

ORIGINAL

NO. 09-1086

IN THE SUPREME COURT OF OHIO

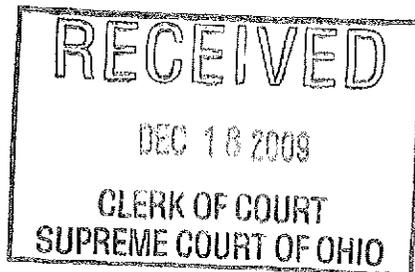
APPEAL FROM
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
NO. 91515

ROBERT GILDERSLEEVE, ET AL
Appellant/Cross-Appellees

-vs-

STATE OF OHIO
Appellee/Cross-Appellant

MERIT BRIEF OF APPELLEE/CROSS-APPELLANT



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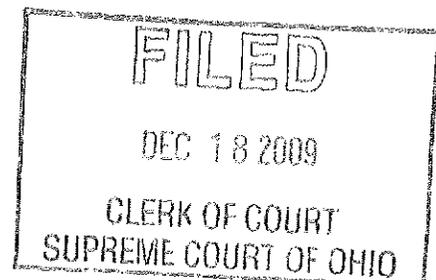


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INTRODUCTION AND SUMMARY

This case raises the issue of whether Ohio's recently-enacted Adam Walsh Act ("AWA") requires that a trial court hold a hearing pursuant to R.C. §2950.11(F)(2) before determining whether Tier III offenders classified under the former Megan's Law may be relieved from the statute's community notification requirement. A large number of offenders classified under the former Megan's Law now qualify as Tier III offenders and may be subject to a community notification based on the plain words of R.C. §2950.11. If such offenders are automatically exempted from a community notification hearing based on their prior disposition under the former Megan's Law, the plain intent of R.C. §2950.11(F)(2) will have been frustrated. The statute clearly requires that trial courts hold a *de novo* hearing and make an individualized determination regarding previously classified offenders as well as newly classified offenders.

STATEMENT OF THE CASE AND RELEVANT FACTS

Robert Gildersleeve, John Brown, Robert Bohammon, Shawn Maver, Demetrius Reddick, Ralph Wells, Arnold Harris, Charles Jones and Wesley Patterson (collectively "cross-appellees") are Tier III sex offenders who were previously classified under the former R.C. §2950 ("Megan's Law") and were reclassified, by operation of law, under the current R.C. §2950 ("Adam Walsh Act" or "AWA"). Cross-appellees were notified by the Ohio Attorney General that they would be reclassified under the Adam Walsh Act. They filed petitions challenging their reclassification under the AWA and also requested the court to relieve them of community notification. The trial court consolidated the hearings and found the AWA to be constitutional and denied cross-appellees relief from community notification.

The Eighth District upheld the constitutionality of Ohio's Adam Walsh Act, but reversed and remanded under R.C. §2950.11(F)(2) for those Tier III offenders who were not previously

subject to community notification under Megan's Law, holding that Tier III offenders not previously subject to community notification are exempt from community notification under R.C. §2950.11(F)(2). The Eighth District noted that the language of R.C. §2950.11(F)(2) was "wrought with confusion" and concluded that a hearing under R.C. §2950.11(F)(2) is not required for Tier III offenders previously classified under Megan's law.

LAW AND ARGUMENT

Proposition of Law: For Those Tier III Offenders who were previously classified under the former R.C. §2950.11 and are exemptable from community notification because they were not subject to community notification under the former R.C. §2950.11, R.C. §2950.11(F)(2) now requires the trial court to first hold a hearing and make an individualized determination before relieving the offender of community notification requirements

In its opinion, the Eighth District held that R.C. §2950.11(F)(2) does not require a trial court to hold an individualized hearing for those Tier III offenders who were previously classified under the former R.C. §2950.11 ("Megan's Law"), and that those offenders are automatically exempt from registration under the current version of R.C. §2950.11 ("Adam Walsh Act" or "AWA"). *Gildersleeve* at ¶ 75. In doing so, the Eighth District Court of Appeals declined to recognize the legislatively authorized mechanism, and instead created an exemption from the community notification requirement. The holding countermands the plain wording, intent, and scheme of Ohio's Adam Walsh Act for a large class of registrants whom the General Assembly clearly intended to subject to community notification until a court specifically determines otherwise.

In *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, 861 N.E.2d 512, at ¶ 9, this Honorable Court explained that "[t]he primary goal of statutory construction is to ascertain and give effect to the legislature's intent in enacting the statute." *Id.* citing *Brooks v. Ohio State*

Univ. (1996), 111 Ohio App.3d 342, 349, 676 N.E.2d 162. “The court must first look to the plain language of the statute itself to determine the legislative intent.” *Lowe, supra*, citing *State ex rel. Burrows v. Indus. Comm.* (1997), 78 Ohio St.3d 78, 81, 676 N.E.2d 519. “[The court] app[lies] a statute as it is written when its meaning is unambiguous and definite.” *Lowe, supra*, citing *Portage Cty. Bd. of Commrs. v. Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, 846 N.E.2d 478, ¶ 52, and *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.* (1996), 74 Ohio St.3d 543, 545, 660 N.E.2d 463. “An unambiguous statute must be applied in a manner consistent with the plain meaning of the statutory language.” *Lowe, supra*, citing *State ex rel. Burrows*, 78 Ohio St.3d at 81, 676 N.E.2d 519. Finally, “* * * a statute susceptible of either of two opposing interpretations must be read in the manner which effectuates, rather than frustrates, the major purpose of the General Assembly.” *Naylor v. Cardinal Local School Dist. Bd. of Edn.*, 20069 Ohio St.3d 162, 168, 630 N.E.2d 725, 1994-Ohio-22, citing *State v. Glass* (1971), 27 Ohio App.2d 214, 219, 394, 273 N.E.2d 893, 897.

The Eighth District properly explained the major purpose of the Adam Walsh Act: “* * * under S.B. 10, sex offenders are placed by operation of law into tiers based upon the crime they committed. Courts have no discretion to determine that a sex offender should not be placed into a tier. Under both systems, offenders are essentially classified by the offense they committed.” *Gildersleeve, supra*, at ¶ 35. The Eighth District also explained, that “[a]fter reviewing R.C. §2950.11(F)(1) and (2), we conclude that it is clear that the legislature intended for Tier III sex offenders to be subject to community notification until a court determines otherwise.” Nevertheless, the Eighth District concluded that a Tier III sex offender, previously classified under Megan’s Law, could be exempted from community notification without a hearing.

The State submits that all adult Tier III sex offenders are subject to community notification unless exempted from community notification after the trial court holds an individualized hearing pursuant to R.C. §2950.11(F)(2).

I. Providing for community notification regarding Tier III sex offenders furthers the General Assembly's intent in protecting the safety and general welfare of the people of Ohio

“In determining the meaning of a statute, a court must give effect to the intent of the legislature.” *Gildersleeve* at ¶57. See also *State ex rel. United States Corp. v. Zaleski*, 98 Ohio St.3d 395, 2003-Ohio-1630, ¶17, *State ex rel. Van Dyke v. Pub. Emp. Retirement Bd.*, 99 Ohio St.3d 430, 2003-Ohio-4123, ¶27. A court must first look to the language of a statute to determine legislative intent. *State v. Smith*, 104 Ohio St.3d 106, 2004-Ohio-6238, 818 N.E.2d 283, ¶15 citing *State ex. rel Van Dyke v. Pub. Emp. Retirement Bd.*, ¶27. Where a statute is ambiguous, courts may look to language in comparable statutes for guidance. *Id.* citing R.C. §1.49(D)

The General Assembly enacted Chapter 2950 of the Revised Code to provide for sex offender registration and notification. R.C. §2950.02(B) states:

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 offenders, and certain other juvenile offenders who are about to be or have been released from imprisonment, a prison term, or other confinement or detention and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood, it is the general assembly's intent to protect the safety and general welfare of the people of this state.

The Eighth District acknowledged that the purpose of the reclassification scheme of the Adam Walsh Act is “to provide increased protection and security for the state's residents from

persons who have been convicted of * * * a sexually oriented offense or a child-victim oriented offense” can be given proper effect in Cuyahoga County and throughout Ohio. *Gildersleeve, supra*, at ¶ 16. quoting S.B. 10, Section 5.

The stated purpose of the AWA clearly indicates that the General Assembly intended to provide community notification to Tier III sex offenders in order to protect the safety and general welfare of the people of this state.

II. R.C. §2950.11(F)(1) subjects all adult Tier III Sex Offenders to community notification

A. All Tier III Offenders are subject to community notification regardless of when the sexually oriented offense occurs.

The language of R.C. §2950.11 indicates that all Tier III offenders, regardless of when the offense was committed are subject to community notification.

R.C. §2950.11 states in relevant part:

(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 to a sexually oriented offense or a child-victim oriented offense *** and if the offender or delinquent child is in any category specified in division (F)(1), (b), or (c) of this section *** The sheriff shall provide the notice ***

(F) Except as provided in division (F)(2) of this section, the duties to provide the notices described in division (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, 2950.05, 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 offender registrant, the offender 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, 2950.05, 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 ***

R.C. §2950.11, emphasis added.

The statutory language of R.C. §2950.11(A) when read in conjunction with R.C. §2950.11(F) demonstrates that the General Assembly intended Ohio sheriffs to provide community notification for all Tier III sex offenders regardless of when the offense was committed.

B. R.C. §2950.11(F)(1)(a) does not distinguish between Tier III sex offenders previously classified under Megan's Law and those classified under the Adam Walsh Act

All adult Tier III sex offenders and public-registry qualified juveniles are subject to community notification. R.C. §2950.11(F)(1)(a). A delinquent child who is a Tier III sex offender who is not a public-registry qualified and was classified under Megan's Law is only subject to community notification if the delinquent child was subject to community notification under Megan's law as a "sexual predator, habitual sex offender, child-victim predator, or habitual child-victim offender." R.C. §2950.11(F)(1)(b). Such language is absent from R.C. §2950.11(F)(1)(a). R.C. §2950.11(F)(1) further distinguishes between non-public registry qualified juvenile offenders who were classified under former law and those who were classified for the first time under AWA. R.C. §2950.11(F)(1)(c). The treatment of delinquent children who are Tier III sex offenders and non public-registry qualified under R.C. §2950.11(F)(1)

further confirms that the General Assembly intended all adult Tier III sex offenders be subject to community notification.

The legislature did not make the same distinction with adult Tier III sex offenders and public-registry qualified Tier III sex offenders as it did with non public-registry qualified juvenile offenders. The General Assembly could have used the same language with adult Tier III sex offenders as it did with non public-registry qualified juveniles who were previous subject to community notification. The State submits that this is evidence of the General Assembly's intent to subject all adult Tier III sex offenders to community notification.

The State submits that the statutory language of R.C. §2950.11(F)(1)(a), (b), and (c), when read as a whole shows that the legislature mandated that all adult Tier III sex offenders be subject to community notification, regardless of whether they were previously classified under Megan's Law. Accordingly, a plain reading of R.C. §2950.11(F)(1) shows that the General Assembly intended to impose community notification on all Tier III sex offenders unless exempted under R.C. §2950.11(F)(2).

- C. The inclusion of public-registry qualified juvenile offenders in R.C. §2950.11(F)(1)(a) shows an intent to subject all adult Tier III offenders to community notification regardless of when the offense was committed

The General Assembly's inclusion of public-registry qualified juvenile with Tier III sex offenders in R.C. §2950.11(F)(1)(a) further shows that the General Assembly intended to subject all adult Tier III sex offenders to community notification. R.C. §2950.01 defines a "Public registry-qualified juvenile" as:

(N) *** 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.

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

(2) A juvenile court judge, pursuant to an order issued under section 2152.86 of the Revised Code *** classifies the person a public registry-qualified juvenile offender registrant.

R.C. §2950.01(N).

R.C. §2152.86 allows a juvenile court to classify a juvenile offender, previously classified under Megan's Law, a public-registry qualified juvenile. R.C. §2152.86(A)(3). R.C. §2152.86(A)(3) states:

If a court issued an order classifying a child a juvenile offender registrant pursuant to section 2152.82 or 2152.83 of the Revised Code prior to January 1, 2008, not later than February 1, 2008, the court shall issue an order that reclassifies the child as a juvenile offender registrant *** and additionally classifies the child a public registry-qualified juvenile offender registrant if all of the following apply:

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

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

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

R.C. §2152.86(A)(3), emphasis added.

As described in R.C. §2950.11(F)(1)(a), Tier III sex offenders who are public-registry-qualified juvenile offender registrants are subject to community notifications. Public registry-qualified juvenile offenders can include those juvenile offenders previously classified under Megan’s Law. Therefore, a juvenile offender who was not a sexual predator, habitual sex offender, child-victim predator, or habitual child-victim offender under Megan’s Law could be subjected to community notification if a juvenile court classifies the offender a public-registry qualified juvenile under the AWA. Like adult Tier III sex offenders, R.C. §2950.11(F)(1)(a) does not distinguish between public registry qualified juveniles who were initially classified under Megan’s Law and public registry qualified juveniles classified for the first time under the AWA. The implication is that the hearing provision under R.C. §2950.11(F)(2) applies to all Tier III sex offenders and Tier III public registry qualified juveniles regardless of when they were originally classified.

II. R.C. §2950.11(F)(2) requires a trial court to conduct a hearing before exempting adult Tier III sex offenders; public registry qualified juvenile offenders; and certain non-public registry qualified juvenile offenders from community notification.

A. The plain language of R.C. §2950.11(F)(2) requires a trial court to conduct a hearing before exempting a Tier III sex offender from the community notification requirement.

Since the State filed its memorandum in support of jurisdiction, the Ninth Appellate District in *State v. Gruszka*, Lorain App. No. 08-CA-009515 held that a trial court wrongly applied res judicata to a R.C. §2950.11(F)(2) hearing. In *Gruszka*, a trial court issued an opinion granting a sex offender’s motion for relief from community notification concluding that the issue of community notification was resolved in the sex offender’s favor under the doctrine of res judicata. *Gruszka, supra* at ¶8. The Ninth District Court of Appeals reserved holding that the trial court “declined to recognize the legislatively authorized mechanism, and instead attempted

to create its own mechanism to allow a challenge to the imposition of a community notification requirement.” *Id.* at ¶11.

The Eighth District in holding that a hearing was not required for Tier III sex offenders, ignored the legislatively authorized mechanism, and instead created an exemption to the community notification requirement. The trial court must conduct the legislatively authorized hearing before relieving the Tier III sex offender from community notification.

The State submits that the statutory framework of R.C. §2950.11(F)(1), and (2) supports the proposition that a hearing is required. R.C. §2950.11(F)(1) states,

(1) Except as provided in division (F)(2) of this section, the duties to provide the notices *** apply regarding any offender or delinquent child who is in [described in R.C. §2950.11(F)(1)(a)-(c)].” R.C. §2950.11(F), *emphasis added*. Therefore, R.C. §2950.11(F)(1) makes clear that a Tier III sex offender can only be exempted from community notification under R.C. §2950.11(F)(2).

R.C. §2950.11(F)(1), *emphasis added*.

R.C. §§2950.11(F)(2) provides that:

(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 enmity;

(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.

R.C. §2950.11(F)(2).

The plain language of R.C. §2950.11(F)(2) further indicates that a Tier III sex offender; public registry qualified juvenile registrant; and certain non-public registry qualified juvenile registrants will be exempted from community notification only after a trial court conducts a hearing and considers the enumerated factors. The statute requires the trial court to consider several factors including whether the sex offender would have been a habitual sex offender. The State submits that by using the words “would not be subject” instead of “was not subject” or “would have been” indicates that R.C. §2950.11(F)(2) does not allow a trial court to consider

whether the sex offender was in fact previously subject to community notification. The court may consider; however, whether the sex offender would have been a habitual sex offender. See R.C. §2950.11(F)(2)(j).

The Eighth District believed that a hearing was not necessary “[f]or those Tier III offenders who were not subject to community notification under the former statute,” but held that a hearing was required for those Tier III offenders being classified for the first time under the AWA. *Gildersleeve* at ¶76-77. Yet the explicit language of R.C. §2950.11(F)(2) allows for a Tier III delinquent child who is not public-registry qualified and was previously subject to community notification under Megan’s Law to request a hearing to seek relief from community notification under the AWA.

R.C. §2950.11(F)(2) allows a hearing for any person described in R.C. §2950.11(F)(1), (b), or (c). As discussed above R.C. §2950.11(F)(1)(b) pertains to non-public registry qualified juvenile offenders classified under Megan’s Law and R.C. §2950.11(F)(1)(c) pertained to non-public registry qualified juvenile offenders classified under the Adam Walsh Act. Thus, a Tier III delinquent child, who is not public-registry qualified and was previously subject to community notification under Megan’s Law, may request a hearing to seek an exemption from community notification under the AWA. It follows that all Tier III sex offenders, including those previously classified under Megan’s Law, may request a hearing to seek an exemption from community notification under the AWA. The State submits that the General Assembly intended to allow all Tier III sex offenders to request a hearing.

The Eighth District disagreed with the State’s argument, explaining:

[It would] would be nonsensical for a court to hold a hearing to determine whether they would have been subject to community notification under the former statute, when it was already determined that they were not subject to community notification under the former statute.

{¶ 75} If we were to adopt the state's interpretation that R.C. 2950.11(F)(2) requires the court to hold a hearing and consider the factors for all offenders who were previously classified under Megan's Law, absurd results would most certainly occur. For example, one judge could have held a H.B. 180 hearing and found that the offender should not be labeled a sexual predator (meaning that person would not be subject to community notification under the former law), and then another judge (or even the same judge for that matter) subsequently holds a R.C. 2950.11(F)(2) hearing under the AWA and, after considering essentially the exact same factors, finds that the offender should be subject to community notification.

Gildersleeve, supra. at ¶74-75.

The Eighth District's holding did not consider that new evidence can be presented to the court that was not previously presented at the former sexual predator hearing. Therefore, one judge could have held a H.B. 180 hearing in 1997 and found that the offender should not be labeled a sexual predator, and then another judge (or the same judge) could subsequently hold a R.C. §2950.11(F)(2) hearing under the AWA, considers "essentially the exact same factors" and any new evidence, and find that the offender should *now* be subject to community notification.

B. Res judicata does not apply to the issue of community notification.

The General Assembly did not intend for res judicata to apply to the issue of community notification. Community notification was only a collateral consequence of adjudication as a sexual predator or habitual sex offender under the former R.C. §2950.09.

The doctrine of "res judicata" encompasses the two related concepts of claim preclusion, also known as res judicata or estoppel by judgment, and issue preclusion, also known as collateral estoppel. Claim preclusion prevents subsequent actions, by the same parties, based upon any claim arising out of a transaction that was the subject matter of a previous action. *Fort Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd.* (1998), 81 Ohio St.3d 392, 395. Where a claim could have been litigated in the previous case, claim preclusion also bars

subsequent actions on that matter. Issue preclusion, on the other hand, serves to prevent relitigation of any fact or point that was determined by a court of competent jurisdiction in a previous action between the same parties or their privies. *Fort Frye*, 81 Ohio St.3d at 395. Issue preclusion applies even if the causes of action differ. However, res judicata does not apply where new evidence is produced. Accordingly,

[t]o survive preclusion by res judicata, a petitioner must produce new evidence that would render the judgment void or voidable and must also show that he could not have appealed the claim based upon information contained in the original record.” *State v. Nemchik* (Mar. 8, 2000), Lorain App. No. 98CA007279, unreported, at 3; see, also, *State v. Ferko* (Oct. 3, 2001), Summit App. No. 20608, unreported, at 5; *State v. Lawson*, supra 103 Ohio App.3d at 313, 659 N.E.2d at 366.

State v. Mills, Tuscarawas App. No. 2008 AP 08 0051, 2009-Ohio-5654, ¶22.

The issue of community notification was not previously litigated during the sexual predator classification hearing, if, in fact, one was held. Rather, the trial court, in conducting the hearing, determined whether the sex offender was likely to commit, in the future, another sexually oriented offense. Nor could the trial court, in the context of the criminal case, relieve a sex offender from community notification since no statutory provision existed at the time. In other words, no one could have made that “claim,” and so neither party can be blamed for having failed to raise it then. Clearly, the issue of relief from community notification was not litigated, and therefore, is not barred. Nor could either party, under former law, appeal the issue of community notification. In the vernacular of res judicata case law, this proceeding is not the “same claim or cause of action,” but, rather, a claim raised *by defendant* seeking a finding under a substantially-different statutory scheme and addressing the on-going matter of sex-offender recidivism. A significant change in law allows such prospective matters to be revisited without violating res judicata or “vested rights.”

The State submits that the General Assembly did not intend that an offender's former classification to resolve the issue of community notification under the AWA. As discussed above, a non-public registry qualified juvenile who was previously classified under Megan's Law can be exempted from community notification after a trial court conducts a R.C. §2950.11(F)(2). If the doctrine of *res judicata* was applicable, then the persons described in R.C. §2950.11(F)(1)(b) should be barred from litigating the issue of community notification. Nevertheless, R.C. §2950.11(F)(2) provides exemption for the persons described in R.C. §2950.11(F)(1)(b) after the appropriate hearing is resolved in the persons' favor.

Another indication that the General Assembly did intend for the former R.C. §2950.09 to control community notification under the AWA is the treatment of habitual sex offenders who were subject to community notification under Megan's Law. Not all former Habitual Sex Offenders are subject to community notification. A Habitual Sex Offender could have been classified as a Tier II offender, due to the offender's prior classification or a Tier III offender, if the offender committed a Tier III offense. See R.C. §2950.01(F)(5) and R.C. §2950.01(G). Accordingly, a number of Habitual Sex Offenders, for whom the issue of community notification was resolved against, are not subject to community notification.

R.C. §2950.11(F)(1) does not provide community notification for Tier II offenders. Accordingly sex offenders who were previously subjected to community notification as Habitual Offenders cannot be subject to community notification unless R.C. §2950.11(F)(1)(a), (b), or (c) applies.

Had the General Assembly intended for community notification to apply to all former Habitual Offenders, then they would have provided for it under the terms of the new statute.

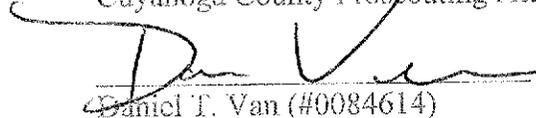
CONCLUSION

The General Assembly did not intend a sex offender's prior classification as an aggravated sexually oriented offender, habitual offender or a sexual predator to control whether sex offenders would be subject to community notification under the AWA. A reading of R.C. §2950.01 and R.C. §2950.11 suggests that some sex offenders who were previously subject to community notification as Habitual Sex Offenders would not be subject to community notification as Tier II offenders. Such a result is consistent with the General Assembly's intent to shift from a risk-based classification system to an offense-based classification system.

The State submits that R.C. §2950.11(F)(2) requires the trial court to first hold a hearing and make an individualized determination before relieving the offender of community notification requirements.

Respectfully submitted,

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SERVICE

A copy of the foregoing Merit Brief has been mailed this 16th day of December, 2009, to CULLEN SWEENEY, Assistant Public Defender, 310 Lakeside Avenue, Suite 200, Cleveland, OH 44113.


Assistant Prosecuting Attorney

NO. 09-1086

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
NO. 91515, 91516, 91517, 91518, 91519 and 91521, 91522, 91523, 91524, 91525, 91526,
91527, 91528, 91529, 91530, 91531, 91532

ROBERT GILDERSLEEVE, ET AL.,

Defendants-Appellants/Cross-Appellees

-vs-

STATE OF OHIO,

Plaintiff-Appellee/Cross-Appellant

NOTICE OF CROSS-APPEAL

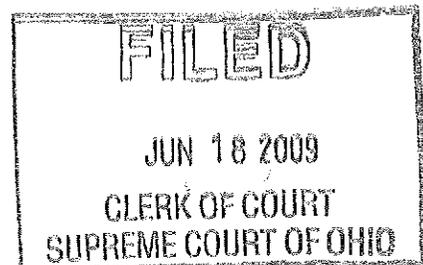
Counsel for Plaintiff-Appellee/Cross-Appellant

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NO. 09-1086

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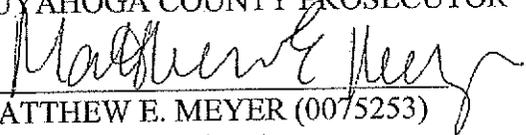
Now comes the State of Ohio and hereby give Notice of Appeal to the Supreme Court of Ohio from a judgment and final order of the Court of Appeals for Cuyahoga County, Ohio, Eighth Judicial District, journalized May 11, 2009, which affirmed in part, reversed in part, and remanded the Trial Court's Decision.

Said cause did not originate in the Court of Appeals, is a felony, involves a substantial constitutional question, and is of great general and public interest.

Respectfully submitted,

WILLIAM D. MASON
CUYAHOGA COUNTY PROSECUTOR

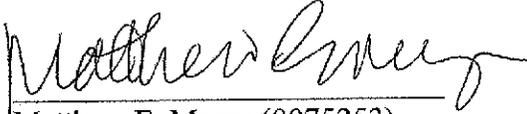
BY:


MATTHEW E. MEYER (0075253)

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CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Cross-Appeal was sent by regular U.S. mail this 17 day of June, 2009 to Cullen G. Sweeney, Esq., Assistant Public Defender, 310 Lakeside Avenue, Suite 200, Cleveland, OH 44113.


Matthew E. Meyer (0075253)
Assistant Prosecuting Attorney

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 91515 - 91519 and 91521 - 91532

ROBERT GILDERSLEEVE, ET AL.

PLAINTIFFS-APPELLANTS

vs.

STATE OF OHIO

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED IN PART, REVERSED IN PART,
AND REMANDED**

Civil Appeals from the
Cuyahoga County Common Pleas Court
Case Nos. CV-648935, CV-651271, CV-648978, CV-647560,
CV-649277, CV-652329, CV-646682, CV-646646, CV-652131,
CV-651446, CV-652246, CV-648361, CV-647325, CV-646910,
CV-646012, CV-648749, and CV-647701

BEFORE: Boyle, J., Stewart, P.J., and Sweeney, J.

RELEASED: April 30, 2009

JOURNALIZED: MAY 11 2009

CA 91519
PAMELA BOLTON
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4 VOL 0681 00347

MARY J. BOYLE, J.:

This case consists of 17 consolidated appeals involving 17 appellants¹ convicted of various sex offenses who had previously been classified under H.B. 180, Ohio's Megan's Law (former R.C. Chapter 2950), and have now been classified under S.B. 10, Ohio's Adam Walsh Act ("AWA").² Because we find merit to appellants' eighth and ninth assignments of error, we affirm in part, reverse in part, and remand.

Appellants were notified by the Ohio Attorney General via registered letter that they would be reclassified under the AWA. They filed petitions challenging their reclassification under the AWA, as well as a request for a preliminary injunction to prevent the AWA from applying to them until the court ruled on their petitions. Several appellants who had been classified as a Tier III offender also requested the court to relieve them of community notification.

The trial court consolidated the cases, held a hearing, denied the petitioners' challenges and preliminary injunction request, and found the AWA

¹See Appendix for list of appellants, the crime they were convicted of, their old H.B. 180 classification, and their new S.B. 10 classification.

²All sections of S.B. 10 did not become effective on the same date. Sections 1 to 3 (and certain other provisions) became effective on July 1, 2007. The remaining provisions (including when the tier classifications went into effect) became effective on January 1, 2008. See Am.Sub.S.B. 10, Final Bill Analysis. The AWA and S.B. 10 will be used interchangeably throughout this opinion.

to be constitutional. It is from this judgment that appellants now appeal, raising nine assignments of error for our review.

“[I.] The retroactive application of Senate Bill 10 violates the Ex Post Facto Clause of the United States Constitution.

“[II.] The retroactive application of Senate Bill 10 violates the Retroactivity Clause of the Ohio Constitution.

“[III.] The retroactive application of Senate Bill 10 violates the separation of powers doctrine.

“[IV.] Senate Bill 10 violates the Double Jeopardy Clause of the United States Constitution and Section 10, Article I[,] of the Ohio Constitution.

“[V.] Senate Bill 10, as applied to appellant[s], violates the United States and Ohio Constitutions’ prohibition against cruel and unusual punishment.

“[VI.] Senate Bill 10’s residency restrictions violate the due process clauses of the United States and Ohio Constitution [sic].

“[VII.] The retroactive application of Senate Bill 10 constitutes a breach of appellant’s [sic] plea agreements and impairs the obligation of contract protected by Article I, Section 10, Clause I of the United States Constitution and Section 28, Article II[,] of the Ohio Constitution.

“[VIII.] The trial court erred by categorically denying appellants relief from community notification pursuant to R.C. 2950.11(F)(2).

“[IX.] The trial court erred in dismissing appellants Mark Patterson and Robert Zamora’s petitions with prejudice for failing to appear at the April 23, 2008 hearing.”

Background

S.B. 10 modified former R.C. Chapter 2950 (“Megan’s Law”) so that it would be in conformity with the federal AWA. The changes made to R.C. Chapter 2950 by S.B. 10 altered the sexual offender classification system. 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. See former R.C. 2950.09. Each classification required registration and notification requirements.

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 years. 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. A habitual sex offender was required to register his or her address annually for 20 years and may or may not have been subject to community

notification. A sexual predator was required to register every 90 days for life and was subject to community notification.

S.B. 10 abolished those classifications. The new provisions leave little, if any, discretion to the trial court in classifying an offender. See R.C. 2950.01. 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. R.C. 2950.01(E)-(G). The tiers dictate the registration and notification requirements. Tier I is the least restrictive tier, requiring a Tier I sex offender to register once annually for 15 years, but there are no community notification requirements. Tier II requires registration every 180 days for 25 years, but it also has no community notification requirements. Tier III, the most restrictive and similar to the former sexual predator finding, requires registration every 90 days for life, and community notification may occur every 90 days for life. See R.C. 2950.07 and 2950.11.

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 ***.” See S.B. 10, Section 5. Similar language is used in the purpose section of the federal act. (“In order to protect the public

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from sex offenders and offenses against children, *** Congress in this chapter establishes a comprehensive national system for the registration of those offenders ***.”) Section 16901, Title 42, U.S. Code. 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.” R.C. 2950.02(B). This statement of purpose antedates the present amendment. See *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, ¶28.

Ex Post Facto and Retroactivity

In their first two assignments of error, appellants claim that the application of S.B. 10 to crimes that occurred before January 1, 2008, violates the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution.

We start with the proposition that statutes, including amendments to those statutes, that are enacted in Ohio are presumed to be constitutional. *Ferguson* at ¶12. Therefore, unless appellants can demonstrate, beyond a reasonable doubt, that S.B. 10 is unconstitutional, it remains valid. *Id.*

The Ex Post Facto Clause, Section 10, Article I, United States Constitution, prohibits the passage of an enactment which may, inter alia, criminalize acts that were innocent when committed or “changes the punishment, and inflicts a greater punishment, than the law annexed to the

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crime, when committed.” *Miller v. Florida* (1987), 482 U.S. 423, 429, quoting *Calder v. Bull* (1798), 3 U.S. 386. Likewise, the Retroactivity Clause, Section 28, Article II, Ohio Constitution, bans the enactment of retroactive statutes that impair vested, substantive rights, but not those rights that are merely remedial and civil in nature. *State v. Graves*, 4th Dist. No. 07CA3004, 2008-Ohio-5763, ¶11. Thus, both contentions turn upon whether Ohio’s AWA is punitive, rather than remedial.

At the outset, we note that this court has already addressed the issue of whether the changes made to R.C. Chapter 2950 altered the statute such that it is now punitive, rather than remedial. We held that the AWA is not punitive, and does not violate either the Ohio or United States constitutional clauses at issue. *State v. Ellis*, 8th Dist. No. 90844, 2008-Ohio-6283; *State v. Rabel*, 8th Dist. No. 91280, 2009-Ohio-350; and *State v. Omiecinski*, 8th Dist No. 90510, 2009-Ohio-1066.

Every other Ohio appellate district has also held that R.C. Chapter 2950, as modified by S.B. 10, remains remedial in nature and is not punitive. See, e.g., *Sewell v. State*, 1st Dist. No. C-080503, 2009-Ohio-872; *State v. King*, 2d Dist. No. 08-CA-02, 2008-Ohio-2594; *In re Gant*, 3d Dist. No. 1-08-11, 2008-Ohio-5198; *Graves*, supra; *In re Kristopher W.*, 5th Dist. No. 2008 AP030022, 2008-Ohio-6075; *Montgomery v. Leffler*, 6th Dist. No. H-08-011, 2008-Ohio-6397; *State v.*

Byers, 7th Dist. No. 07CO39, 2008-Ohio-5051; *In re G.E.S.*, 9th Dist. No. 24079, 2008-Ohio-4076; *State v. Swank*, 11th Dist. No. 2008-L-019, 2008-Ohio-6059; and *State v. Williams*, 12th Dist. No. CA2008-02-029, 2008-Ohio-6195. In addition, federal courts that have addressed the issue have also reached the same result. See *United States v. Markel* (W.D.Ark. 2007), 2007 U.S. Dist. LEXIS 27102; see, also, *United States v. Templeton* (W.D.Okla. 2007), 2007 U.S. Dist. LEXIS 8930.

A. *Ohio Supreme Court Cases on Former R.C. Chapter 2950*

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

Chapter 2950 did not violate the Ex Post Facto Clause of the United States Constitution. *Id.* at 423.

Two years later, in *State v. Williams*, 88 Ohio St.3d 513, 2000-Ohio-428, the Ohio Supreme Court addressed whether the registration and notification provisions of former R.C. Chapter 2950 amounted to double jeopardy. The Supreme Court held that because former R.C. Chapter 2950 was “neither ‘criminal,’ nor a statute that inflicts punishment,” former R.C. Chapter 2950 did not violate the Double Jeopardy Clauses of the United States and Ohio Constitutions. *Id.* at 528. Subsequently, in *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, the Ohio Supreme Court reiterated that “the sex-offender-classification proceedings under [former] R.C. Chapter 2950 are civil in nature[.]” *Id.* at ¶32.³

³In *Wilson*, Justice Lanzinger, in a concurring in part and dissenting in part opinion (joined by Justice O'Connor and Judge Donovan), opined: “While protection of the public is the avowed goal of R.C. Chapter 2950, we cannot deny that severe obligations are imposed upon those classified as sex offenders. All sexual predators and most habitual sex offenders are expected, for the remainder of their lives, to register their residences and their employment with local sheriffs. Moreover, this information will be accessible to all. The stigma attached to sex offenders is significant, and the potential exists for ostracism and harassment, as the *Cook* court recognized. *Id.*, 83 Ohio St.3d at 418. Therefore, I do not believe that we can continue to label these proceedings as civil in nature. These restraints on liberty are the consequences of specific criminal convictions and should be recognized as part of the punishment that is imposed as a result of the offender’s actions.” *Wilson* at ¶45-46.

Former R.C. Chapter 2950 was amended by S.B. 5 in 2003. The amendments (1) required the designation “sexual predator” and the concomitant duty to register remain for life; (2) required sex offenders to register in three different counties (that is, county of residence, county of employment, and county of school) every 90 days (as opposed to registering only in their county of residence); (3) expanded community notification requirements; and (4) required any information in the registration process be included on an internet data base. See S.B. 5.

Recently, in *Ferguson*, the Ohio Supreme Court addressed whether the S.B. 5 amendments, as applied to conduct prior to the effective date of the statute, violated the Ex Post Facto Clause of the United States Constitution and the Ohio Constitution’s prohibition on retroactive laws. Once again, noting the civil, remedial nature of the statute, the Supreme Court held that the S.B. 5 amendments to former R.C. Chapter 2950 neither violated the Retroactivity Clause of the Ohio Constitution nor the Ex Post Facto Clause of the United States Constitution. Id. at ¶36, 40, and 43.⁴

⁴Again in *Ferguson*, Justice Lanzinger dissented and was joined by Justices Pfeifer and Stratton. Discussing the S.B. 5 amendments, Justice Lanzinger stated that R.C. Chapter 2950 has evolved from a remedial statute to a punitive one, that the registration requirements are not merely “collateral to a criminal conviction,” and that it violates the Ex Post Facto Clause of the United States Constitution. She pointed out that “S.B. 5 applies to all sex offenders, without regard to their future dangerousness.” Id. at ¶59. She also noted that “[t]he reporting requirements themselves are

B. Punitive versus Remedial

To determine if the amendments set forth in S.B. 10 are punitive in nature, and not civil or remedial, we shall turn to the “intent-effects” test used by the Ohio Supreme Court in *Cook*. *Id.* at 415. First, we must determine if the legislature intended the statute to be punitive or remedial. If the intent is found to be remedial, then we must determine if the statute has such a punitive effect that it negates its remedial intent. *Id.* at 418, citing *Allen v. Illinois* (1986), 478 U.S. 364.

Upon reviewing S.B. 10, we find that the legislature’s intent in enacting the statute was clearly civil, not punitive. “A court must look to the language and the purpose of the statute in order to determine legislative intent.” *Cook* at 416. S.B. 10 is devoid of any language indicating an intent to punish. To the contrary, and just as the Ohio Supreme Court found in *Cook* with regard to former R.C. Chapter 2950, the legislature has expressly declared that the intent of S.B. 10 is “to protect the safety and general welfare of the people of this state,” which is “a paramount governmental interest”; and that “the exchange or release

exorbitant; S.B. 5 requires sexual predators to engage in perpetual quarterly reporting to the sheriff of the county in which they reside, work, and go to school, even if their personal information has not changed. *** And meriting heaviest weight in my judgment, S.B. 5 makes no provision whatever for the possibility of rehabilitation. Offenders cannot shorten their registration or notification period, even on the clearest demonstration of rehabilitation or conclusive proof of physical incapacitation. Prior to S.B. 5, a sexual predator had the opportunity to remove that label.” *Id.* at ¶60.

of [information required by this law] is not punitive.” R.C. 2950.02; *Cook* at 417. Indeed, the language in former R.C. Chapter 2950, which the Supreme Court in *Cook* relied on to find that the legislature’s intent was remedial, is almost identical to the language used in S.B. 10.

A more difficult issue is whether S.B. 10 is so punitive in effect as to negate the legislature’s non-punitive intent. As the Seventh District noted in *Byers*, the registration requirements under S.B. 10 “are more involved” than the requirements in the former R.C. Chapter 2950 that were discussed in *Cook*. *Id.* at ¶33. Nonetheless, we agree that “[w]hile some may view [Justice Lanzinger’s] reasoning to be persuasive and logical, we must follow the Supreme Court’s decision in *Cook* and the majority decision in *Wilson* that offender classification is civil in nature and the registration requirement is still de minimus; *Cook* and *Wilson* are still controlling law.” *Id.* at ¶37.

The *Byers* court further stated:

“Senate Bill 10’s R.C. Chapter 2950 may not be the narrowly tailored dissemination of information that was contemplated by *Cook*. However, as stated above, *Cook* is still controlling law and as of *Wilson*, the Supreme Court was still of the opinion that sex offender classification was still remedial and not punitive. *** Admittedly, Senate Bill 10 does make some changes to the classification procedure. It changes the classification types from sexually

oriented offender, habitual sex offender, and sexual predator to Tier I, Tier II and Tier III. It also provides a more systematic determination of what offenses fall into what classification. Lastly, it increases the registration period. Tier I is 15 years, while a sexually oriented offender would only have been 10 years. Tier II is 25 years, while a habitual sex offender was 20 years. Tier III is a lifetime registration requirement, which sexual predator has always been. But those changes do not clearly indicate that *Wilson* and *Cook* are no longer controlling and that the sexual offender classification system is now punitive rather than remedial.” *Id.* at ¶55.

Notably, one day after the Seventh District released *Byers*, the Ohio Supreme Court released *Ferguson*, upholding the S.B. 5 amendments to R.C. Chapter 2950 (which were even more restrictive than those discussed in *Cook* and *Wilson*). *Ferguson* adds to the strength of the Seventh District’s reasoning that the Supreme Court will likely uphold the changes to R.C. Chapter 2950, under S.B. 10, as it has continually upheld prior versions.

This court further agrees with the Second District that it is unlikely that the Ohio Supreme Court will find difficulty with the AWA after its *Cook* decision or that the United States Supreme Court will find it unconstitutional after *Smith v. Doe* (2003), 538 U.S. 84 (upheld Alaska’s version of Megan’s Law). *King*, *supra*, at ¶13.

Accordingly, we conclude that S.B. 10, which sets forth Ohio's version of the AWA, is civil in nature, and not punitive. Appellants' first and second assignments of error are overruled.

Separations of Powers

In their third assignment of error, appellants argue that the retroactive application of S.B. 10 violates the separation-of-powers doctrine because the legislative and executive branches interfere with a prior court adjudication regarding their sex offender status.

First, appellants claim that “[p]rior to the enactment of the AWA, the determination of whether and how an offender had to register as a sexual offender was specifically reserved for the judiciary.” That is simply not the case, however. Under former R.C. Chapter 2950, an offender who committed a sexually oriented offense that was not registration-exempt was classified by operation of law as a sexually oriented offender. No judicial action was required, and courts had no discretion to remove the label. Similarly, under S.B. 10, sex offenders are placed by operation of law into tiers based upon the crime they committed. Courts have no discretion to determine that a sex offender should not be placed into a tier. Under both systems, offenders are essentially classified by the offense they committed. See *Montgomery*, supra.

In fact, “the classification of sex offenders into categories has always been a legislative mandate, not an inherent power of the courts. *Slagle v. State*, 145 Ohio Misc.2d 98, 2008-Ohio-593. Without the legislature’s creation of sex offender classifications, no such classification would be warranted. Therefore, *** we cannot find that sex offender classification is anything other than a creation of the legislature, and therefore, the power to classify is properly expanded or limited by the legislature.” *In re Smith*, 3d Dist. No. 1-07-58, 2008-Ohio-3234, ¶39 (holding that S.B. 10 does not violate the separation-of-powers doctrine). See, also, *Smith*, supra; *State v. Randlett*, 4th Dist. No. 08CA3046, 2009-Ohio-112; and *Williams*, 2008-Ohio-6195.

Appellants further claim that S.B. 10 violates the separations-of-powers doctrine by requiring the executive branch, namely, the Ohio Attorney General, to interfere with a prior final adjudication. S.B. 10, however, does not require the Attorney General to reopen final court judgments. See *Slagle*, supra. It simply changes the classification and registration requirements for sex offenders and requires that the new procedures be applied to sex offenders currently registered under the old law or offenders currently incarcerated for committing sexually oriented offenses. In *Cook*, the Ohio Supreme Court made it clear that appellants should not have a reasonable expectation that their sex offenses

would never be made the subject of future sex-offender legislation. *Id.* at 412. Thus, S.B. 10 cannot be said to abrogate a final judicial determination.

Accordingly, S.B. 10 does not violate the separation-of-powers doctrine. Appellants' third assignment of error is overruled.

Double Jeopardy

In their fourth assignment of error, appellants maintain that S.B. 10 violates the Double Jeopardy Clause of the United States and Ohio Constitutions. Specifically, they argue that because S.B. 10 is "punitive in both its intent and effect and therefore, as applied to appellants, constitutes additional punishment" that it is prohibited by double jeopardy protections.

Since this court has already determined that S.B. 10 is a civil, remedial statute, and not a criminal, punitive statute, we find that S.B. 10 does not violate double jeopardy rights. See, also, *Smith*, *supra*; *Byers*, *supra*; and *Slagle*, *supra*. Accordingly, appellants' fourth assignment of error is overruled.

Cruel and Unusual Punishment

In their fifth assignment of error, appellants contend that the application of S.B. 10, as applied to them, violates the prohibition of cruel and unusual punishment as protected by the United States and Ohio Constitutions. They argue that the registration, notification, and residency restrictions imposed by S.B. 10 are disproportionate to their crimes. We disagree.

It is true that under S.B. 10, several of the appellants will have to register for a longer period of time. Under the old law, a sexually oriented offender had to register for 10 years. Under S.B. 10, even the least restrictive, a Tier I offender, has to register for 15 years. Thus, the reporting period is longer under S.B. 10.

The fact that a sex offender has to register for a longer period of time, however, does not change the fact that S.B. 10 is remedial, and not punitive. As the Seventh District stated in *Byers*, “[a]s long as R.C. Chapter 2950 is viewed as civil, and not criminal – remedial and not punitive – then the period of registration cannot be viewed as punishment. Accordingly, it logically follows that it does not constitute cruel and unusual punishment since the punishment element is lacking.” *Id.* at ¶77.

Appellants’ fifth assignment of error is overruled.

Due Process - Residency Restrictions

In their sixth assignment of error, appellants argue that S.B. 10 violates their substantive and procedural due process rights protected by both the Ohio and United States Constitutions. Specifically, they claim that “[b]y restricting sex offenders to residences that are not located within 1000 feet of any school, pre-school or day-care center, R.C. 2950.034 clearly infringes an individual’s constitutional right to establish the residence of their [sic] own choosing.”

First, there is absolutely no evidence in the record before us, nor do any of the appellants claim, that they currently reside within 1,000 feet of a school, preschool, or daycare center. Nor have any of the appellants alleged that they were forced to move from an area due to their proximity to a school, preschool, or daycare center, or that they have any intention of moving to a residence within 1,000 feet of a school, preschool, or daycare center.

This court has held that where the offender does not presently claim to reside “within 1,000 feet of a school, or that he was forced to move from an area because of his proximity to a school[,]” the offender “lacks standing to challenge the constitutionality” of the residency restrictions. *State v. Peak*, 8th Dist. No. 90255, 2008-Ohio-3448, ¶8-9; see, also, *State v. Pierce*, 8th Dist. No. 88470, 2007-Ohio-3665, ¶33; and *State v. Amos*, 8th Dist. No. 89855, 2008-Ohio-1834. The United States District Court for the Southern District of Ohio has reached the same conclusion. *Coston v. Petro* (S.D. Ohio 2005), 398 F.Supp.2d 878, 882-883. “The constitutionality of a state statute may not be brought into question by one who is not within the class against whom the operation of the statute is alleged to have been unconstitutionally applied and who has not been injured by its alleged unconstitutional provision.” *Pierce* at ¶33, quoting *Palazzi v. Estate of Gardner* (1987), 32 Ohio St.3d 169, syllabus.

Accordingly, we agree with the state that this issue is premature and not ripe for review. See, also, *In re: R.P.*, 9th Dist. No. 23967, 2008-Ohio-2673; *State v. Worthington*, 3d Dist. No. 9-07-62, 2008-Ohio-3222.

We note that even if this issue was ripe for review, the only modification of the statute made by S.B. 10 was to add daycare centers and preschools. The statute was not expressly made retroactive. Therefore, the Ohio Supreme Court's holding with regard to the pre-S.B. 10 amendments in *Hyle v. Porter*, 117 Ohio St.3d 165, 2008-Ohio-542, syllabus, is controlling. Specifically, the *Hyle* court held: "[b]ecause [former] R.C. 2950.031 was not expressly made retrospective, it does not apply to an offender who bought his home and committed his offense before the effective date of the statute." Thus, if appellants had purchased their homes near daycare centers, preschools, or schools prior to the effective date of S.B. 10, the new version of the statute would be inapplicable to them.

Appellants' sixth assignment of error is overruled.

Retroactive Application of AWA on Plea Agreements

In their seventh assignment of error, appellants argue that the retroactive application of the AWA constitutes a breach of their plea agreements. They claim that the state is obligated "to impose sex offender requirements that are

materially identical to those contemplated by the law in effect at the time of the plea agreement.” We disagree.

We have already determined that the retroactive application of S.B. 10 is constitutional. Further, except with regard to constitutional protections against ex post facto laws, convicted sex offenders have no reasonable right to expect that their conduct will never be subject to future versions of R.C. Chapter 2950. *Cook* at 412. “If the rule were otherwise, the initial version of R.C. Chapter 2950 could not have been applied retroactively in the first place.” *King*, supra, at ¶33. Accordingly, the state did not breach any agreement entered into with appellants.

We also note that Ohio courts have rejected similar arguments regarding H.B. 180 classifications that went into effect after an offender had entered into a plea agreement, as well as S.B. 10 classifications. See *Gant*, supra; *State v. Desbiens*, 2d Dist. No. 22489, 2008-Ohio-3375; *State v. Taylor*, 11th Dist. No. 2002-G-2441, 2003-Ohio-6963, ¶28; *State v. Paris* (June 16, 2000), 3d Dist. No. 2-2000-04; and *State v. Harley* (May 16, 2000), 10th Dist. No. 99AP-374; *State v. Bodyke*, 6th Dist. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387; and *Randlett*, supra.

Appellants’ seventh assignment of error is not well-taken.

Relief from Community Notification

In their eighth assignment of error, the Tier III appellants maintain that “the trial court erred by categorically denying them relief from community notification pursuant to R.C. 2950.11(F)(2).” They argue, “[s]imply put, R.C. 2950.11(F)(2) provides that an individual is not subject to community notification requirements if he or she would not have been subject to those requirements under Ohio’s Megan’s Law.” The state maintains that “[c]ommunity notification is presumed and will apply unless the court affirmatively finds,” after holding an individualized hearing and considering the R.C. 2950.11(F)(2) factors, “that the offender would not be subject to community notification under the old system.”

Based upon the disparity between appellants’ and the state’s arguments, it is clear that R.C. 2950.11(F)(1) and (2), which set forth community-notification provisions under S.B. 10, are wrought with confusion. We wholeheartedly agree with the Second District’s frustration regarding these provisions that “[t]he enactment of the ‘Adam Walsh Act’ by the Ohio legislature, had resulted in a confusing array of very poorly worded statutory provisions that require a trial court to constantly refer to the law in effect prior to the enactment of the Adam Walsh Law in order to apply the current law.” *In re S.R.B.*, 2d Dist. No. 08-CA-8, 2008-Ohio-6340, ¶6.

To address this issue, we must first look to the statute itself. In determining the meaning of a statute, a court must give effect to the intent of the legislature. See *State ex rel. United States Steel Corp. v. Zaleski*, 98 Ohio St.3d 395, 2003-Ohio-1630, ¶17; *State ex rel. Van Dyke v. Pub. Emp. Retirement Bd.*, 99 Ohio St.3d 430, 2003-Ohio-4123, ¶27.

A. R.C. 2950.11(F)(1) and (2)

R.C. 2950.11(F)(1) states that “[e]xcept as provided in division (F)(2) of this section, the duties to provide the notices *** apply regarding any offender *** who is in any of the following categories[.]” It then lists Tier III sex offenders and various categories of Tier III delinquent child offenders. See R.C. 2950.11(F)(1)(a)-(c).⁵

R.C. 2950.11(F)(2) provides: “[t]he 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

⁵In this case, we only address issues relating to adult sex offenders.

described in this division, the court shall consider the following [community-notification] factors:^{6]}

“(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

⁶With the exception of factor (j), these factors are identical to the “sexual predator” factors under former R.C. 2950.09(B)(3) that a trial court had to consider when determining whether an offender should be labeled a sexual predator. Factor (j) is related to a habitual sexual offender finding.

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.”

B. *Presumption of Community Notification and Hearing Requirement*

The Tier III appellants here contend that “[f]or individuals, like [them], who were originally classified under Ohio’s Megan’s Law, a trial court does not need to hold subsequent hearings *** to determine whether those individuals would not have been subject to community notification under Ohio’s Megan’s Law.” The state disagrees, arguing that the statute requires the court to hold individualized hearings and consider the required factors for all Tier III offenders before they can be relieved of community notification.

After reviewing R.C. 2950.11(F)(1) and (2), we conclude that it is clear that the legislature intended for Tier III sex offenders to be subject to community notification until a court determines otherwise. We find, however, that R.C. 2950.11(F)(2) is ambiguous as to whether a court must hold an evidentiary hearing and consider the community-notification factors for sex offenders who were previously classified under Ohio’s Megan’s Law.

R.C. 2950.11(F)(2) requires courts to look back to the former version of R.C. 2950.11 to determine if “the person would not be subject to the notification provisions *** that were in the version *** that existed immediately prior to the effective date” of S.B. 10. Under the version of R.C. 2950.11 that was in effect immediately prior to S.B. 10, only sexual predators, certain habitual sexual offenders, or offenders who had been convicted of an aggravated sexually

oriented offense, were subject to community notification. See former 2950.11(F)(1). For offenders then who were not subject to community notification under the prior law, we conclude that the language plainly indicates that they will not be subject to it under the AWA. For those who were subject to it previously, they will still be subject to it under the AWA.

Thus, we agree with appellants that it would be nonsensical for a court to hold a hearing to determine whether they *would have been* subject to community notification under the former statute, when it was already determined that they were not subject to community notification under the former statute.

If we were to adopt the state's interpretation that R.C. 2950.11(F)(2) requires the court to hold a hearing and consider the factors for all offenders who were previously classified under Megan's Law, absurd results would most certainly occur. For example, one judge could have held a H.B. 180 hearing and found that the offender should not be labeled a sexual predator (meaning that person would *not* be subject to community notification under the former law), and then another judge (or even the same judge for that matter) subsequently holds a R.C. 2950.11(F)(2) hearing under the AWA and, after considering essentially the exact same factors, finds that the offender should be subject to community notification. It is our view that the legislature could not have intended such paradoxical results. Thus, this court will not adopt such an

interpretation. See *State v. Smith*, 104 Ohio St.3d 106, 2004-Ohio-6238 (“[i]t is an axiom of judicial interpretation that statutes be construed to avoid unreasonable or absurd consequences”); *State v. Wells*, 91 Ohio St.3d 32, 2001-Ohio-3.

For a Tier III offender who was not previously classified under Megan’s Law and is, therefore, being classified for the first time under the AWA, we find that R.C. 2950.11(F)(2) does require the sentencing court to hold an individualized hearing in every case where community notification is at issue, and consider the required factors prior to determining whether the offender should be relieved of community notification. See *State v. Stockman*, 6th Dist. No. L-08-1077, 2009-Ohio-266, ¶ 19 (upon initial classification of a sex offender, R.C. 2950.11(F)(2) requires sentencing court to hold a hearing and consider the factors listed therein).

For those Tier III offenders who were not subject to community notification under the former statute, we find that they are exempt from community notification under the AWA. See *State v. Clay*, 177 Ohio App.3d 78, 2008-Ohio-2980 (First District held that if appellant had been classified as a sexually oriented offender under H.B. 180, then he would be exempt from community notification under the current R.C. 2950.11(F)(2)). In such

notification under R.C. 2950.11(H)(1) only arises after the sex offender has been registering for 20 years. R.C. 2950.11(H)(2).

In addition, under R.C. 2950.031 and 2950.032, if sex offenders challenged their reclassification or new registration duties under the AWA, then it was their burden to file a petition with the court within 60 days of receiving a letter from the Ohio Attorney General, request a hearing, and establish by clear and convincing evidence that the reclassification or new registration duties did not apply to them. See R.C. 2950.031(E) and 2950.032(E).¹⁰ But the hearing provided for in these two sections, as well as the offender's burden set forth in them, *was only applicable when an offender had been reclassified* as a Tier I, II, or III sex offender under the AWA. These provisions do not apply to the community-notification hearing set forth in R.C. 2950.11(F)(2). We therefore disagree with the state that under R.C. 2950.11, sex offenders have a "clear and convincing evidence" burden to prove that they should not be subject to community notification.

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."

¹⁰R.C. 2950.031 applied to sex offenders who had a duty to register under Megan's Law and R.C. 2950.032 applied to sex offenders who were still in prison.

Thus, when a Tier III sex offender sufficiently raises the issue of community notification, just as in other matters, the burden then will shift to the state to establish that community notification should apply, if indeed, that is what the state contends.

D. *Clear and Convincing Evidence Burden*

The state argues that sex offenders must establish by clear and convincing evidence that they are entitled to relief from community notification. The state does not cite to any authority regarding this claim. Contrary to the state's assertion, R.C. 2950.11(F)(2) says nothing about "clear and convincing evidence" or even that it is the sex offender's burden to prove anything.

There is a provision in R.C. 2950.11 regarding the suspension of community notification that requires an offender to prove by clear and convincing evidence that he or she "is unlikely to commit in the future a sexually oriented offense." R.C. 2950.11(H)(1).⁹ But a hearing to suspend community

⁹R.C. 2950.11(H)(1) provides: "Upon the motion of the offender or the prosecuting attorney *** 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

situations, the court need not hold an evidentiary hearing or consider the R.C. 2950.11(F)(2) factors.

C. R.C. 2950.11(F)(2) Motion

Although R.C. 2950.11(F)(2) is not clear as to how the issue of relief from community notification should arise, in practice, it will most likely be the Tier III sex offender who raises the issue to the court, through a written motion or otherwise.⁷ See *Sewell*, supra, at ¶4 (“Sewell filed a R.C. 2950.11(F)(2) motion *** for relief from the community-notification provisions,” which the trial court granted).

Moreover, as in most other circumstances when a party files a motion, in either a civil or criminal case, that person must state the grounds with particularity and set forth the relief sought. See Crim.R. 47 and Civ.R. 7(B)(1).⁸

⁷We point out, though, that there is nothing in R.C. 2950.11(F)(2) to prevent a court from sua sponte holding a hearing and considering the factors to determine whether a sex offender should be relieved from community notification.

⁸Crim.R. 47 provides: “An application to the court for an order shall be by motion. A motion, other than one made during trial or hearing, shall be in writing unless the court permits it to be made orally. It shall state with particularity the grounds upon which it is made and shall set forth the relief or order sought. It shall be supported by a memorandum containing citations of authority, and may also be supported by an affidavit.”

Civ.R. 7(B)(1), which is similar, states: “An application to the court for an order shall be by motion which, unless made during a hearing or a trial, shall be made in writing. A motion, whether written or oral, shall state with particularity the grounds therefore, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.”

E. *Ripe for Review*

Finally, the state contends that the community notification issue is not ripe for review because the trial court did not hold individualized hearings for each offender. We disagree.

First, as we discussed, individualized hearings were not required for these offenders because they either were or were not subject to community notification under Megan's Law. Second, the appellants who had been reclassified as Tier III offenders sufficiently raised the issue in their petitions to the trial court that they should be relieved from community notification. Thus, the trial court erred when it summarily denied the Tier III offenders' request since it is clear that some, if not all, were not previously subject to community notification. Further, the trial court had decided all of the other issues before it. Therefore, we conclude that this issue is ripe for review.

Failure to Appear at Hearing

Two appellants failed to appear at the April 23, 2008 hearing on their petitions challenging their reclassifications. The trial court dismissed their petitions with prejudice. These appellants argue that the trial court erred in doing so because it did not provide notice to them prior to dismissing their petitions. We agree.

Under Civ.R. 41(B)(1), a court may dismiss an action for failure to prosecute, but only after “notice to the plaintiff’s counsel” is given. *Quonset Hut, Inc. v. Ford Motor Co.* (1997), 80 Ohio St.3d 46, 49. The trial court erred by not giving prior notice to counsel that it would dismiss the appellants’ petition involuntarily, and with prejudice.

Accordingly, appellants’ ninth assignment of error is sustained.

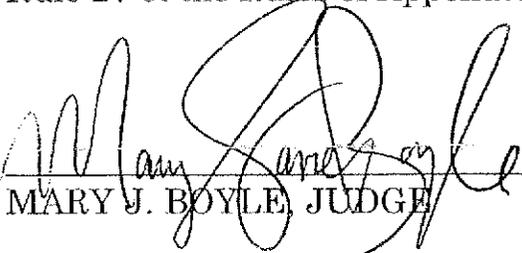
Judgment affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. The trial court is further instructed to reinstate the two petitioners it dismissed for failure to appear at the hearing.

It is ordered that appellee and appellants equally share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



MARY J. BOYLE, JUDGE

MELODY J. STEWART, P.J., CONCURS;
JAMES J. SWEENEY, J., DISSENTS WITH SEPARATE OPINION

JAMES J. SWEENEY, J., DISSENTING:

I respectfully dissent from the majority opinion. For the reasons stated in my dissenting opinion in *State v. Omiecinski*, Cuyahoga App. No. 90510, 2009-Ohio-1066, I would sustain the first and second assignments of error, which would render the remaining assignments of error moot.

APPENDIX:

Name	Conviction	H.B. 180 Classification	S.B. 10 Classification
Robert Gildersleeve	Sexual Battery	Sexually Oriented Offender	Tier III
James Stevens	GSI	Sexually Oriented Offender	Tier I
John Brown	Attempted Rape	Sexually Oriented Offender	Tier III
Michael Topeka	Attempted Corruption of Minor	Sexually Oriented Offender	Tier II
Robert Bohammon	Sexual Battery	Sexually Oriented Offender	Tier III
John W. Evans	Unlawful Sexual Conduct	Sexually Oriented Offender	Tier II
Shawn Maver	Rape	Sexually Oriented Offender	Tier III
Demetrius Reddick	Sexual Battery	Sexually Oriented Offender	Tier III
Ralph Wells	Rape	Sexually Oriented Offender	Tier III
Willie Moncrief	GSI	Sexually Oriented Offender	Tier II
Arnold Harris	Rape and GSI	Sexually Oriented Offender	Tier III
Edward Schneider	GSI	Sexually Oriented Offender	Tier II
Charles M. Jones	Rape	Sexually Oriented Offender	Tier III
Wesley Patterson	Rape	Sexually Oriented Offender	Tier III
Mark D. Patterson ¹¹	Attempted Felonious Penetration	Habitual Sexual Offender	Tier III
Robert Zamora ¹²	CA conviction	CA conviction	Tier II
Dwayne Orr ¹³	GSI	Sexually Oriented Offender	Tier III

¹¹Did not show up for hearing, so trial court dismissed his petition.

¹²Did not show up for hearing, so trial court dismissed his petition.

¹³Was classified incorrectly as a Tier III offender; he should have been classified as a Tier I offender. The trial court corrected his classification.

Baldwin's Ohio Revised Code Annotated Currentness

General Provisions

▣ Chapter 1. Definitions; Rules of Construction (Refs & Annos)

▣ Statutory Provisions (Refs & Annos)

⇒ 1.49 Aids in construction of ambiguous statutes

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

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

CREDIT(S)

(1971 H 607, eff. 1-3-72)

Current through 2009 File 9 of the 128th GA (2009-2010), apv. by 12/7/09 and filed with the Secretary of State by 12/7/09.

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Baldwin's Ohio Revised Code Annotated Currentness

Title XXI. Courts--Probate--Juvenile (Refs & Annos)

Chapter 2152. Juvenile Courts--Criminal Provisions (Refs & Annos)

Juvenile Offender Registrants

⇒ 2152.86 Duties of court in event of delinquency adjudication, release of child from department of youth services, or classification of child as juvenile offender registrant; automatic sex offender/child-victim offender classification; right to request hearing to contest classification

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

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

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

(2) Upon a child's release, on or after January 1, 2008, from the department of youth services, the court shall issue an order that classifies the child a juvenile offender registrant, specifies that the child has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code, and additionally classifies the child a public registry-qualified juvenile offender registrant if all of the following apply:

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

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

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

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

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

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

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

(B)(1) If an order is issued under division (A)(1), (2), or (3) of this section, the classification of tier III sex offender/child-victim offender automatically applies to the delinquent child based on the sexually oriented offense the child committed, subject to a possible reclassification pursuant to division (D) of this section for a child whose delinquent act was committed prior to January 1, 2008. If an order is issued under division (A)(2) of this section regarding a child whose delinquent act described in division (A)(1)(a) or (b) of this section was committed prior to January 1, 2008, or if an order is issued under division (A)(3) of this section regarding a delinquent child, the order shall inform the child and the child's parent, guardian, or custodian, that the child has a right to a hearing as described in division (D) of this section and inform the child and the child's parent, guardian, or custodian of the procedures for requesting the hearing and the period of time within which the request for the hearing must be made. Section 2152.831 of the Revised Code does not apply regarding an order issued under division (A)(1), (2), or (3) of this section.

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

(C) An order issued under division (A)(1), (2), or (3) of this section shall remain in effect for the period of time specified in section 2950.07 of the Revised Code as it exists on and after January 1, 2008, subject to a judicial termination of that period of time as provided in section 2950.15 of the Revised Code, subject to a possible reclassification of the child pursuant to division (D) of this section if the child's delinquent act was committed prior to January 1, 2008. If an order is issued under division (A)(1), (2), or (3) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division. If an order is issued under division (A)(3) of this section, the duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code based upon that order shall be considered, for purposes of section 2950.07 of the Revised Code and for all other purposes, to be a con-

tinuation of the duty to comply with those sections imposed upon the child prior to January 1, 2008, under the order issued under section 2152.82, 2152.83, 2152.84, or 2152.85 and Chapter 2950. of the Revised Code.

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

If the delinquent child requests a hearing by timely filing a petition with the juvenile court, the delinquent child shall serve a copy of the petition on the prosecutor who handled the case in which the delinquent child was adjudicated a delinquent child for committing the sexually oriented offense or child-victim oriented offense that resulted in the delinquent child's registration duty under section 2950.04 or 2950.041 of the Revised Code. The prosecutor shall represent the interest of the state in the hearing. In any hearing under this division, the Rules of Juvenile Procedure apply except to the extent that those Rules would by their nature be clearly inapplicable. The court shall schedule a hearing and shall provide notice to the delinquent child and the delinquent child's parent, guardian, or custodian and to the prosecutor of the date, time, and place of the hearing.

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

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

If the delinquent child fails to request a hearing in accordance with this division within the applicable sixty-day period specified in this division, the failure constitutes a waiver by the delinquent child of the delinquent child's right to a hearing under this division, and the delinquent child is bound by the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant.

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

CREDIT(S)

(2007 § 10, eff. 1-1-08)

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Baldwin's Ohio Revised Code Annotated Currentness
Title XXIX. Crimes--Procedure (Refs & Annos)
§ Chapter 2950. Sex Offenders (Refs & Annos)
→ 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, 2907.322, or 2907.323 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 of the Revised Code;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) A violation of division (A)(3) of section 2907.323 of the Revised Code;

(e) A violation of division (A)(3) of section 2903.211, 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, or 2907.322 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 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 or 2950.032 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 or 2950.032 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 (I) 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 (C)(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 of the Revised Code.

(II) "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, 2950.05, 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 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.

CREDIT(S)

(2007 S 10, eff. 1-1-08; 2006 S 260, eff. 1-2-07; 2004 H 473, eff. 4-29-05; 2003 S 57, eff. 1-1-04; 2003 S 5, § 3, eff. 1-1-04; 2003 S 5, § 1, eff. 7-31-03; 2002 H 490, eff. 1-1-04; 2002 H 485, eff. 6-13-02; 2002 S 175, eff. 5-7-02; 2002 H 393, eff. 7-5-02; 2001 S 3, eff. 1-1-02; 2000 H 502, eff. 3-15-01; 1998 H 565, eff. 3-30-99; 1997 S 111, eff. 3-17-98; 1996 H 180, eff. 1-1-97)

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Baldwin's Ohio Revised Code Annotated Currentness
Title XXIX. Crimes--Procedure (Refs & Annos)
Chapter 2950. Sex Offenders (Refs & Annos)
→ **2950.02 Legislative findings; public policy declaration**

(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.

CREDIT(S)

(2007 S 10, eff. 1-1-08; 2003 S 5, eff. 7-31-03; 2001 S 3, eff. 1-1-02; 1996 H 180, eff. 7-1-97)

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Title XXIX. Crimes--Procedure (Refs & Annos)

Chapter 2950. Sex Offenders (Refs & Annos)

⇒ 2950.11 Community notification of sex offender registration

(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, 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 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 man-

agement 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, 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 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 (1)(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 au-

thorized 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, 2950.05, 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, 2950.05, 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, 2950.05, 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,

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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, 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, 2950.05, 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

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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 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, 2941.1419, or 2941.1420 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.

(f) 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, 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 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 sec-

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tion 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 offense 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

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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.

CREDIT(S)

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