

ORIGINAL

**IN THE
SUPREME COURT OF OHIO**

STATE OF OHIO : NO. 2010-0047
Plaintiff-Appellee : On Appeal from the Hamilton County
Court of Appeals, First Appellate
vs. : District
RONALD GINGELL : Court of Appeals
Defendant-Appellant : Case Number C-081167

MERIT BRIEF OF PLAINTIFF-APPELLEE, STATE OF OHIO

Joseph T. Deters (0012084P)
Prosecuting Attorney

PAULA E. ADAMS (0069036P) (COUNSEL OF RECORD)
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3228
Fax No. (513) 946-3021
paula.adams@hcpros.org

COUNSEL FOR PLAINTIFF-APPELLEE, STATE OF OHIO

MARGIE SLAGLE (0082217) (COUNSEL OF RECORD)
Attorney at Law
Ohio Justice & Policy Center
215 E. Ninth Street, Suite 601
Cincinnati, Ohio 45202
(513) 421-1108, ext. 20
(513) 562-3200 (fax)
maslagle@ohiojpc.org

COUNSEL FOR DEFENDANT-APPELLANT, RONALD GINGELL

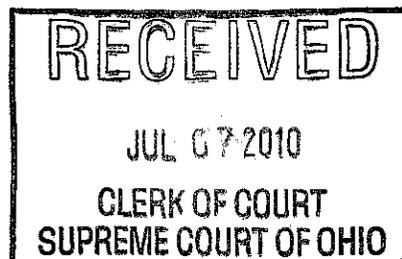
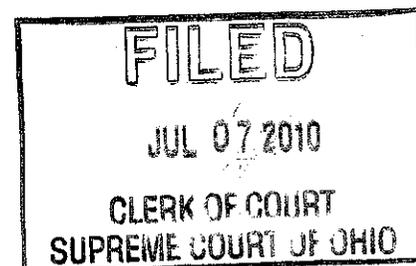


TABLE OF CONTENTS

	<u>PAGE</u>
<u>STATEMENT OF FACTS</u>	1
<u>ARGUMENT</u>	3
<u>Proposition of Law No. 1</u> : A statute is not applied retroactively when the conduct for which the defendant is convicted and sentenced occurred after the effective date of that statute	3
[Offered in Response to Defendant-Appellant’s Propositions of Law Nos. 1, 2, and 3]	3
<u>CONCLUSION</u>	9
<u>PROOF OF SERVICE</u>	10
<u>APPENDIX</u>	
R.C. 2950.06.....	A-1

TABLE OF AUTHORITIES

CASES

Bielat v. Bielat, 87 Ohio St.3d 350, 353, 2000-Ohio-451, 721 N.E.2d 28 7

Collins v. Youngblood (1990), 467 U.S. 37, 110 S.Ct. 2715 7

In re M.D. (1988), 38 Ohio St.3d 149, 527 N.E.2d 286, at syllabus
paragraph..... 5

Smith v. Smith 109 Ohio St.3d 285, 287, 2006-Ohio-2419, 847 N.E.2d 414 7

State v. Awan (1986), 22 Ohio St.3d 120, 489 N.E.2d 277, at syllabus
paragraph..... 5

State v. Brooks, 163 Ohio App.3d 241, 2005-Ohio-4728, 837 N.E.2d 796. 8

State v. Looman, 5th Dist. No. 09CA105, 2010-Ohio-2567..... 8

State v. Morgan, 1st Dist. No. C-080011, 2009-Ohio-1370, at ¶25 5

State v. Richey, 10th Dist. No. 09AP-36, 2009-Ohio-4487 8

State v. Smith, 3rd Dist. No. 5-07-23, 2008-Ohio-4778 8

State ex rel. Bouse v. Cickelli (1956), 165 Ohio St. 191, 134 N.E.2d 834 7

United Engineering & Foundry Co. v. Bowers (1960), 171 Ohio St. 279,
282, 169 N.E.2d 697, 700 7

STATUTES

Am.Sub.S.B. No. 97..... 6

R.C. 1.58 (A)(2) and (3)..... 7

R.C. 2950.06(B)(4) 5

R.C. 2950.06(F) 5

R.C. 2950.99(A)(1)(a)(ii)..... 6

CONSTITUTIONAL PROVISIONS

Section 10, Article I of the United States Constitution..... 7

Section 28, Article II of the Ohio Constitution..... 6

STATEMENT OF FACTS

On July 2, 2008, the defendant-appellant Ronald Gingell was indicted for one count of Failure to Provide Periodic Verification of Address (Count 1) in violation of R.C. 2950.06 and one count of Failure to Provide Notice of Change of Address (Count 2) in violation of R.C. 2950.05(E)(1). The indictment clearly indicated that both counts were first-degree felonies. The dates of the offenses were also clearly set forth as “on or about the 6th of May in the year Two Thousand and Eight” for Count 1 and “on or about the 24th day of June in the year Two Thousand and Eight” for Count 2.

On September 4, 2008, Gingell pled guilty as charged in Count 1 in exchange for the dismissal of Count 2. The “Entry Withdrawing Plea of Not Guilty and Entering Plea of Guilty” was filed on September 4, 2008. That entry clearly indicates that the offense to which Gingell entered a guilty plea as Count 1, Periodic Verification of Address (2950.06), and the specific degree of that offense as an “F-1.”

The trial court ordered a pre-sentence investigation as well as a Court Clinic evaluation. The pre-sentence investigation provided Gingell’s explanation for his failure to report his change of address. He indicated that he missed reporting his address by thirty days when he was supposed to report a change of address twenty days prior to the change. He said that he had been otherwise compliant with his registration obligations since his release from prison in 2006. He explained that he was not thinking clearly due to the deaths of two of his grown children. The report also provided a brief summary of Gingell’s medical and mental health history.

The Court Clinic report prepared by Charles Lee, Ed.D., provided a detailed account of Gingell’s social, legal, medical, substance use, mental health, and sexual

histories as well as information from a mental status examination and psychological testing. Specifically, Dr. Lee's report revealed that on September 11, 1981, Gingell was convicted of three counts of Rape under case number B-8102202 for vaginally, anally, and orally raping his eight-year-old step-daughter. He served approximately twenty-five years in prison. Gingell was first released from prison on March 31, 2004 but was sent back after violating his parole. He reported that his parole revocation was due to substances found in this vehicle. He was finally released from the penitentiary in 2006. Gingell was initially classified as a sexually oriented offender but his status was changed to a Tier III offender.¹ Gingell was described as having "a history of telling different stories about himself" and exhibiting "pseudologica fatasitica." He denied committing the rapes and therefore never participated in sex offender treatment during his lengthy incarceration.

The trial court held a sentencing hearing on November 13, 2008. Gingell's attorney requested that he receive community control and the trial court expressed obvious reservations about such a request given Gingell's problems with truthfulness. (T.p. 3; T.p. 5) The trial court specifically addressed Gingell regarding discrepancies in information he provided to the Court Clinic and the probation department. (T.p. 7-11) The trial court presented Gingell with specific information it obtained from the parole and probation authorities as well as the Court Clinic. (T.p. 13-15) The fact that Gingell sold Teddy Bears and candy at a flea market and had a roommate whose fifteen-year old daughter visited on the week-ends was understandably quite disturbing to the trial court.

¹ The State of Ohio submits that while Gingell's Tier III sex offender status would be invalidated pursuant to this Court's recent decision in *State v. Bodyke*, ___ Ohio St.3d ___, 2010-Ohio-2424, ___ N.E.2d ___, the record indicates that Gingell still had a duty as a sexually oriented offender to provide annual verification of his address and he failed to do so.

(T.p. 15-16) In summary, the trial court stated, “in my mind of mind you are one of the most manipulative, one of the scariest predators I have ever seen walking in this courtroom.” (T.p. 17) The trial court then sentenced Gingell to eight years incarceration.

On direct appeal to the First Appellate District, Gingell claimed that the Ohio Constitution’s prohibition against retroactive laws and R.C. 1.58 precluded him from being sentenced for a first degree felony and that the trial court based its sentence on an “ex parte investigation.” Gingell then filed a supplemental brief claiming that he received ineffective assistance of counsel. The First District Court of Appeals affirmed the judgment of the trial court in a “Judgment Entry” on October 14, 2009 and an “Entry Transmitting Errata” on November 24, 2009.

On appeal to the Supreme Court of Ohio, Gingell has submitted three separate propositions of law regarding his claim that the Ohio Constitution’s prohibition against retroactive laws, R.C. 1.58, and the Ex Post Facto Clause of the United States Constitution precluded his offense from being a first degree felony.

ARGUMENT

Proposition of Law No. 1: A statute is not applied retroactively when the conduct for which the defendant is convicted and sentenced occurred after the effective date of that statute.

[Offered in Response to Defendant-Appellant’s Propositions of Law Nos. 1, 2, and 3]

Gingell claims that his failure to provide periodic verification of his address in May of 2008 should not have been a first degree felony violation of R.C. 2950.06

because R.C. 2950.99 was not expressly made retroactive. He contends, as he did for the first time in his direct appeal, that a retroactive application of R.C. 2950.99 violates Ohio statutory (R.C. 1.58) and constitutional (Section 28, Article II, Ohio Constitution) law. And, for the first time, now argues that it violates the Ex Post Facto Clause of the federal constitution (Section 10, Article I, United States Constitution). Since Gingell entered a guilty plea and R.C. 2950.99 was in fact not applied retroactively to him, Gingell's claims are without merit.

Gingell entered a guilty plea as charged in Count One of the indictment. The indictment clearly set forth the date of the first degree felony offense as "on or about the 6th day of May in the year Two Thousand and Eight" and indicated that the offense providing the basis of his address verification requirement was "Rape, a felony of the first degree" as "convicted in the Hamilton County, Ohio Court of Common Pleas under case number B8102202 on September 11, 1981." The "Entry Withdrawing Plea of Not Guilty and Entering Plea of Guilty" specifically identified the offense to which Gingell entered his guilty plea as "Count Number 1, Periodic Verification of Current Address 2950.06, F1."² At the sentencing hearing, counsel for Gingell verified that the offense was in fact a first degree felony, (T.p. 18) Therefore, the record for this appeal clearly reveals that Gingell was well aware that he was charged with and pleading guilty to a first degree felony.

Gingell never questioned or complained about the offense level until the direct appeal. In fact, Gingell has still never alleged that his plea was involuntarily, unknowingly, or unintelligently made. A "criminal defendant who pleads guilty is limited on appeal; he may only attack the voluntary, knowing, and intelligent nature of

² The only transcript of the proceedings provided in this appeal is of the sentencing hearing.

the plea and ‘may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.’” *State v. Morgan*, 1st Dist. No. C-080011, 2009-Ohio-1370, at ¶25, citing *State v. Spates*, 64 Ohio St.3d 269, 272, 1992-Ohio-130, 595 N.E.2d 351, and *Tollett v. Henderson* (1973), 411 U.S. 258, 267, 93 S.Ct. 1602. Additionally, “[f]ailure to raise at the trial court level the issue of the constitutionality of a statute or its application, which issue is apparent at the time of trial, constitutes a waiver of such issue and a deviation from this state’s orderly procedure, and therefore need not be heard for the first time on appeal.” *State v. Awan* (1986), 22 Ohio St.3d 120, 489 N.E.2d 277, at syllabus paragraph. Still, “[e]ven where waiver is clear, this court reserves the right to consider constitutional challenges to the application of statutes in specific cases of plain error or where the rights and interests involved may warrant it.” *In re M.D.* (1988), 38 Ohio St.3d 149, 527 N.E.2d 286, at syllabus paragraph.

While the State of Ohio does not submit that Gingell’s case is one of “plain error or where the rights and interests involved may warrant it,” it does respectfully submit that R.C. 2950.99 was simply not applied “retroactively” to Gingell. Gingell pled guilty to R.C. 2950.06 for failing to provide periodic verification of his current address on or about May 6, 2008. The Am.Sub.S.B. No.10 (“S.B.10”) version of R.C. 2950.06 went into effect on January 1, 2008. Division (B)(4) specifically provides for the continuation of the registration duties for those offenders like Gingell who had a duty to register prior to January 1, 2008 and it clearly indicates that the “initial registration date” remains the same for address verification purposes. R.C. 2950.06(B)(4). R.C. 2950.06(F) which provides that “[n]o person who is required to verify a current residence * * * shall fail to

* * *” was not changed by S.B. 10. R.C. 2950.99 then sets forth the appropriate penalty for failing to provide address verification. Specifically, R.C. 2950.99(A)(1)(a)(ii) provides, “[i]f the most serious sexually oriented offense * * * that was the basis of the * * * address verification requirement that was violated under the prohibition is a felony of the first, second, third, or fourth degree * * *, the offender is guilty of a felony of the same degree as the most serious sexually oriented offense * * * that was the basis of the * * * address verification requirement that was violated under the prohibition.” This particular version of R.C. 2950.99 was also effective on January 1, 2008 but via Am.Sub.S.B. No. 97 (“S.B. 97”). The record clearly sets forth that the most serious sexually oriented offense that was the basis of Gingell’s address verification requirement was Rape, a first degree felony. It further sets forth that the date of the failure to verify his address was on or about May 6, 2008, approximately five months after the effective date of the statutes.

Despite these facts, it is Gingell’s contention that because his duty to register as a sex offender commenced prior to the effective date of S.B. 97 then Ohio’s constitutional prohibition against retroactive laws, the Ex Post Facto Clause, and R.C. 1.58 preclude his failure to provide periodic verification of his address offense from being prosecuted as a first degree felony. Gingell argues that the offense level should remain at what it was when his duty to register commenced rather than what it was when he actually failed to provide his annual address verification.

Section 28, Article II of the Ohio Constitution provides, “[t]he General Assembly shall have no power to pass retroactive laws.” Retroactive laws are “those new laws that reach back and create new burdens, new duties, new obligations, or new liabilities not

existing at the time” of the law’s effective date. *Smith v. Smith* 109 Ohio St.3d 285, 287, 2006-Ohio-2419, 847 N.E.2d 414; *Bielat v. Bielat*, 87 Ohio St.3d 350, 353, 2000-Ohio-451, 721 N.E.2d 28 "A statute is not retroactive merely because it draws on antecedent facts as a criterion in its operation." *United Engineering & Foundry Co. v. Bowers* (1960), 171 Ohio St. 279, 282, 169 N.E.2d 697, 700; see also *State ex rel. Bouse v. Cickelli* (1956), 165 Ohio St. 191, 134 N.E.2d 834. Section 10, Article I of the United States Constitution provides that “[n]o State shall . . . pass any ex post facto law.” This constitutional prohibition is directed at those legislative enactments which would punish as a crime an act previously committed, which was innocent when done, or legislative enactments which would make more burdensome the punishment for a crime after its commission, or which would deprive one charged with a crime of any defense available according to the law at the time when the act was committed. See *Collins v. Youngblood* (1990), 467 U.S. 37, 110 S.Ct. 2715. Here, Gingell had a duty to provide periodic verification of his address since his release from prison in 2006 and that duty never changed. When Gingell actually failed to provide the periodic verification of his address on or about May 6, 2008 that offense was a first degree felony. Therefore, Gingell’s conviction and sentence for a first degree felony did not violate Ohio’s constitutional prohibition against retroactive laws or the Ex Post Facto Clause of the United States Constitution.

Gingell also claims that applying the S.B. 97 version of R.C. 2950.99 to him violates R.C. 1.58. Specifically, R.C. 1.58 (A)(2) and (3) provide that an “amendment or repeal of a statute does not * * * [a]ffect any * * * obligation , or liability previously acquired, accrued, accorded, or incurred thereunder; * * * or penalty, forfeiture, or

punishment incurred in respect thereto.” In support of his claim, Gingell relies on the Fourth District Court of Appeals decision in *State v. Brooks*, 163 Ohio App.3d 241, 2005-Ohio-4728, 837 N.E.2d 796. Since the *Brooks* case involves an actual sentence in the form of community control as opposed to a collateral consequence of a conviction such as the duty to provide address verification, the analysis provided in *Brooks* is not instructive.

The Third, Fifth, and Tenth Appellate Districts, however, have decided cases that are much more applicable than *Brooks*. In *State v. Looman*, 5th Dist. No. 09CA105, 2010-Ohio-2567, the State of Ohio conceded and the court of appeals recently reversed the trial court’s imposition of a mandatory three-year sentence for the defendant’s second failure to comply with R.C. Chapter 2950 offense because his second offense was committed on or about August 15, 2007, approximately six months prior to the effective date of the S.B. 97 version of R.C. 2950.99(A)(2)(b) which imposes the mandatory three-year sentence. In *State v. Richey*, 10th Dist. No. 09AP-36, 2009-Ohio-4487, the court of appeals determined that it was not cruel and unusual punishment for a defendant to be convicted of a felony level of failure to provide notice of a change of address when such an offense was a misdemeanor when he was originally convicted of sexual imposition and his duty to provide notice of change of address commenced. “Although appellant’s sex offense triggered the registration requirement, punishment for failure to register violations flows not from the past sex offense, but from the failure to adhere to registration requirements, a new violation.” *Id.* at ¶19, citing *State v. Cook*, 83 Ohio St.3d 404, 421, 1998-Ohio-291, 700 N.E.2d 570 and *Smith v. Doe* (2003), 538 U.S. 84, 101-02, 123 S.Ct. 1140, 1152. In *State v. Smith*, 3rd Dist. No. 5-07-23, 2008-Ohio-4778,

the court of appeals rejected the defendant's claim that the trial court violated the Ex Post Facto Clause in applying the 2004 amended version of R.C. 2950.99 that changed the penalty from a fifth degree felony to a third degree felony. "[A]t the time Smith committed his offense, the applicable penalty, under R.C. 2950.99, was a felony of the third degree. This is not a situation where the penalty was changed after his criminal conduct occurred." *Id.* at ¶14.

Therefore, even if Gingell's guilty plea and failure to raise these issues before the trial court did not waive his claims, the First District Court of Appeals correctly held that the amended statute was not applied retroactively, because the offense occurred after the effective date of the amendment.

CONCLUSION

The First District Court of Appeals' judgment entry affirming Gingell's conviction and sentence for a first degree felony violation of R.C. 2950.06 should be affirmed.

Respectfully Submitted,

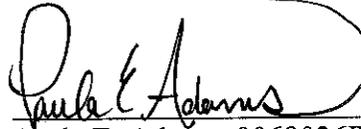
Joseph T. Deters, 0012084P
Prosecuting Attorney



Paula E. Adams, 0069036P
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Phone: 946-3228
Attorneys for Plaintiff-Appellee,
State of Ohio

PROOF OF SERVICE

I hereby certify that I have sent a copy of the foregoing Merit Brief of Plaintiff-Appellee, by United States mail, addressed to Margie Slagle (0082217), Ohio Justice & Policy Center, 215 E. Ninth Street, Suite 601, Cincinnati, Ohio 45202, counsel of record, this 7th day of July, 2010.



Paula E. Adams, 0069036P
Assistant Prosecuting Attorney

APPENDIX

2950.06 Periodic verification of current residence address.

(A) An offender or delinquent child who is required to register a residence address pursuant to division (A)(2), (3), or (4) of section 2950.04 or 2950.041 of the Revised Code shall periodically verify the offender's or delinquent child's current residence address, and an offender or public registry-qualified juvenile offender registrant who is required to register a school, institution of higher education, or place of employment address pursuant to any of those divisions shall periodically verify the address of the offender's or public registry-qualified juvenile offender registrant's current school, institution of higher education, or place of employment, in accordance with this section. The frequency of verification shall be determined in accordance with division (B) of this section, and the manner of verification shall be determined in accordance with division (C) of this section.

(B) The frequency with which an offender or delinquent child must verify the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address pursuant to division (A) of this section shall be determined as follows:

(1) Regardless of when the sexually oriented offense or child-victim oriented offense for which the offender or delinquent child is required to register was committed, if the offender or delinquent child is a tier I sex offender/child-victim offender, the offender shall verify the offender's current residence address or current school, institution of higher education, or place of employment address, and the delinquent child shall verify the delinquent child's current residence address, in accordance with division (C) of this section on each anniversary of the offender's or delinquent child's initial registration date during the period the offender or delinquent child is required to register.

(2) Regardless of when the sexually oriented offense or child-victim oriented offense for which the offender or delinquent child is required to register was committed, if the offender or delinquent child is a tier II sex offender/child-victim offender, the offender shall verify the offender's current residence address or current school, institution of higher education, or place of employment address, and the delinquent child shall verify the delinquent child's current residence address, in accordance with division (C) of this section every one hundred eighty days after the offender's or delinquent child's initial registration date during the period the offender or delinquent child is required to register.

(3) Regardless of when the sexually oriented offense or child-victim oriented offense for which the offender or delinquent child is required to register was committed, if the offender or delinquent child is a tier III sex offender/child-victim offender, the offender shall verify the offender's current residence address or current school, institution of higher education, or place of employment address, and the delinquent child shall verify the delinquent child's current residence address and, if the delinquent child is a public registry-qualified juvenile offender registrant, the current school, institution of higher education, or place of employment address, in accordance with division (C) of this section every ninety days after the offender's or delinquent child's initial registration date during the period the offender or delinquent child is required to register.

(4) If, prior to January 1, 2008, an offender or delinquent child registered with a sheriff under a duty imposed under section 2950.04 or 2950.041 of the Revised Code as a result of a conviction of, plea of guilty to, or adjudication as a delinquent child for committing a sexually oriented offense or a child-victim oriented offense as those terms were defined

in section 2950.01 of the Revised Code prior to January 1, 2008, the duty to register that is imposed on the offender or delinquent child pursuant to section 2950.04 or 2950.041 of the Revised Code on and after January 1, 2008, is a continuation of the duty imposed upon the offender prior to January 1, 2008, under section 2950.04 or 2950.041 of the Revised Code and, for purposes of divisions (B)(1), (2), and (3) of this section, the offender's initial registration date related to that offense is the date on which the offender initially registered under section 2950.04 or 2950.041 of the Revised Code.

(C)(1) An offender or delinquent child who is required to verify the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address pursuant to division (A) of this section shall verify the address with the sheriff with whom the offender or delinquent child most recently registered the address by personally appearing before the sheriff or a designee of the sheriff, no earlier than ten days before the date on which the verification is required pursuant to division (B) of this section and no later than the date so required for verification, and completing and signing a copy of the verification form prescribed by the bureau of criminal identification and investigation. The sheriff or designee shall sign the completed form and indicate on the form the date on which it is so completed. The verification required under this division is complete when the offender or delinquent child personally appears before the sheriff or designee and completes and signs the form as described in this division.

(2) To facilitate the verification of an offender's or delinquent child's current residence, school, institution of higher education, or place of employment address, as applicable, under division (C)(1) of this section, the sheriff with whom the offender or delinquent child most recently registered the address may mail a nonforwardable verification form prescribed by the bureau of criminal identification and investigation to the offender's or delinquent child's last reported address and to the last reported address of the parents of the delinquent child, with a notice that conspicuously states that the offender or delinquent child must personally appear before the sheriff or a designee of the sheriff to complete the form and the date by which the form must be so completed. Regardless of whether a sheriff mails a form to an offender or delinquent child and that child's parents, each offender or delinquent child who is required to verify the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address, as applicable, pursuant to division (A) of this section shall personally appear before the sheriff or a designee of the sheriff to verify the address in accordance with division (C)(1) of this section.

(D) The verification form to be used under division (C) of this section shall contain all of the following:

(1) Except as provided in division (D)(2) of this section, the current residence address of the offender or delinquent child, the name and address of the offender's or delinquent child's employer if the offender or delinquent child is employed at the time of verification or if the offender or delinquent child knows at the time of verification that the offender or delinquent child will be commencing employment with that employer subsequent to verification, the name and address of the offender's or public registry-qualified juvenile offender registrant's school or institution of higher education if the offender or public registry-qualified juvenile offender registrant attends one at the time of verification or if the offender or public registry-qualified juvenile offender registrant knows at the time of verification that the offender will be commencing attendance at that school or institution subsequent to verification, and any other information required by the bureau of criminal identification and investigation.

(2) Regarding an offender or public registry-qualified juvenile offender registrant who is verifying a current school, institution of higher education, or place of employment

address, the name and current address of the school, institution of higher education, or place of employment of the offender or public registry-qualified juvenile offender registrant and any other information required by the bureau of criminal identification and investigation.

(E) Upon an offender's or delinquent child's personal appearance and completion of a verification form under division (C) of this section, a sheriff promptly shall forward a copy of the verification form to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted by the attorney general pursuant to section 2950.13 of the Revised Code. If an offender or public registry-qualified juvenile offender registrant verifies a school, institution of higher education, or place of employment address, or provides a school or institution of higher education address under division (D)(1) of this section, the sheriff also shall provide notice to the law enforcement agency with jurisdiction over the premises of the school, institution of higher education, or place of employment of the offender's or public registry-qualified juvenile offender registrant's name and that the offender or public registry-qualified juvenile offender registrant has verified or provided that address as a place at which the offender or public registry-qualified juvenile offender registrant attends school or an institution of higher education or at which the offender or public registry-qualified juvenile offender registrant is employed. The bureau shall include all information forwarded to it under this division in the state registry of sex offenders and child-victim offenders established and maintained under section 2950.13 of the Revised Code.

(F) No person who is required to verify a current residence, school, institution of higher education, or place of employment address, as applicable, pursuant to divisions (A) to (C) of this section shall fail to verify a current residence, school, institution of higher education, or place of employment address, as applicable, in accordance with those divisions by the date required for the verification as set forth in division (B) of this section, provided that no person shall be prosecuted or subjected to a delinquent child proceeding for a violation of this division, and that no parent, guardian, or custodian of a delinquent child shall be prosecuted for a violation of section 2919.24 of the Revised Code based on the delinquent child's violation of this division, prior to the expiration of the period of time specified in division (G) of this section.

(G)(1) If an offender or delinquent child fails to verify a current residence, school, institution of higher education, or place of employment address, as applicable, as required by divisions (A) to (C) of this section by the date required for the verification as set forth in division (B) of this section, the sheriff with whom the offender or delinquent child is required to verify the current address, on the day following that date required for the verification, shall send a written warning to the offender or to the delinquent child and that child's parents, at the offender's or delinquent child's and that child's parents' last known residence, school, institution of higher education, or place of employment address, as applicable, regarding the offender's or delinquent child's duty to verify the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address, as applicable.

The written warning shall do all of the following:

(a) Identify the sheriff who sends it and the date on which it is sent;

(b) State conspicuously that the offender or delinquent child has failed to verify the offender's or public registry-qualified juvenile offender registrant's current residence, school, institution of higher education, or place of employment address or the current

residence address of a delinquent child who is not a public registry-qualified juvenile offender registrant by the date required for the verification;

(c) Conspicuously state that the offender or delinquent child has seven days from the date on which the warning is sent to verify the current residence, school, institution of higher education, or place of employment address, as applicable, with the sheriff who sent the warning;

(d) Conspicuously state that a failure to timely verify the specified current address or addresses is a felony offense;

(e) Conspicuously state that, if the offender or public registry-qualified juvenile offender registrant verifies the current residence, school, institution of higher education, or place of employment address or the delinquent child who is not a public registry-qualified juvenile offender registrant verifies the current residence address with that sheriff within that seven-day period, the offender or delinquent child will not be prosecuted or subjected to a delinquent child proceeding for a failure to timely verify a current address and the delinquent child's parent, guardian, or custodian will not be prosecuted based on a failure of the delinquent child to timely verify an address;

(f) Conspicuously state that, if the offender or public registry-qualified juvenile offender registrant does not verify the current residence, school, institution of higher education, or place of employment address or the delinquent child who is not a public registry-qualified juvenile offender registrant does not verify the current residence address with that sheriff within that seven-day period, the offender or delinquent child will be arrested or taken into custody, as appropriate, and prosecuted or subjected to a delinquent child proceeding for a failure to timely verify a current address and the delinquent child's parent, guardian, or custodian may be prosecuted for a violation of section 2919.24 of the Revised Code based on the delinquent child's failure to timely verify a current residence address.

(2) If an offender or delinquent child fails to verify a current residence, school, institution of higher education, or place of employment address, as applicable, as required by divisions (A) to (C) of this section by the date required for the verification as set forth in division (B) of this section, the offender or delinquent child shall not be prosecuted or subjected to a delinquent child proceeding for a violation of division (F) of this section, and the delinquent child's parent, guardian, or custodian shall not be prosecuted for a violation of section 2919.24 of the Revised Code based on the delinquent child's failure to timely verify a current residence address and, if the delinquent child is a public registry-qualified juvenile offender registrant, the current school, institution of higher education, or place of employment address, as applicable, unless the seven-day period subsequent to that date that the offender or delinquent child is provided under division (G)(1) of this section to verify the current address has expired and the offender or delinquent child, prior to the expiration of that seven-day period, has not verified the current address. Upon the expiration of the seven-day period that the offender or delinquent child is provided under division (G)(1) of this section to verify the current address, if the offender or delinquent child has not verified the current address, all of the following apply:

(a) The sheriff with whom the offender or delinquent child is required to verify the current residence, school, institution of higher education, or place of employment address, as applicable, promptly shall notify the bureau of criminal identification and investigation of the failure.

(b) The sheriff with whom the offender or delinquent child is required to verify the current residence, school, institution of higher education, or place of employment address, as applicable, the sheriff of the county in which the offender or delinquent child resides, the sheriff of the county in which is located the offender's or public registry-qualified juvenile offender registrant's school, institution of higher education, or place of employment address that was to be verified, or a deputy of the appropriate sheriff, shall locate the offender or delinquent child, promptly shall seek a warrant for the arrest or taking into custody, as appropriate, of the offender or delinquent child for the violation of division (F) of this section and shall arrest the offender or take the child into custody, as appropriate.

(c) The offender or delinquent child is subject to prosecution or a delinquent child proceeding for the violation of division (F) of this section, and the delinquent child's parent, guardian, or custodian may be subject to prosecution for a violation of section 2919.24 of the Revised Code based on the delinquent child's violation of that division.

(H) An offender or public registry-qualified juvenile offender registrant who is required to verify the offender's or public registry-qualified juvenile offender registrant's current residence, school, institution of higher education, or place of employment address pursuant to divisions (A) to (C) of this section and a delinquent child who is not a public registry-qualified juvenile offender registrant who is required to verify the delinquent child's current residence address pursuant to those divisions shall do so for the period of time specified in section 2950.07 of the Revised Code.

Effective Date: 07-31-2003; 2007 SB10 01-01-2008