediately prior to the effective date of this amendment. In making the determination of whether a person would have been subject to the notification provisions under prior law as described in this division, the court shall consider the following factors:

(a) The offender's or delinquent child's age;

(b) The offender's or delinquent child's prior criminal or delinquency record regarding all offenses, including, but not limited to, all sexual offenses;

(c) The age of the victim of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made;

(d) Whether the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made involved multiple victims;

(e) Whether the offender or delinquent child used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting;

(f) If the offender or delinquent child previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing an act that if committed by an adult would be, a criminal offense, whether the offender or delinquent child completed any sentence or dispositional order imposed for the prior offense or act and, if the prior offense or act was a sex offense or a sexually oriented offense, whether the offender or delinquent child participated in available programs for sexual offenders;

(g) Any mental illness or mental disability of the offender or delinquent child;

(h) The nature of the offender's or delinquent child's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;

(i) Whether the offender or delinquent child, during the commission of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made, displayed cruelty or made one or more threats of cruelty;

(j) Whether the offender or delinquent child would have been a habitual sex offender or a habitual child victim offender under the definitions of those terms set forth in *section 2950.01 of the Revised Code* as that section existed prior to the effective date of this amendment;

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

(G) (1) The department of job and family services shall compile, maintain, and update in January and July of each year, a list of all agencies, centers, or homes of a type described in division (A)(2) or (6) of this section that contains the

name of each agency, center, or home of that type, the county in which it is located, its address and telephone number, and the name of an administrative officer or employee of the agency, center, or home.

(2) The department of education shall compile, maintain, and update in January and July of each year, a list of all boards of education, schools, or programs of a type described in division (A)(3), (4), or (5) of this section that contains the name of each board of education, school, or program of that type, the county in which it is located, its address and telephone number, the name of the superintendent of the board or of an administrative officer or employee of the school or program, and, in relation to a board of education, the county or counties in which each of its schools is located and the address of each such school.

(3) The Ohio board of regents shall compile, maintain, and update in January and July of each year, a list of all institutions of a type described in division (A)(7) of this section that contains the name of each such institution, the county in which it is located, its address and telephone number, and the name of its president or other chief administrative officer.

(4) A sheriff required by division (A) or (C) of this section, or authorized by division (D)(2) of this section, to provide notices regarding an offender or delinquent child, or a designee of a sheriff of that type, may request the department of job and family services, department of education, or Ohio board of regents, by telephone, in person, or by mail, to provide the sheriff or designee with the names, addresses, and telephone numbers of the appropriate persons and entities to whom the notices described in divisions (A)(2) to (7) of this section are to be provided. Upon receipt of a request, the department or board shall provide the requesting sheriff or designee with the names, addresses, and telephone numbers of the appropriate persons and entities to whom those notices are to be provided.

(H) (1) Upon the motion of the offender or the prosecuting attorney of the county in which the offender was convicted of or pleaded guilty to the sexually oriented offense or child-victim oriented offense for which the offender is subject to community notification under this section, or upon the motion of the sentencing judge or that judge's successor in office, the judge may schedule a hearing to determine whether the interests of justice would be served by suspending the community notification requirement under this section in relation to the offender. The judge may dismiss the motion without a hearing but may not issue an order suspending the community notification requirement without a hearing. At the hearing, all parties are entitled to be heard, and the judge shall consider all of the factors set forth in division (K) of this section. If, at the conclusion of the hearing, the judge finds that the offender has proven by clear and convincing evidence that the offender is unlikely to commit in the future a sexually oriented offense or a child-victim oriented offense and if the judge finds that suspending the community notification requirement is in the interests of justice, the judge may suspend the application of this section in relation to the offender. The order shall contain both of these findings.

The judge promptly shall serve a copy of the order upon the sheriff with whom the offender most recently registered under *section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code* and upon the bureau of criminal identification and investigation.

An order suspending the community notification requirement does not suspend or otherwise alter an offender's duties to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* and does not suspend the victim notification requirement under *section 2950.10 of the Revised Code*.

(2) A prosecuting attorney, a sentencing judge or that judge's successor in office, and an offender who is subject to the community notification requirement under this section may initially make a motion under division (H)(1) of this section upon the expiration of twenty years after the offender's duty to comply with division (A)(2), (3), or (4) of section 2950.04, division (A)(2), (3), or (4) of *section 2950.041 [2950.04.1]* and *sections 2950.05 and 2950.06 of the Revised Code* begins in relation to the offense for which the offender is subject to community notification. After the initial making of a motion under division (H)(1) of this section, thereafter, the prosecutor, judge, and offender may make a subsequent motion under that division upon the expiration of five years after the judge has entered an order denying the initial motion or the most recent motion made under that division.

(3) The offender and the prosecuting attorney have the right to appeal an order approving or denying a motion made under division (H)(1) of this section.

(4) Divisions (H)(1) to (3) of this section do not apply to any of the following types of offender:

(a) A person who is convicted of or pleads guilty to a violent sex offense or designated homicide, assault, or kidnapping offense and who, in relation to that offense, is adjudicated a sexually violent predator;

(b) A person who is convicted of or pleads guilty to a sexually oriented offense that is a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* committed on or after January 2, 2007, and either who is sentenced under *section 2971.03 of the Revised Code* or upon whom a sentence of life without parole is imposed under division (B) of *section 2907.02 of the Revised Code*;

(c) A person who is convicted of or pleads guilty to a sexually oriented offense that is attempted rape committed on or after January 2, 2007, and who also is convicted of or pleads guilty to a specification of the type described in *section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code*;

(d) A person who is convicted of or pleads guilty to an offense described in division (B)(3)(a), (b), (c), or (d) of *section 2971.03 of the Revised Code* and who is sentenced for that offense pursuant to that division;

(e) An offender who is in a category specified in division (F)(1)(a), (b), or (c) of this section and who, subsequent to being subjected to community notification, has pleaded guilty to or been convicted of a sexually oriented offense or child-victim oriented offense.

(I) If a person is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense or a person is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, and if the offender or delinquent child is not in any category specified in division (F)(1)(a), (b), or (c) of this section, the sheriff with whom the offender or delinquent child has most recently registered under *section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code* and the sheriff to whom the offender or delinquent child most recently sent a notice of intent to reside under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code*, within the period of time specified in division (D) of this section, shall provide a written notice containing the information set forth in division (B) of this section to the executive director of the public children services agency that has jurisdiction within the specified geographical notification area and that is located within the county served by the sheriff.

(J) Each sheriff shall allow a volunteer organization or other organization, company, or individual who wishes to receive the notice described in division (A)(10) of this section regarding a specific offender or delinquent child or notice regarding all offenders and delinquent children who are located in the specified geographical notification area to notify the sheriff by electronic mail or through the sheriff's web site of this election. The sheriff shall promptly inform the bureau of criminal identification and investigation of these requests in accordance with the forwarding procedures adopted by the attorney general pursuant to *section 2950.13 of the Revised Code*.

(K) In making a determination under division (H)(1) of this section as to whether to suspend the community notification requirement under this section for an offender, the judge shall consider all relevant factors, including, but not limited to, all of the following:

(1) The offender's age;

(2) The offender's prior criminal or delinquency record regarding all offenses, including, but not limited to, all sexually oriented offenses or child-victim oriented offenses;

(3) The age of the victim of the sexually oriented offense or child-victim oriented offense the offender committed;

(4) Whether the sexually oriented offense or child-victim oriented offense the offender committed involved multiple victims;

(5) Whether the offender used drugs or alcohol to impair the victim of the sexually oriented offense or child-victim oriented the offender committed or to prevent the victim from resisting;

(6) If the offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing an act that if committed by an adult would be a criminal offense, whether the offender completed any sentence or dispositional order imposed for the prior offense or act and, if the prior offense or act was a sexually

oriented offense or a child-victim oriented offense, whether the offender or delinquent child participated in available programs for sex offenders or child-victim offenders;

(7) Any mental illness or mental disability of the offender;

(8) The nature of the offender's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense the offender committed or the nature of the offender's interaction in a sexual context with the victim of the child-victim oriented offense the offender committed, whichever is applicable, and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;

(9) Whether the offender, during the commission of the sexually oriented offense or child-victim oriented offense the offender committed, displayed cruelty or made one or more threats of cruelty;

(10) Any additional behavioral characteristics that contribute to the offender's conduct.

(L) As used in this section, "specified geographical notification area" means the geographic area or areas within which the attorney general, by rule adopted under *section 2950.13 of the Revised Code*, requires the notice described in division (B) of this section to be given to the persons identified in divisions (A)(2) to (8) of this section.

HISTORY:

146 v H 180 (Eff 7-1-97); 147 v H 396 (Eff 1-30-98); 147 v H 565 (Eff 3-30-99); 148 v H 471 (Eff 7-1-2000); 149 v S 3 (Eff 1-1-2002); 149 v S 175 (Eff 5-7-2002); 149 v H 485. Eff 6-13-2002; 150 v S 5, § 1, Eff 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 151 v H 15, § 1, eff. 11-23-05; 151 v S 17, § 1, eff. 8-3-06; 151 v S 260, § 1, eff. 1-2-07; 152 v S 10, § 1, eff. 1-1-08.

OHIO 127TH GENERAL ASSEMBLY -- 2007-08 REGULAR SESSION

SENATE BILL NO. 10

2007 Ohio SB 10

BILL TRACKING SUMMARY FOR THIS DOCUMENT

SYNOPSIS: AN ACT To amend sections 109.42, 109.57, 311.171, 1923.01, 1923.02, 2151.23, 2151.357, 2152.02, 2152.19, 2152.191, 2152.22, 2152.82, 2152.83, 2152.84, 2152.85, 2152.851, 2743.191, 2901.07, 2903.211, 2905.01, 2905.02, 2905.03, 2905.05, 2907.01, 2907.02, 2907.05, 2921.34, 2929.01, 2929.02, 2929.022, 2929.03, 2929.06, 2929.13, 2929.14, 2929.19, 2929.23, 2930.16, 2941.148, 2950.01, 2950.02, 2950.03, 2950.031, 2950.04, 2950.041, 2950.05, 2950.06, 2950.07, 2950.08, 2950.081, 2950.10, 2950.11, 2950.12, 2950.13, 2950.14, 2953.32, 2967.12, 2967.121, 2971.01, 2971.03, 2971.04, 2971.05, 2971.06, 2971.07, 5120.49, 5120.61, 5120.66, 5139.13, 5149.10, 5321.01, 5321.03, and 5321.051; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 2152.821 (2152.811) and 2950.031 (2950.034); to enact new section 2950.031 and sections 2152.831, 2152.86, 2950.011, 2950.032, 2950.033, 2950.042, 2950.043, 2950.131, 2950.15, and 2950.16; and to repeal sections 2152.811, 2950.021, 2950.09, and 2950.091 of the Revised Code to revise Ohio's Sex Offender Registration and Notification Law and conform it to recently enacted requirements of federal law contained in the Adam Walsh Child Protection and Safety Act of 2006, to increase the penalties for certain violations of kidnapping, aggravated murder when a sentence of death or life without parole is not imposed, and murder when the victim of any of those offenses is less than 13 years of age and the offense was committed with a sexual motivation and require that those sentences be served under the Sexually Violent Predator Sentencing Law, and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 5. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that the changes to the state's Sex Offender Registration and Notification Law made by this act are crucially needed to provide increased protection and security for the state's residents from persons who have been convicted of, or found to be delinquent children for committing, a sexually oriented offense or a child-victim oriented offense and to conform that Law by July 1, 2007, to recently enacted requirements of federal law. Therefore this act shall take immediate effect.

HISTORY:

Approved by the Governor June 30, 2007

SPONSOR: Austria

TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 151. CHILD PROTECTION AND SAFETY
SEX OFFENDER REGISTRATION AND NOTIFICATION

Go to the United States Code Service Archive Directory

42 USCS § 16901

§ 16901. Declaration of purpose

In order to protect the public from sex offenders and offenders against children, and in response to the vicious attacks by violent predators against the victims listed below, Congress in this Act establishes a comprehensive national system for the registration of those offenders:

- (1) Jacob Wetterling, who was 11 years old, was abducted in 1989 in Minnesota, and remains missing.
- (2) Megan Nicole Kanka, who was 7 years old, was abducted, sexually assaulted, and murdered in 1994, in New Jersey.
- (3) Pam Lychner, who was 31 years old, was attacked by a career offender in Houston, Texas.
- (4) Jetseta Gage, who was 10 years old, was kidnapped, sexually assaulted, and murdered in 2005, in Cedar Rapids, Iowa.
- (5) Dru Sjodin, who was 22 years old, was sexually assaulted and murdered in 2003, in North Dakota.
- (6) Jessica Lunsford, who was 9 years old, was abducted, sexually assaulted, buried alive, and murdered in 2005, in Homosassa, Florida.
- (7) Sarah Lunde, who was 13 years old, was strangled and murdered in 2005, in Ruskin, Florida.
- (8) Amie Zyla, who was 8 years old, was sexually assaulted in 1996 by a juvenile offender in Waukesha, Wisconsin, and has become an advocate for child victims and protection of children from juvenile sex offenders.
- (9) Christy Ann Fornoff, who was 13 years old, was abducted, sexually assaulted, and murdered in 1984, in Tempe, Arizona.
- (10) Alexandra Nicole Zapp, who was 30 years old, was brutally attacked and murdered in a public restroom by a repeat sex offender in 2002, in Bridgewater, Massachusetts.
- (11) Polly Klaas, who was 12 years old, was abducted, sexually assaulted, and murdered in 1993 by a career offender in California.
- (12) Jimmy Ryce, who was 9 years old, was kidnapped and murdered in Florida on September 11, 1995.
- (13) Carlie Brucia, who was 11 years old, was abducted and murdered in Florida in February, 2004.
- (14) Amanda Brown, who was 7 years old, was abducted and murdered in Florida in 1998.
- (15) Elizabeth Smart, who was 14 years old, was abducted in Salt Lake City, Utah in June 2002.
- (16) Molly Bish, who was 16 years old, was abducted in 2000 while working as a lifeguard in Warren, Massachusetts, where her remains were found 3 years later.
- (17) Samantha Runnion, who was 5 years old, was abducted, sexually assaulted, and murdered in California on July 15, 2002.

HISTORY:

(July 27, 2006, P.L. 109-248, Title I, § 102, 120 Stat. 590.)

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

Go to the Ohio Code Archive Directory

ORC Ann. 2950.02 (2009)

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

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

(1) If the public is provided adequate notice and information about offenders and delinquent children who commit sexually oriented offenses or who commit child-victim oriented offenses, members of the public and communities can develop constructive plans to prepare themselves and their children for the offender's or delinquent child's release from imprisonment, a prison term, or other confinement or detention. This allows members of the public and communities to meet with members of law enforcement agencies to prepare and obtain information about the rights and responsibilities of the public and the communities and to provide education and counseling to their children.

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

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

(4) Overly restrictive confidentiality and liability laws governing the release of information about sex offenders and child-victim offenders have reduced the willingness to release information that could be appropriately released under the public disclosure laws and have increased risks of public safety.

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

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

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

HISTORY:

146 v H 180 (Eff 7-1-97); 149 v S 3. Eff 1-1-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

OHIO REVISED CODE GENERAL PROVISIONS
CHAPTER 1. DEFINITIONS; RULES OF CONSTRUCTION
CONSTRUCTION

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ORC Ann. 1.42 (2004)

§ 1.42. Common and technical use

Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

HISTORY: 134 v H 607. Eff 1-3-72.

OHIO REVISED CODE GENERAL PROVISIONS
CHAPTER 1. DEFINITIONS; RULES OF CONSTRUCTION
CONSTRUCTION

Go to the Ohio Code Archive Directory

ORC Ann. 1.47 (2009)

§ 1.47. Intentions in the enactment of statutes

In enacting a statute, it is presumed that:

- (A) Compliance with the constitutions of the state and of the United States is intended;
- (B) The entire statute is intended to be effective;
- (C) A just and reasonable result is intended;
- (D) A result feasible of execution is intended.

HISTORY:

134 v H 607. Eff 1-3-72.