

ORIGINAL

IN THE SUPREME COURT OF OHIO

NO: 2009-1086

ROBERT GILDERSLEEVE ET. AL :

Defendants-Appellants/Cross Appellees

vs. :

STATE OF OHIO :

Plaintiff-Appellee/Cross-Appellant :

CROSS-APPELLEES' MERIT BRIEF

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INTRODUCTION

This case arose when seventeen individuals, formerly classified as sex offenders under Ohio's Megan's Law, were reclassified with more onerous obligations and burdens by virtue of Senate Bill 10, otherwise known as Ohio's Adam Walsh Act ("AWA"). All of these individuals have challenged the retroactive application of the AWA in its entirety. This Court accepted their consolidated appeal, stayed briefing, and held the appeal for decision in *State v. Bodyke*, Ohio Supreme Court Case No. 2008-2502.

This Court also accepted the State's cross-appeal to address the retroactive application of a specific provision of the AWA: R.C. 2950.11(F)(2). R.C. 2950.11(F)(2) specifically exempts a Tier III sex offender from community notification if "the person would not be subject to the notification provisions" of Megan's Law. In its cross-appeal, the State interprets this provision as affording it the opportunity to litigate *de novo* the question of whether or not a reclassified sex offender would be subject to notification under Megan's Law *even if* that individual were in fact *not* subject to notification under Megan's Law.

The Eighth District found the State's interpretation to be "nonsensical" and held that R.C. 2950.11(F)(2) dictates that individuals who were not subject to community notification under Megan's Law are not subject to notification under the AWA. *Gildersleeve v. State*, Cuyahoga App. No. 91515-19 and 91521-32, 2009-Ohio-2031, ¶73. For reclassified Tier III sex offenders, the Eighth District concluded that a duplicative evidentiary hearing was not required. *Id.* at ¶77. For reclassified individuals, the scope of the hearing is limited to a determination of whether or not the reclassified Tier III sex offender was in fact previously subject to community notification under Megan's Law.

Cross-appellees ask this Court to affirm the decision of the Eighth District.¹

STATEMENT OF THE CASE AND FACTS

A. Cross-Appellees Are Reclassified from Sexually-Oriented Offenders to Tier III Sex Offenders.

The State's cross-appeal pertains to nine individuals: Robert Gildersleeve, John Brown, Robert Bohammon, Shawn Maver, Demtrius Reddick, Ralph Wells, Arnold Harris, Charles Jones, and Wesley Patterson (collectively referred to as "cross-appellees"). Each of the cross-appellees was convicted of a sex offense at some time between 1975 and 2003.² All of the cross-appellees were previously classified as sexually-oriented offenders under Ohio's Megan's Law, the least restrictive classification. These classification decisions were made after a judicial hearing in every case, but one.³ As sexually-oriented offenders, cross-appellees were required to register once a year for 10 years and were not subject to community notification pursuant to former R.C. 2950.11.

In 2007, the Ohio General Assembly enacted a new sex offender law, Ohio's Adam Walsh Act (Senate Bill 10), which fundamentally transformed Ohio's sex offender classification process and offender registration requirements, notification requirements, and residency restrictions. By virtue of this legislation, the General Assembly vacated cross-appellees' existing classifications, which were based on individualized judicial determinations of their risk, or lack

¹ If this Court holds, in *Bodyke*, that the retroactive application of the AWA violates the state and/or federal constitution, then the question presented by the State's cross-appeal would be moot.

² Gildersleeve, Bohammon, and Reddick were convicted of sexual battery. Brown was convicted of attempted rape. Harris, Jones, Maver, Patterson and Wells were convicted of rape.

³ The State did not seek a classification hearing with respect to Ralph Wells.

thereof, to community, and replaced them with new offense-based classifications to be determined by the Ohio Attorney General.

As a result of the enactment of the AWA, the Ohio Attorney General reclassified cross-appellees from the least restrictive tier under Megan's Law to the most restrictive tier under the Adam Walsh Act (Tier III Sex Offender). Due to this reclassification, cross-appellees must now register every 90 days for life as Tier III Sex Offenders rather than annually for 10 years as sexually oriented offenders. They are also subject to stringent restrictions on where they can lawfully reside. The question of whether cross-appellees will also be subject to community notification requirements for the first time is now before this Court.

B. Proceedings Below.

Cross-appellees filed petitions challenging the application of the Adam Walsh Act.⁴ With their petitions, appellants argued that the retroactive application of the Adam Walsh Act violated several constitutional provisions, including the Ex Post Facto and Retroactivity Clauses of the United States and Ohio Constitutions (ART. I, SEC. 10 U.S. CONST.; ART. II, SEC. 28 OHIO CONST.), the Double Jeopardy Clauses of the United States and Ohio Constitutions (U.S. CONST. AMEND. V; ART. I, SEC. 10 OHIO CONST.), the Due Process Clauses of the United States and Ohio Constitutions (U.S. CONST. AMEND. XIV; ART. I, SEC. 16 OHIO CONST.), the prohibition on cruel and unusual punishment in the United States and Ohio Constitutions (U.S. CONST. AMEND. VIII; ART. I, SEC. 9 OHIO CONST.), and the separation of powers doctrine encompassed in the Ohio Constitution. Moreover, several petitioners argued that the retroactive application of the AWA constituted a breach of their plea agreements. Finally, several petitioners argued that, pursuant to

⁴ These petitions were filed as new civil cases per the policy of the Cuyahoga County Common Pleas Clerk's Office.

R.C. 2950.11(F)(2), they must be relieved of community notification.

The trial court appointed the public defender to represent the *pro se* petitioners,⁵ established a consolidated briefing schedule, and scheduled a single consolidated hearing on the requests for a preliminary injunction and on the merits of the petitions. The trial court held a hearing on April 23, 2008. After oral argument by counsel for petitioners and the State of Ohio, the trial court rejected all of petitioners' arguments, found "the Adam Walsh Act to be constitutional," and refused to relieve any of the petitioners of community notification as provided by R.C. 2950.11(F)(2).

Petitioners filed a timely appeal with the Eighth District Court of Appeals. On April 30, 2009, the Eighth District issued a decision, affirming in part and reversing in part. *Gildersleeve v. State*, Cuyahoga App. No. 91515-91519, 91521-91532, 2009 Ohio 2031. In a 2-1 decision, the Eighth District affirmed the trial court's ruling that the retroactive application of the Adam Walsh Act was constitutional and did constitute a breach of petitioners' plea agreements. *Id.* at ¶¶ 17-54. The dissenting judge would have held that the Adam Walsh Act was unconstitutional as applied to petitioners. *Id.* at ¶ 89 (Sweeney, J., dissenting). However, the Eighth District reversed the trial court's decision on several petitioners' requests for relief from community notification pursuant to R.C. 2950.11(F)(2). *Id.* at ¶¶ 55-84. It also reversed the trial court's decision to dismiss two petitioners' cases due to their failure to appear at the hearing. *Id.* at ¶¶ 85-87.

Petitioners appealed the Eighth District's adverse ruling on the constitutional and contractual issues to this Court. This Court accepted their appeal, stayed briefing, and held the

⁵ Four of the cross-appellees (Robert Bohammon, John Brown, Robert Gildersleeve, and Arnold Harris) filed their petitions *pro se*.

case for the decision in *State v. Bodyke*, Ohio Supreme Court Case No. 2008-2502. The State cross-appealed, challenging the Eighth District's resolution of cross-appellees' community notification claims. This Court accepted the cross-appeal and chose not to hold it for *Bodyke*.

Cross-appellees' brief now follows.

LAW AND ARGUMENT

The central issue in the State's cross-appeal involves the retroactive application of a single provision of Ohio's new sex offender law, R.C. 2950.11(F)(2).⁶ R.C. 2950.11(F)(2) is clear and unambiguous: community notification does not apply to individuals who "would not be subject to the notification provisions" under Ohio's Megan's Law. Although R.C. 2950.11(F)(2) refers to a hearing, such a hearing is only necessary in cases in which the defendant's registration requirements were not previously governed by Ohio's Megan's Law; i.e. cases in which the defendant was sentenced after the Adam Walsh Act went into effect. When, as with all of the cross-appellees, a defendant was classified under Ohio's Megan's Law and was not subject to community notification, a trial court *must* exempt the defendant from community notification. In short, cross-appellees ask this Court to adopt the following proposition of law:

Pursuant to R.C. 2950.11(F)(2), Tier III Sex Offenders, who were formerly classified under Megan's Law, must be exempted from community notification if the offenders were not subject to community notification by virtue of their prior classification under Megan's Law.

With its cross-appeal, the State argues that R.C. 2950.11(F)(2) operates quite differently. The State maintains that, in applying that provision, a trial court must ignore a defendant's prior classification under Megan's Law and make a de novo determination after considering the same

⁶ This Court has accepted another case to address the prospective application of that same provision. See *State v. McConville*, Sup. Ct. Case No. 2009-893 (argued on January 13, 2010).

exact factors. The State's interpretation of R.C. 2950.11(F)(2) is inconsistent with the plain language of the statute, the policy underlying the enactment of the statute, and principles of res judicata.

Because of the unusual structure of R.C. 2950.11(F)(2) which relates back to a prior version of the law, cross-appellees begin with a statutory analysis of both R.C. 2950.11(F)(2) of the Adam Walsh Act and former R.C. 2950.09 and R.C. 2950.11 of Ohio's Megan's Law, and then turn to the application of R.C. 2950.11(F)(2).

A. Pertinent Statutory Provisions

1. Adam Walsh Act

Under the Adam Walsh Act, Tier III Sex Offenders are subject to community notification unless R.C. 2950.11(F)(2) applies. R.C. 2950.11(F)(1). Subsection (F)(2) provides that:

The notification provisions of this section do not apply to a person . . . 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 age or delinquent child's age;
- (b) The offender's or delinquent's 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 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.

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

Simply 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.

2. Ohio's Megan's Law

Under Ohio's Megan's Law, an individual was subject to community notification only if he or she were found to be a sexual predator or, in limited circumstances involving multiple sex offenses, a habitual sex offender. Former R.C. 2950.11(F)(1). With respect to individuals, like cross-appellees, who committed a single sex offense, the State bore the burden of demonstrating, by clear and convincing evidence, that they were sexual predators (and therefore subject to

community notification) because they were “likely to engage in the future in one or more sexually oriented offenses.” Former R.C. 2950.01(E), R.C. 2950.09(B), R.C. 2950.11. In making the sexual predator determination, the trial court was required to consider factors that are virtually identical to those set forth in subsection (F)(2).⁷ Former R.C. 2950.09(B)(3).

B. Nature of the Proceedings Under R.C. 2950.11(F)(2)

Assuming that the retroactive application of the Adam Walsh Act is constitutional, cross-appellees agree with the State that R.C. 2950.11(F)(2) applies to all adult Tier III sex offenders regardless of whether their offense and classification originally occurred under Megan’s Law or after the enactment of the Adam Walsh Act (or SB 10). (State’s Br. at 9). In other words, the parties agree that R.C. 2950.11(F)(2) applies *both* to *reclassified* Tier III sex offenders (individuals previously classified under Megan’s Law) and to *newly* classified Tier III sex offenders (individuals classified for the first time under the Adam Walsh Act).⁸ The question presented in this case is how R.C. 2950.11(F)(2) applies to reclassified Tier III sex offenders and whether, as urged by the State, a trial court can ignore the offenders’ prior classification under Megan’s Law.

Cross-appellees maintain that the nature of the hearing required by R.C. 2950.11(F)(2) differs depending on whether or not an individual was previously classified under Megan’s Law. If the individual were previously classified under Megan’s Law, the scope of the hearing is

⁷ Before the Eighth District, the State repeatedly emphasized that a new hearing was necessary under R.C. 2950.11(F)(2) for the trial court to consider the “newly-codified” factors. (State’s Ct. Appeals Br. at 3 and 6). The State now seems to acknowledge that R.C. 2950.11(F)(2) includes the same factors that were already considered for those previously classified under former R.C. 2950.09 in Ohio’s Megan’s Law.

⁸ The Cuyahoga County Prosecutor therefore disagrees with the position taken by the Lorain County Prosecutor in *State v. McConville*, Case No. 2009-893 regarding the prospective application of R.C. 2950.11(F)(2).

limited to a determination of whether or not the person was previously subject to community notification under Megan's Law. If, on the other hand, the individual was *not* previously classified under Megan's Law, then the trial court must hold a full evidentiary hearing that complies with the dictates of *State v. Eppinger* (2001), 91 Ohio St. 3d 158.

1. Tier III Sex Offenders Previously Classified Under Megan's Law (Cross-Appellces).

For Tier III sex offenders who were previously classified under Ohio's Megan's Law, the scope of the inquiry required by R.C. 2950.11(F)(2) is quite narrow. A trial court need only hold a hearing to determine whether or not the reclassified sex offender was subject to community notification under Megan's Law.

As explained above, R.C. 2950.11(F)(2) explicitly ties an individual's community notification requirements under the Adam Walsh Act to any requirements which would have been imposed under Ohio's Megan's Law. Specifically, it provides that the "notification provisions of this section do not apply to" Tier III sex offenders 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 [under Megan's Law]." R.C. 2950.11(F)(2) (emphasis added). For every cross-appellce (with the exception of Ralph Wells), *a court* has already held a hearing, considered the very same factors present in R.C. 2950.11(F)(2), and concluded that cross-appellces would not be subjected to community notification under Megan's law as habitual sex offenders or sexual predators. There is nothing in R.C. 2950.11(F)(2) that suggests that the prior judicial determinations should, or even could, be disregarded and that a new evidentiary hearing must be held.

Indeed, the language utilized by the General Assembly in R.C. 2950.11(F)(2) supports the conclusion that the factors listed in R.C. 2950.11(F)(2) should only be considered once, either by

the prior trial court who made the original classification decision under Megan's Law *or* by the current trial court who is classifying an individual for the first time under the Adam Walsh Act. Several of the enumerated factors specifically provide for consideration of the circumstances of the offense "for which sentence *is* to be imposed." R.C. 2950.11(F)(2)(c), (d), and (i). If the General Assembly had actually intended for a *de novo* consideration of these factors, it would have referred to the circumstances of the offense for which sentence "is to be imposed" or "was imposed." Contrary to the State's desires, the General Assembly did not word the statute in that manner because the General Assembly wanted to avoid having different trial court judges issuing conflicting decisions on whether community notification should apply to a particular defender *under Megan's Law*. Indeed, if this Court were to accept the State's interpretation of R.C. 2950.11(F)(2), then a reclassified sexual predator could petition a court to relieve him or her of community notification under the Adam Walsh Act. Given that the AWA imposes more severe requirements upon registered sex offenders, it seems unlikely the General Assembly would have created a provision that allows relief from community notification for former sexual predators.

Cross-appellees' interpretation of R.C. 2950.11(F)(2) is not only consistent with the plain language of the statute; it is also consistent with the General Assembly's "intent to protect the safety and general welfare of the people of this State." R.C. 2950.02(B). If the public is overwhelmed by community notifications, which include those previously deemed not to be a significant risk, "the purpose behind and the credibility of the law" will be diluted. *Cf. Eppinger*, 91 Ohio St.3d at 156 (explaining the risks associated with overclassification). Moreover, research on the efficacy of sex offender laws indicates that community notification provisions have either no impact or have counterproductive effects on sexual recidivism rates. Prescott, J.J. & Rockoff, J. (2008), *Do Sex Offender Registration and Notification Laws Affect Criminal*

Behavior?, 24-25, available at <http://www.law.umich.edu/centersandprograms/olin/abstracts/2008/Documents/08-006prescott.pdf> (concluding that community notification laws appear to *increase recidivism* by registered offenders and noting that this finding is consistent with work by criminologists suggesting that notification may increase recidivism by imposing social and financial costs on registered sex offenders and making non-criminal activity relatively less attractive.)

The State's primary statutory argument for ignoring thousands of prior classification decisions under Megan's Law is that the General Assembly used the words "would not be subject" to notification under Megan's Law instead of "was not subject" to notification of Megan's Law. The State misunderstands the significance of the "would not be subject" language. If the General Assembly had simply exempted a Tier III sex offender who "was not subject to" community notification under Megan's Law, it would not have accomplished its purpose of also applying R.C. 2950.11(F)(2) to individuals classified for the first time under the Adam Walsh Act. The choice of the subjunctive phrase "would not be" clearly encompasses both retroactive and prospective application of this subdivision. Had the General Assembly simply used past tense verbs (i.e. "was not"), then R.C. 2950.11(F)(2) would only have applied to those individuals who were previously classified under Ohio's Megan's Law.

The State also argues that a *de novo* evidentiary hearing is required and that prior judgments related to the same exact question (whether or not an offender is subject to community notification under Megan's Law) must be ignored because 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." (State's Br. at 6). Cross-appellees agree that R.C. 2950.11(F)(1)(a) does not distinguish between reclassified and newly classified Tier III sex

offenders. However, subsection (F)(1)(a) has no bearing on the proper interpretation of subsection (F)(2). The question still remains what a court must determine, pursuant to R.C. 2950.11(F)(2), with respect to reclassified Tier III sex offenders. If a court previously concluded at an IIB 180 hearing that an individual would not be subject to notification, this ends the inquiry and no new evidentiary hearing is required. The State maintains that any prior court ruling about whether an individual would be subject to community notification is completely irrelevant and that the question *must* be reconsidered *de novo*. There is nothing in R.C. 2950.11(F)(1)(a) that sheds light on that question.

For individuals who were originally classified under Ohio's Megan's Law, the trial court need not hold subsequent evidentiary hearings (in addition to the one held under Ohio's Megan's Law) to determine whether those individuals would not have been subject to community notification under Ohio's Megan's Law. The inquiry for those individuals is quite simple. If they were subject to notification under Ohio's Megan's Law, they will be subject to it under the AWA. If they were not subject to notification under Ohio's Megan's Law, they are not subject to it under the AWA. Accordingly, for reclassified Tier III sex offenders, like cross-appellees, the hearing contemplated by R.C. 2950.11(F)(2) merely concerns a determination of the offenders' prior obligations under Megan's Law.

2. Tier III Sex Offenders Classified for the First Time Under the Adam Walsh Act.

For those individuals who are classified for the first time under the Adam Walsh Act, the trial court must necessarily hold an evidentiary hearing to consider, for the first time, the factors listed in R.C. 2950.11(F)(2) and determine whether the State has proven, by clear and convincing evidence, that the individual would not have been subject to community notification under

Ohio's Megan's Law.⁹

At these evidentiary hearings, the trial court must adhere to the procedural protections previously established by this Court in *State v. Eppinger* (2001), 91 Ohio St. 3d 158 for hearings held under former R.C. 2950.09. These procedural protections include the appointment of counsel, the opportunity to present expert testimony at state's expense for indigent defendants, the establishment of a complete record for decision-making and review, and the requirement that the trial court consider the statutory factors listed in R.C. 2950.11(F)(2) and discuss on the record the particular evidence upon which it relies in making its decision. *Id.* at 166.

The detailed nature of the hearing required for Tier III sex offenders classified for the first time under the Adam Walsh Act also weighs heavily against the State's position that such exhaustive evidentiary hearings are also required for reclassified Tier III sex offenders. It is unlikely that the General Assembly would have established a procedure whereby a trial court would address a question previously determined by another trial court (i.e. whether a defendant would not be subject to community notification under Megan's Law) at duplicative evidentiary hearings for over 7000 reclassified Tier III sex offenders.¹⁰ Indeed, if the General Assembly had intended such a drastic result, it would have clearly said so as it does not "hide elephants in mouseholes." *Cf. Whitman v. American Trucking Ass'n* (2001), 531 U.S. 457, 469 (explaining that Congress does not leave highly significant issues undefined).

⁹ R.C. 2950.11(F)(2) incorporates by reference the burden of proof applied in proceedings under Ohio's Megan's Law. By tying an individual's notification requirements to his or her requirements under Ohio's Megan's Law, the Adam Walsh Act necessarily leaves the burden of proof with the State, just as it was under Ohio's Megan's Law.

¹⁰ According to discovery provided by the Ohio Attorney General in *Doe v. Dann*, Case No. 1:08-CV-00220 (N.D. Ohio), there were approximately 7167 adult sex offenders who were subject to community notification, *for the first time*, as a direct result of their reclassification under the AWA.

C. The State is barred by the doctrine of *res judicata* from relitigating the issue of community notification.

Although the Eighth District's decision did not rest on principles of *res judicata*, that legal doctrine serves as an independent basis for upholding the Eighth District's decision. See e.g. *Agee v. Russell* (2001), 92 Ohio St. 3d 540, 544 ("we will not reverse a correct judgment merely because a court of appeals erred in its specified rationale."). The State is barred by the doctrines of *res judicata* and collateral estoppel from relitigating, with respect to cross-appellees, the community notification issue under the Adam Walsh Act when that precise issue was previously litigated, or could have been litigated, by the same parties under Ohio's Megan's Law.

Res judicata dictates that a "valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." See *Grava v. Parkman Twp.* (1995), 73 Ohio St. 3d 379, 382. The doctrine of collateral estoppel operates to "preclude the relitigation of a point of law or fact that was at issue in a former action between the same parties and was passed upon by a court of competent jurisdiction." *Consumers' Counsel v. Pub. Util. Comm.* (1985), 16 Ohio St. 3d 9, 10.) The State of Ohio previously litigated the question of whether cross-appellees (with the exception of Ralph Wells) would be subject to community notification at an H.B. 180 hearing pursuant to Ohio's Megan's Law. In each of these cases, the trial court concluded, after considering the very same factors set forth in R.C. 2950.11(F)(2), that the cross-appellees were not subject to community notification because they were not sexual predators or habitual sex offenders. Those prior rulings bar the State from relitigating this identical issue in a subsequent proceeding.

Moreover, with respect to cross-appellee Ralph Wells, the State is barred by *res judicata* from litigating the question of whether he would be subject to community notification under

Megan's law because the State failed to timely litigate that issue under Ohio's Megan's Law. Prior judgments preclude subsequent litigation when the party had the *opportunity* to litigate the issues in a prior proceeding. The policy basis underlying the doctrine of *res judicata* is "to assure an end to litigation, and prevent a party from being vexed twice for the same cause." *LaBarbera v. Batsch* (1967), 10 Ohio St. 2d 106, 113. Consistent with that policy, *res judicata* bars future litigation when a party fails, in the original action, to meet the applicable statute of limitations, *Id.* at 116, or when a case is dismissed for a parties failure to prosecute, *Rice v. City of Westlake*, Cuyahoga App. No. 55424, 1989 Ohio App. LEXIS 2365, *7-8. Here, the State had several years to litigate the question of whether or not Wells should be subject to the notification requirements of Ohio's Megan's Law. Once Wells was released from prison on his sex offense, the State was barred from litigating the notification question.¹¹ Because the State could have (but did not) litigate the community notification issue under Ohio's Megan's Law, *res judicata* bars it from litigating that same question now under R.C. 2950.11(F)(2).

The State argues that *res judicata* should not apply in Wells' case because the issue of community notification was not previously litigated during the sexual predator classification hearing. The State is wrong. R.C. 2950.11(F)(2) explicitly ties community notification under the Adam Walsh Act to community notification under Megan's Law. Under Ohio Megan's Law, a sex offender was only subjected to community notification if he were found to be a sexual

¹¹ Under Ohio's Megan's Law, a trial court only had jurisdiction to hold a HB 180 hearing and classify an individual as a sexual predator "prior to the offender's release from confinement." *State v. Brewer* (1999), 86 Ohio St. 3d 160, paragraph one of the syllabus and 165. The Ohio General Assembly subsequently extended the trial court's authority to hold a classification hearing to "any time within one year following the offender's release from that imprisonment." R.C. 2950.09(C)(2)(a).

predator or a habitual sex offender with notification.¹² In making that classification decision under former R.C. 2950.09 of Megan's Law, the trial court considered the same factors that are set forth in R.C. 2950.11(F)(2). In previously concluding that cross-appellees were not sexual predators or habitual sex offenders, trial courts necessarily determined that they would not be subject to community notification under Megan's Law. If the State disagreed with the trial court's decision that cross-appellees would not be subject to community notification as sexual predators, the State had the right to appeal that decision. Former R.C. 2950.09(C)(2)(c)(iii). The State failed to appeal in any of these cases and therefore is now bound by those prior determinations.

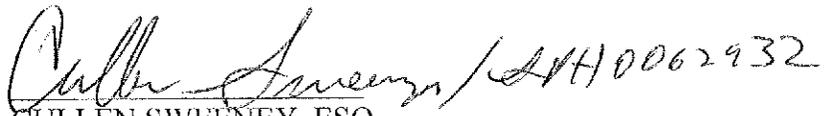
In essence, the State asks this Court to hold that it can relitigate the question of whether a reclassified sex offender "would be" subject to community notification under Megan's Law even though it was previously determined that the offender would not be subject to community notification under Megan's Law. Such a holding would be "wholly inconsistent with the doctrine of res judicata" and should be rejected as there is no indication in R.C. 2950.11(F)(2) that "the General Assembly intended to do away with the doctrine of res judicata." *State v. Perry* (1967), 10 Ohio St.2d 175, 179. On the contrary, R.C. 2950.11(F)(2) is specifically drafted so that an individual's community notification obligations under the AWA depends on his or her prior classification under Megan's Law.

¹² Community notification also applied, under Megan's Law, to individuals convicted of aggravated sexually oriented offenses. Former R.C. 2950.11(F)(1)(c). None of the cross-appellees in this case were convicted of an aggravated sexually oriented offense as defined by former R.C. 2950.01(O).

CONCLUSION

For the foregoing reasons, cross-appellees respectfully ask this Court to affirm the decision of the Eighth District Court of Appeals with respect to the issue of community notification, adopt the cross-appellees' proposition of law, and hold that they are not subject to community notification under the Adam Walsh Act because they were not subject to community notification under Megan's Law.

Respectfully Submitted,


 CULLEN SWEENEY, ESQ.
 Counsel for Appellants/Cross-Appellees

CERTIFICATE OF SERVICE

A copy of the foregoing Cross-Appellees' Merit Brief was served upon WILLIAM D. MASON, ESQ., Cuyahoga County Prosecutor, The Justice Center - 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113 on this 8th day of February, 2010.


 CULLEN SWEENEY, ESQ.
 Counsel for Appellants/Cross-Appellees

APPENDIX

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*** ARCHIVE MATERIAL ***

*** CURRENT THROUGH LEGISLATION APPROVED THROUGH DECEMBER 15, 2004 ***
 *** ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2004 ***

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

ORC Ann 2950 09 (2004)

§ 2950 09 Classification as sexual predator; determination hearing; petition for removal from classification

(A) If a person is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually oriented offense that is not a registration-exempt sexually oriented offense and that is a sexually violent offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging the sexually violent offense, the conviction of or plea of guilty to the specification automatically classifies the offender as a sexual predator for purposes of this chapter. If a person is convicted, pleads guilty, or adjudicated a delinquent child, in a court in another state, in a federal court, military court, or Indian tribal court, or in a court of any nation other than the United States for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, and if, as a result of that conviction, plea of guilty, or adjudication, the person is required, under the law of the jurisdiction in which the person was convicted, pleaded guilty, or was adjudicated, to register as a sex offender until the person's death, that conviction, plea of guilty, or adjudication automatically classifies the person as a sexual predator for the purposes of this chapter, but the person may challenge that classification pursuant to division (F) of this section. In all other cases, a person who is convicted of or pleads guilty to, has been convicted of or pleaded guilty to, or is adjudicated a delinquent child for committing, a sexually oriented offense may be classified as a sexual predator for purposes of this chapter only in accordance with division (B) or (C) of this section or, regarding delinquent children, divisions (B) and (C) of *section 2152 83 of the Revised Code*.

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

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

(ii) Regardless of when the sexually oriented offense was committed, the offender is to be sentenced on or after January 1, 1997, for a sexually oriented offense that is not a registration-exempt sexually oriented offense and that is a sexually violent offense, and a sexually violent predator specification was not included in the indictment, count in the indictment, or information charging the sexually violent offense

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

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

(i) The judge is required by section 2152 82 or division (A) of section 2152 83 of the Revised Code to classify the child a juvenile offender registrant

(ii) Division (B) of section 2152 83 of the Revised Code applies regarding the child, the judge conducts a hearing under that division for the purposes described in that division, and the judge determines at that hearing that the child will be classified a juvenile offender registrant

(2) Regarding an offender, the judge shall conduct the hearing required by division (B)(1)(a) of this section prior to sentencing and, if the sexually oriented offense for which sentence is to be imposed is a felony and if the hearing is being conducted under division (B)(1)(a) of this section, the judge may conduct it as part of the sentencing hearing required by section 2929 19 of the Revised Code. Regarding a delinquent child, the judge may conduct the hearing required by division (B)(1)(b) of this section at the same time as, or separate from, the dispositional hearing, as specified in the applicable provision of section 2152 82 or 2152 83 of the Revised Code. The court shall give the offender or delinquent child and the prosecutor who prosecuted the offender or handled the case against the delinquent child for the sexually oriented offense notice of the date, time, and location of the hearing. At the hearing, the offender or delinquent child and the prosecutor shall have an opportunity to testify, present evidence, call and examine witnesses and expert witnesses, and cross-examine witnesses and expert witnesses regarding the determination as to whether the offender or delinquent child is a sexual predator. The offender or delinquent child shall have the right to be represented by counsel and, if indigent, the right to have counsel appointed to represent the offender or delinquent child.

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

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

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

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

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

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

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

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participated in available programs for sexual offenders;

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

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

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

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

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

(5) A hearing shall not be conducted under division (B) of this section regarding an offender if the sexually oriented offense in question is a sexually violent offense, if the indictment, count in the indictment, or information charging the offense also included a sexually violent predator specification, and if the offender is convicted of or pleads guilty to that sexually violent predator specification.

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

(a) If the sexually oriented offense was an offense described in division (D)(1)(c) of *section 2950 01 of the Revised Code* or was a violent sex offense, the department shall notify the court that sentenced the offender of this fact, and the court shall conduct a hearing to determine whether the offender is a sexual predator.

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

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offender. In all cases, the department shall enter its determination and recommendation in the offender's institutional record, and the court shall proceed in accordance with division (C)(2) of this section.

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

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

The court may conduct a hearing to determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense or a child-victim oriented offense but may make the determination without a hearing. However, if the court determines that the offender previously has been convicted of or pleaded guilty to such an offense, it shall not impose a requirement that the offender be subject to the community notification provisions contained in sections 2950 10 and 2950 11 of the Revised Code without a hearing. In determining whether to impose the community notification requirement, the court, in the circumstances described in division (E)(2) of this section, shall apply the presumption specified in that division. The court shall include in the offender's institutional record any determination made under this division as to whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense or child-victim oriented offense, and, as such, whether the offender is a habitual sex offender.

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

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

(i) If the court determines that the offender is not a sexual predator and that the offender previously has not

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

(ii) If the court determines that the offender is not a sexual predator but that the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the hearing is being conducted or previously has been convicted of or pleaded guilty to a child-victim oriented offense, it shall include in the offender's institutional record its determination that the offender is not a sexual predator but is a habitual sex offender and the reason or reasons why it determined that the offender is not a sexual predator, shall attach the determinations and the reason or reasons to the offender's sentence, shall specify that the determinations were pursuant to division (C) of this section, shall provide a copy of the determinations and the reason or reasons to the offender, to the prosecuting attorney, and to the department of rehabilitation and correction, and may impose a requirement that the offender be subject to the community notification provisions contained in *sections 2950 10 and 2950 11 of the Revised Code*. In determining whether to impose the community notification requirements, the court, in the circumstances described in division (E)(2) of this section, shall apply the presumption specified in that division. The offender shall not be subject to those community notification provisions relative to the sexually oriented offense in question if the court does not so impose the requirement described in this division. If the court imposes that requirement, the offender may appeal the judge's determination that the offender is a habitual sex offender

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

If the hearing is scheduled under division (C)(2)(b) of this section to determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense or a child-victim oriented offense or whether to subject the offender to the community notification provisions contained in *sections 2950 10 and 2950 11 of the Revised Code*, upon making the determination, the court shall attach the determination or determinations to the offender's sentence, shall provide a copy to the offender, to the prosecuting attorney, and to the department of rehabilitation and correction and may impose a requirement that the offender be subject to the community notification provisions. In determining whether to impose the community notification requirements, the court, in the circumstances described in division (E)(2) of this section, shall apply the presumption specified in that division. The offender shall not be subject to the community notification provisions relative to the sexually oriented offense in question if the court does not so impose the requirement described in this division. If the court imposes that requirement, the offender may appeal the judge's determination that the offender is a habitual sex offender

(3) The changes made in divisions (C)(1) and (2) of this section that take effect on the effective date of this amendment do not require a court to conduct a new hearing under those divisions for any offender regarding a sexually oriented offense if, prior to the effective date of this amendment, the court previously conducted a hearing under those divisions regarding that offense to determine whether the offender was a sexual predator. The changes made in divisions (C)(1) and (2) of this section that take effect on the effective date of this amendment do not require a court to conduct a hearing under those divisions for any offender regarding a sexually oriented offense if, prior to the effective date of this amendment and pursuant to those divisions, the department of rehabilitation and correction recommended that the offender be adjudicated a sexual predator regarding that offense, and the court denied the recommendation and determined that the offender was not a sexual predator without a hearing, provided that this provision does not apply if the sexually oriented offense in question was an offense described in division (D)(1)(c) of *section 2950 01 of the Revised Code*

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(D) (1) Division (D)(1) of this section does not apply to any person who has been convicted of or pleaded guilty to a sexually oriented offense. Division (D) of this section applies only to delinquent children as provided in Chapter 2152 of the Revised Code. A person who has been adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense and who has been classified by a juvenile court judge a juvenile offender registrant or, if applicable, additionally has been determined by a juvenile court judge to be a sexual predator or habitual sex offender, may petition the adjudicating court for a reclassification or declassification pursuant to *section 2152 85 of the Revised Code*.

A judge who is reviewing a sexual predator determination for a delinquent child under *section 2152 84 or 2152 85 of the Revised Code* shall comply with this section. At the hearing, the judge shall consider all relevant evidence and information, including, but not limited to, the factors set forth in division (B)(3) of this section. The judge shall not enter a determination that the delinquent child no longer is a sexual predator unless the judge determines by clear and convincing evidence that the delinquent child is unlikely to commit a sexually oriented offense in the future. If the judge enters a determination under this division that the delinquent child no longer is a sexual predator, the judge shall notify the bureau of criminal identification and investigation of the determination and shall include in the notice a statement of the reason or reasons why it determined that the delinquent child no longer is a sexual predator. Upon receipt of the notification, the bureau promptly shall notify the sheriff with whom the delinquent child most recently registered under *section 2950 04 or 2950 05 of the Revised Code* of the determination that the delinquent child no longer is a sexual predator.

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

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

(a) The judge is required by *section 2152 82 or division (A) of section 2152 83 of the Revised Code* to classify the child a juvenile offender registrant;

(b) Division (B) of *section 2152 83 of the Revised Code* applies regarding the child, the judge conducts a hearing under that division for the purposes described in that division, and the judge determines at that hearing that the child will be classified a juvenile offender registrant.

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

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If, under division (E)(1) of this section, the judge determines that the offender or delinquent child previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing, a sexually oriented offense or a child-victim oriented offense and that the offender satisfies all other criteria for being a habitual sex offender, the offender or delinquent child is a habitual sex offender or habitual child-victim offender and the court shall determine whether to impose a requirement that the offender or delinquent child be subject to the community notification provisions contained in *sections 2950 10 and 2950 11 of the Revised Code*. In making the determination regarding the possible imposition of the community notification requirement, if at least two of the sexually oriented offenses or child-victim oriented offenses that are the basis of the habitual sex offender or habitual child-victim offender determination were committed against a victim who was under eighteen years of age, it is presumed that subjecting the offender or delinquent child to the community notification provisions is necessary in order to comply with the determinations, findings, and declarations of the general assembly regarding sex offenders and child-victim offenders that are set forth in *section 2950 02 of the Revised Code*. When a judge determines as described in this division that an offender or delinquent child is a habitual sex offender or a habitual child-victim offender, the judge shall specify in the offender's sentence and the judgment of conviction that contains the sentence or in the order classifying the delinquent child a juvenile offender registrant that the judge has determined that the offender or delinquent child is a habitual sex offender and may impose a requirement in that sentence and judgment of conviction or in that order that the offender or delinquent child be subject to the community notification provisions contained in *sections 2950 10 and 2950 11 of the Revised Code*. Unless the habitual sex offender also has been adjudicated a sexual predator relative to the sexually oriented offense in question or the habitual sex offender was convicted of or pleaded guilty to an aggravated sexually oriented offense, the offender or delinquent child shall be subject to those community notification provisions only if the court imposes the requirement described in this division in the offender's sentence and the judgment of conviction or in the order classifying the delinquent child a juvenile offender registrant. If the court determines pursuant to this division or division (C)(2) of this section that an offender is a habitual sex offender, the determination is permanent and continues in effect until the offender's death, and in no case shall the determination be removed or terminated.

If a court in another state, a federal court, military court, or Indian tribal court, or a court in any nation other than the United States determines a person to be a habitual sex offender in that jurisdiction, the person is considered to be determined to be a habitual sex offender in this state. If the court in the other state, the federal court, military court, or Indian tribal court, or the court in the nation other than the United States subjects the habitual sex offender to community notification regarding the person's place of residence, the person, as much as is practicable, is subject to the community notification provisions regarding the person's place of residence that are contained in *sections 2950 10 and 2950 11 of the Revised Code*, unless the court that so subjected the person to community notification determines that the person no longer is subject to community notification.

(F) (1) An offender or delinquent child classified as a sexual predator may petition the court of common pleas or, for a delinquent child, the juvenile court of the county in which the offender or delinquent child resides or temporarily is domiciled to enter a determination that the offender or delinquent child is not an adjudicated sexual predator in this state for purposes of the registration and other requirements of this chapter or the community notification provisions contained in *sections 2950 10 and 2950 11 of the Revised Code* if all of the following apply:

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

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

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

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(2) The court may enter a determination that the offender or delinquent child filing the petition described in division (F)(1) of this section is not an adjudicated sexual predator in this state for purposes of the registration and other requirements of this chapter or the community notification provisions contained in sections 2950 10 and 2950 11 of the Revised Code only if the offender or delinquent child proves by clear and convincing evidence that the requirement of the other jurisdiction that the offender or delinquent child register as a sex offender until the offender's or delinquent child's death is not substantially similar to a classification as a sexual predator for purposes of this chapter. If the court enters a determination that the offender or delinquent child is not an adjudicated sexual predator in this state for those purposes, the court shall include in the determination a statement of the reason or reasons why it so determined.

(G) If, prior to the effective date of this section, an offender or delinquent child was adjudicated a sexual predator or was determined to be a habitual sex offender under this section or section 2152 82, 2152 83, 2152 84, or 2152 85 of the Revised Code and if, on and after the effective date of this amendment, the sexually oriented offense upon which the classification or determination was based no longer is considered a sexually oriented offense but instead is a child-victim oriented offense, notwithstanding the redesignation of that offense, on and after the effective date of this amendment, all of the following apply:

(1) Divisions (A)(1) or (2) or (E)(1) and (2) of section 2950 091 [2950 09 1] of the Revised Code apply regarding the offender or child, and the judge's classification or determination made prior to the effective date of this amendment shall be considered for all purposes to be a classification or determination that classifies the offender or child as described in those divisions.

(2) The offender's or child's classification or determination under divisions (A)(1) or (2) or (E)(1) and (2) of section 2950 091 [2950 09 1] of the Revised Code shall be considered, for purposes of section 2950 07 of the Revised Code and for all other purposes, to be a continuation of the classification or determination made prior to the effective date of this amendment.

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

HISTORY: 146 v H 180 (Eff 1-1-97); 147 v H 565 (Eff 3-30-99); 148 v H 502 (Eff 3-15-2001); 149 v S 3 (Eff 1-1-2002); 149 v S 175 (Eff 5-7-2002); 149 v H 485 (Eff 6-13-2002); 149 v H 393 (Eff 7-5-2002); 150 v S 5, § 1, eff 7-31-03

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*** ARCHIVE MATERIAL ***

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

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

ORC Ann 2950.11 (2006)

§ 2950.11 Persons to be notified within geographical area

(A) 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. If a person is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense, or a person is adjudicated a delinquent child for committing either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, and if the offender or delinquent child is in any category specified in division (F)(1)(a), (b), or (c) of this section, the sheriff with whom the offender or delinquent child has most recently registered under *section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code* and the sheriff to whom the offender or delinquent child most recently sent a notice of intent to reside under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code*, within the period of time specified in division (C) of this section, shall provide a written notice containing the information set forth in division (B) of this section to all of the persons described in divisions (A)(1) to (9) of this section. If the sheriff has sent a notice to the persons described in those divisions as a result of receiving a notice of intent to reside and if the offender or delinquent child registers a residence address that is the same residence address described in the notice of intent to reside, the sheriff is not required to send an additional notice when the offender or delinquent child registers. The sheriff shall provide the notice to all of the following persons:

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

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

(c) The building manager, or the person the building owner or condominium unit owners association authorizes to exercise management and control, of each multi-unit building that is located within one thousand feet of the offender's or delinquent child's residential premises, including a multi-unit building in which the offender or delinquent

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

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

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

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

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

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

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

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

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

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

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

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

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

(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;

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(2) The address or addresses of the offender's residence, school, institution of higher education, or place of employment, as applicable, or the delinquent child's residence address or addresses;

(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) All of the following statements that are applicable:

(a) A statement that the offender has been adjudicated a sexual predator, a statement that the offender has been convicted of or pleaded guilty to an aggravated sexually oriented offense, a statement that the delinquent child has been adjudicated a sexual predator and that, as of the date of the notice, the court has not entered a determination that the delinquent child no longer is a sexual predator, or a statement that the sentencing or reviewing judge has determined that the offender or delinquent child is a habitual sex offender and that, as of the date of the notice, the determination regarding a delinquent child has not been removed pursuant to *section 2152.84 or 2152.85 of the Revised Code*;

(b) A statement that the offender has been adjudicated a child-victim predator, a statement that the delinquent child has been adjudicated a child-victim predator and that, as of the date of the notice, the court has not entered a determination that the delinquent child no longer is a child-victim predator, or a statement that the sentencing or reviewing judge has determined that the offender or delinquent child is a habitual child-victim offender and that, as of the date of the notice, the determination regarding a delinquent child has not been removed pursuant to *section 2152.84 or 2152.85 of the Revised Code*;

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

(C) If a sheriff with whom an offender or delinquent child registers under *section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code* or to whom the offender or delinquent child most recently sent a notice of intent to reside under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* is required by division (A) of this section to provide notices regarding an offender or delinquent child and if, pursuant to that requirement, the sheriff provides a notice to a sheriff of one or more other counties in accordance with division (A)(8) of this section, the sheriff of each of the other counties who is provided notice under division (A)(8) of this section shall provide the notices described in divisions (A)(1) to (7) and (A)(9) 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) 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 (9) 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) 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 a sexual predator, a habitual sex offender, a child-victim predator, or a habitual child-victim offender that is described in division (B) of this section and that must be provided in a notice required under division (A) or (C) of this section or that may be provided in a notice authorized under division (D)(2) of this section is a public record that is open to inspection under *section 149.43 of the Revised Code*.

The sheriff shall not cause to be publicly disseminated by means of the internet any of the information described in this division that is provided by a sexual predator, habitual sex offender, child-victim predator, or habitual child-victim offender who is a juvenile offender registrant, except when the act that is the basis of the child's classification as a juvenile offender registrant is a violation of, or an attempt to commit a violation of, *section 2903.01, 2903.02, or 2905.01 of the Revised Code* that was committed with a purpose to gratify the sexual needs or desires of the child, a violation of *section 2907.02 of the Revised Code*, or an attempt to commit a violation of that section

(F) (1) 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, if the other criteria set forth in division (A) or (C) of this section, whichever is applicable, are satisfied:

(a) The offender or delinquent child has been adjudicated a sexual predator relative to the sexually oriented offense for which the offender or delinquent child has the duty to register under *section 2950.04 of the Revised Code* or has been adjudicated a child-victim predator relative to the child-victim oriented offense for which the offender or child has the duty to register under *section 2950.041 [2950.04 1] of the Revised Code*, and the court has not subsequently determined pursuant to *section 2152.84 or 2152.85 of the Revised Code* regarding a delinquent child that the delinquent child no longer is a sexual predator or no longer is a child-victim predator, whichever is applicable

(b) The offender or delinquent child has been determined pursuant to division (C)(2) or (E) of section 2950.09 or 2950.091 [2950.09 1], division (B) of *section 2152.83, section 2152.84, or section 2152.85 of the Revised Code* to be a habitual sex offender or a habitual child-victim offender, the court has imposed a requirement under that division or section subjecting the habitual sex offender or habitual child-victim offender to this section, and the determination has not been removed pursuant to *section 2152.84 or 2152.85 of the Revised Code* regarding a delinquent child

(c) The sexually oriented offense for which the offender has the duty to register under *section 2950.04 of the Revised Code* is an aggravated sexually oriented offense, regardless of whether the offender has been adjudicated a sexual predator relative to the offense or has been determined to be a habitual sex offender.

(2) The notification provisions of this section do not apply regarding a person who is convicted of or pleads guilty to, has been convicted of or pleaded guilty to, or is adjudicated a delinquent child for committing, a sexually oriented offense or a child-victim oriented offense, who is not in the category specified in either division (F)(1)(a) or (c) of this section, and who is determined pursuant to division (C)(2) or (E) of section 2950.09 or 2950.091 [2950.09.1], division (B) of *section 2152.83, section 2152.84, or section 2152.85 of the Revised Code* to be a habitual sex offender or habitual child-victim offender unless the sentencing or reviewing court imposes a requirement in the offender's sentence and in the judgment of conviction that contains the sentence or in the delinquent child's adjudication, or imposes a requirement as described in division (C)(2) of *section 2950.09 or 2950.091 [2950.09 1] of the Revised Code*, that subjects the offender or the delinquent child to the provisions of this section.

(G) 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. 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. 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. A sheriff required by division (A) or (C) of this section, or authorized by division (D)(2) of this section, to provide notices regard-

ing 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 (B)(3) of *section 2950.09 of the Revised Code*. If, at the conclusion of the hearing, the judge finds that the offender has proven by clear and convincing evidence that the offender is unlikely to commit in the future a sexually oriented offense or a child-victim oriented offense and if the judge finds that suspending the community notification requirement is in the interests of justice, the judge may suspend the application of this section in relation to the offender. The order shall contain both of these findings.

The judge promptly shall serve a copy of the order upon the sheriff with whom the offender most recently registered under *section 2950.04, 2950.041 [2950.04 1], or 2950.05 of the Revised Code* and upon the bureau of criminal identification and investigation.

An order suspending the community notification requirement does not suspend or otherwise alter an offender's duties to comply with *sections 2950.04, 2950.041 [2950.04 1], 2950.05, and 2950.06 of the Revised Code* and does not suspend the victim notification requirement under *section 2950.10 of the Revised Code*.

(2) A prosecuting attorney, a sentencing judge or that judge's successor in office, and an offender who is subject to the community notification requirement under this section may initially make a motion under division (H)(1) of this section upon the expiration of twenty years after the offender's duty to comply with *sections 2950.04, 2950.041 [2950.04 1], 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 the effective date of this amendment 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 the effective date of this amendment and who also is convicted of or pleads guilty to a specification of the type described in *section 2941.1418 [2941.14 18], 2941.1419 [2941.14 19], or 2941.1420 [2941.14.20] of the Revised Code*;

(d) A habitual sex offender or habitual child-victim oriented offender who is subject to community notification who, subsequent to being subjected to community notification, has pleaded guilty to or been convicted of a sexually oriented offense or a child-victim oriented offense;

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

HISTORY:

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

NOTES:

Section Notes

EFFECT OF AMENDMENTS

151 v S 260, effective January 2, 2007, rewrote (H)(4)

151 v S 17, effective August 3, 2006, added (I); and made minor stylistic changes.

151 v H 15, effective November 23, 2005, added (B)(5)

150 v H 473, effective April 29, 2005, rewrote (H)(4)(a); and inserted "adjudicated" in (H)(4)(c).

S B. 5, Acts 2003, effective July 31, 2003, rewrote the section.

Related Statutes & Rules

Cross-References to Related Statutes

Community notification requires hearing, when, *RC § 2950.09*

Duties of attorney general, *RC § 2950.13*.

Immunity for certain persons from liability in civil action, *RC § 2950.12*

OH Administrative Code

Community notification. *OAC 109 5-2-03*.

Lists to be compiled, maintained, and updated. *OAC 109 5-2-06*.

School and child care facility's use of sex offender information. *OAC 109 5-2-04*

ALR

Validity, construction, and application of state statutes authorizing community notification of release of convicted sex offender. *78 ALR5th 489*.

Case Notes & OAGs

ANALYSIS Evidence Hearing Right to privacy Standing Written notice required

EVIDENCE

Defendant was properly classified as a habitual sexual offender and ordered to register as such and comply with the community notification provisions as he had a prior conviction for rape and pled guilty to sexual battery; the trial court considered the factors set forth in *Ohio Rev Code Ann § 2950 09(B)(3)* and the record was replete with the court's understanding of the present offense, defendant's previous criminal history, his failed incarceration and rehabilitative measures, and his lack of remorse. *State v Cooper, 2005 Ohio App. LEXIS 3192, 2005 Ohio 3424, (2005)*.

HEARING

Offender was not constitutionally entitled to a hearing before being designated a sexually oriented offender, but, rather, that designation attached as a matter of law, and defendant could not have presented anything at a hearing to prevent the designation. Defendant's argument that the trial court erred in failing to hold a hearing before designating him as a sexually oriented offender was without merit, even if defendant would have been able to show that the trial court failed to hold such a hearing. *State v Lenigar, 2005 Ohio App. LEXIS 1318, 2005 Ohio 1322, (Mar 16, 2005)*.

RIGHT TO PRIVACY

Revised Code Chapter 2950 does not violate a sex offender's right to privacy: *State v Williams, 88 Ohio St 3d 513, 728 N.E.2d 342, 2000 Ohio LEXIS 813, 2000 Ohio 428, (2000)*

STANDING

State prisoner convicted of a sexually oriented offense committed before enactment of *RC § 2950 11* and facing a sexual predator adjudication hearing at an undetermined time in the future lacked standing to challenge the statute: *Miller v Taft, 151 F Supp. 2d 922, 2001 US Dist LEXIS 7555 (2001)*

WRITTEN NOTICE REQUIRED

A county sheriff that provides sex offender registration information to the general public on the internet through a web site must provide a written notice containing the information set forth in *RC § 2950 11(B)* to all the persons listed in *RC § 2950.11(A)*: OAG No. 2002-040 (2003).

Except for the persons listed in *RC § 2950.11(A)(1)* and *OAC 109:5-2-03(A)(1)(c)*, a county sheriff may use e-mail to electronically transmit the written notice required by *RC § 2950 11(A)*. The persons listed in *RC § 2950.11(A)(1)* and rule *OAC 109:5-2-03(A)(1)(c)* must receive the written notice required by *RC § 2950 11(A)* by regular mail or by personal delivery to their residences: OAG No. 2002-040 (2003)