

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
 : Case No. 2009-1974
 :
 Plaintiff-Appellee, :
 :
 v. : On Appeal from the Trumbull
 : County Court of Appeals
 : Eleventh Appellate District
 LAMBERT DEHLER, :
 :
 Defendant-Appellant. : Court of Appeals
 : Case No. 2008-T-0061

MERIT BRIEF FOR APPELLANT LAMBERT DEHLER

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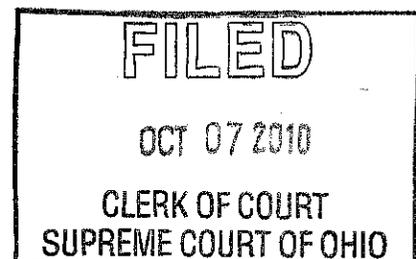


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STATEMENT OF THE CASE AND FACTS

In 1992, a jury found Mr. Dehler guilty of two counts of rape and two counts of gross sexual imposition. (June 23, 2008 Judgment Entry). The Trumbull County Court of Common Pleas sentenced Mr. Dehler to concurrent, seven-to-25-year prison terms for each of the rape convictions, and to two consecutive, 18-month prison terms for each count of gross sexual imposition. *Id.* The gross-sexual-imposition prison terms were ordered to be served concurrently to the prison terms that had been imposed for the rape convictions. *Id.* Mr. Dehler never received a classification hearing under House Bill 180.

On January 7, 2008, the Attorney General notified Mr. Dehler of his classification as a Tier III offender. (November 30, 2007 Letter to Lambert Dehler from the Ohio Attorney General, attached to Lambert Dehler's February 1, 2008 Request for a Hearing Pursuant to R.C. 2950.032(E)). The notice informed Mr. Dehler that his classification and registration duties upon release would be in accordance with the newly enacted R.C. 2950 SORN provisions. *Id.* Mr. Dehler was also notified of his new duties to register and his right to contest the application of the classification and requirements. *Id.*

Mr. Dehler filed a timely petition contesting the classification. Several days later, he filed a request for a second hearing, the immediate appointment of counsel, and other motions. (Lambert Dehler's February 1, 2008 Request for a Hearing Pursuant to R.C. 2950.032(E); Lambert Dehler's February 8, 2008 Request for a Second Hearing Pursuant to R.C. 2950.11(F)(2); Lambert Dehler's February 8, 2008 Motion for the Immediate Appointment of Counsel, respectively). Through these filings, Mr. Dehler raised several arguments. Among them was an argument that the State was barred from classifying him as a sex offender because he had never been classified under the prior versions of Ohio's sexual-offender registration law.

(Lambert Dehler's February 1, 2008 Request for a Hearing Pursuant to R.C. 2950.032(E)). Thus, Mr. Dehler argued that the State was barred from classifying him as a sex offender due to the affirmative defenses of collateral estoppel, res judicata, and laches. *Id.* See, also, Lambert Dehler's February 8, 2008 Request for a Second Hearing Pursuant to R.C. 2950.11(F)(2). Additionally, Mr. Dehler asserted that the Department of Rehabilitation and Correction "lost jurisdiction" after December 1, 2007, to serve written notice of the new registration and classification duties. *Id.* And because Mr. Dehler's notice was served on January 1, 2008, he claimed that was not subject to the act. *Id.* Mr. Dehler further argued that the application of Senate Bill 10 to him violated the Double Jeopardy and Ex Post Facto Clauses of the United States Constitution, and that Senate Bill 10 violated Ohio's separation-of-powers doctrine. *Id.*

The State did not file an answer brief opposing Mr. Dehler's motion for summary judgment, but instead filed its own motion for summary judgment, arguing that Mr. Dehler was properly classified as a Tier III sex offender because he had been charged and convicted of rape. (State's May 1, 2008 Motion for Summary Judgment). The State further argued that Senate Bill 10 was constitutional. *Id.*

The trial court found that Senate Bill 10 was constitutional, and that Mr. Dehler was properly classified as a Tier III offender. (June 23, 2008 Judgment Entry). The trial court denied Mr. Dehler's motions, including his request for an oral hearing. *Id.* Finding that no genuine issues of material fact remained for determination, the court granted the State's motion for summary judgment. *Id.*

Mr. Dehler timely appealed, and raised five assignments of error:

1. The trial court erred by not granting Petitioner's Motion for Summary Judgment because the Department of Rehabilitation and Correction lost jurisdiction to distribute

to adult prison inmates the Notice of New Classification and Registration Duties after December 1, 2007;

2. The trial court erred by not granting a hearing pursuant to R.C. 2950.032(E);
3. The trial court erred when it failed to provide the mandatory hearing under R.C. 2950.11(F)(2);
4. The trial court erred when it denied the appointment of counsel because the Petitioner filed timely requests for counsel under the Adam Walsh Act; and
5. The Adam Walsh Act (AWA) amendments to R.C. 2950.01 et seq., do not apply to the Defendant because he was sentenced in 1992 and the state previously declined to avail itself of the prior law (“Megan’s Law”) and the current application of the AWA violates the doctrine of laches, res judicata, Clause I, Section 10, Article I, of the United States Constitution as ex post facto legislation, and violates Section 28, Article II, of the Ohio Constitution as retroactive legislation, and further violates R.C. 1.48 and 1.58, et. seq.

State v. Dehler, 11th Dist. No. 2008-T-0061, 2009-Ohio-5059, at ¶¶11-15. The court of appeals denied all of Mr. Dehler’s assignments of error, finding Senate Bill 10 to be remedial in nature, and that Mr. Dehler had neither the right to a Senate Bill 10 hearing, nor the right to counsel.

State v. Dehler, 2009-Ohio-5059.

Subsequently, Mr. Dehler requested that the court of appeals certify a conflict between its decision as to Mr. Dehler’s second and third assignments of error and the courts of appeals’ decisions from various districts, including: *State v. Reddish*, 2nd Dist. No. 22866, 2009-Ohio-3643; *Holcomb v. State*, 3rd Dist. Nos. 8-08-23, 8-08-24, 8-08-25, and 8-08-26, 2009-Ohio-782; *Downing v. State*, 3rd Dist. No. 8-08-29, 2009-Ohio-1834; and *State v. Pletcher*, 4th Dist. No. 08CA3044, 2009-Ohio-1819. (Lambert Dehler’s October 6, 2009 Motion to Certify a Conflict; Lambert Dehler’s October 29, 2009 Notice of Certification of Conflict). The court of appeals declined to certify a conflict. (Court of Appeals’ December 2, 2009 Judgment Entry).

Mr. Dehler also filed a timely notice of appeal and memorandum in support of jurisdiction in this Court. (Lambert Dehler's October 29, 2009 Notice of Appeal; October 29, 2009 Memorandum in Support of Jurisdiction). The memorandum submitted the following propositions of law:

1. A trial court loses jurisdiction to hear a petition filed under the Adam Walsh Act when the prison serves the notice after the deadline date of December 1, 2007;
2. A trial court must hold a hearing under R.C. 2950.032(E) when a timely petition is filed;
3. A trial court must hold a hearing under R.C. 2950.11(T)(2) when a timely and properly filed petition is made under that section, notwithstanding wording in R.C. 2950.11(II)(1);
4. A trial court must appoint counsel under the Adam Walsh Act when a timely petition for a hearing is filed; and
5. The Adam Walsh Act violates the state and federal constitutions when it is retroactively applied to a prisoner who was sentenced more than 17 years ago and he was never previously labeled under Megan's Law.

(Lambert Dehler's October 29, 2009 Memorandum in Support of Jurisdiction).

This Court accepted jurisdiction as to Mr. Dehler's fourth and fifth propositions of law, but stayed the briefing schedule pending the outcome in the cases captioned *State v. Bodyke*, Ohio Supreme Court Case No. 2008-2502, and *Chojnacki v. Cordray*, Ohio Supreme Court Case No. 2008-0992. *04/14/2010 Case Announcements*, 2010-Ohio-1557. On June 3, 2010, this Court issued its opinion in *State v. Bodyke*, Slip Opinion No. 2010-Ohio-2424. On July 13, 2010, this Court issued its opinion in *Chojnacki v. Cordray*, Slip Opinion No. 2010-Ohio-3212. And subsequently, on July 22, 2010, this Court ordered that briefing proceed in Mr. Dehler's case as to his fourth and fifth propositions of law. *07/22/2010 Case Announcements*, 2010-Ohio-3396. The issues as to whether counsel must be appointed during Senate Bill 10 classification

hearings, and whether the retroactive application of Senate Bill 10 violates Ohio's separation-of-powers doctrine, the Ex Post Facto and Double Jeopardy Clauses of the United States Constitution, and the Retroactivity Clause of the Ohio Constitution, are now before this Court.

ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW

FIRST PROPOSITION OF LAW¹

The retroactive application of Senate Bill 10 violates Ohio's separation-of-powers doctrine, the Ex Post Facto and Double Jeopardy Clauses of the United States Constitution, and the Retroactivity Clause of Section 28, Article II of the Ohio Constitution. Fifth Amendment to the United States Constitution; Section 10, Article I of the United States Constitution; and Sections 10, 28, and 1, Articles I, II, and IV, respectively, of the Ohio Constitution.

I. Introduction.

This Court's decision in *State v. Bodyke*, Slip Opinion No. 2010-Ohio-2424 applies to Mr. Dehler. Senate Bill 10's infringement upon judicial determinations, along with this Court's remedy of severance as it was delineated in *Bodyke*, prohibits the application of Senate Bill 10 to Mr. Dehler. Moreover, the primary intent and effect of Senate Bill 10 is punishment. Senate Bill 10 does not protect the public. It does not help Ohio obtain federal funds. This Court should hold that Senate Bill 10 violates the Ohio Constitution's ban on retroactive laws and that it may not be applied to people like Mr. Dehler, whose crime was committed before July 1, 2007.

II. Argument.

Prior to the enactment of Senate Bill 10, a person who committed a sexually oriented offense was entitled to a hearing at which the trial court would make the determination as to whether the defendant was a sexual predator; a habitual sex offender or a habitual child-victim

¹ This Proposition of Law was presented to this Court in Mr. Dehler's MISJ as Proposition of Law V.

offender; or a sexually oriented offender. Former Ohio Rev. Code Ann. § 2950.01, et seq. (amended January 1, 2008). Before adjudicating a defendant as a sexual predator, a trial court was required to take the following factors into account:

- (a) The offender's or delinquent child's age;
- (b) The offender's or delinquent child's prior criminal or delinquency record regarding all offenses, including, but not limited to, all sexual offenses;
- (c) The age of the victim of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made;
- (d) Whether the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made involved multiple victims;
- (e) Whether the offender or delinquent child used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting;
- (f) If the offender or delinquent child previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing an act that if committed by an adult would be, a criminal offense, whether the offender or delinquent child completed any sentence or dispositional order imposed for the prior offense or act and, if the prior offense or act was a sex offense or a sexually oriented offense, whether the offender or delinquent child participated in available programs for sexual offenders;
- (g) Any mental illness or mental disability of the offender or delinquent child;
- (h) The nature of the offender's or delinquent child's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;
- (i) Whether the offender or delinquent child, during the commission of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made, displayed cruelty or made one or more threats of cruelty; and

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

Former Ohio Rev. Code Ann. § 2950.09(B)(3) (amended January 1, 2008). If a defendant was determined to be a sexual predator, the defendant's registration duties "continued until the offender's death." Former Ohio Rev. Code Ann. § R.C. 2950.07(B)(1) (amended January 1, 2008).

However, if a trial court determined that the offender was not a sexual predator, but that "the offender previously ha[d] been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the hearing [was] being conducted or previously ha[d] been convicted of or pleaded guilty to a child-victim oriented offense," the defendant was to be adjudicated a child-victim predator or a habitual sex offender. Former Ohio Rev. Code Ann. § 2950.01(B)(1) (amended January 1, 2008). A defendant who was adjudicated a child-victim predator or a habitual sex offender was required to comply with the Revised Code's registration mandates for twenty years. Former Ohio Rev. Code Ann. § R.C. 2950.07(B)(2) (repealed January 1, 2008).

A defendant who was not adjudicated to be either a sexual predator or a habitual sex offender was classified as a sexually oriented offender and required to "comply [with his or her registration duties] for ten years." Former Ohio Rev. Code Ann. § R.C. 2950.07(B)(3) (repealed January 1, 2008).

Senate Bill 10 has eradicated former R.C. Chapter 2950's sex-offender classification system. Going forward, instead of judging an offender's risk to the public, a trial court must place an offender into a "tier" without reference to future dangerousness, based solely on the offense that was committed. And the law was also intended to apply retroactively, to wipe out

the risk-based classifications of offenders and replace them with new offense-based classifications. The law also increased registration and notification duties for all classified offenders. At the time that Mr. Dehler received his Tier III status from the Attorney General, he was already a “sexually oriented offender” with a ten-year registration period. See *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169, at paragraph two of the syllabus. Under the prior version of R.C. Chapter 2950, due process did not require a trial court to conduct a hearing to determine whether a defendant was a sexually oriented offender because according to that version, if a defendant had been convicted of a sexually oriented offense as defined in R.C. 2950.01(D), and was neither a habitual sex offender nor a sexual predator, the sexually oriented offender designation attached as a matter of law.

As such, as of November 30, 2007, Mr. Dehler was subject to only ten years of registration requirements. If the trial court wanted to classify him as a habitual sexual offender or a sexual predator, the court “was permitted to hold [a] hearing and make the determination prior to [Mr. Dehler’s] release from imprisonment or at any time within one year following [Mr. Dehler’s] release from prison.” Former R.C. 2950.09(C)(2)(a) (repealed January 1, 2008). But when the Ohio General Assembly repealed Megan’s Law and replaced it with Senate Bill 10, it removed the provisions authorizing trial courts to hold such classification hearings. Under Senate Bill 10’s classification system, Mr. Dehler was automatically, and unconstitutionally, placed into “Tier III” by Ohio’s Attorney General. He must comply with all registration requirements every 90 days for the rest of his life. R.C. 2950.07(B)(1). (November 30, 2007 Letter from Attorney General to Lambert Dehler, attached to Lambert Dehler’s February 1, 2008 Request for a Hearing Pursuant to R.C. 2950.032(E)). Those registration requirements attached to Mr. Dehler without the hearing provided for under the former law.

By tying sex-offender classification, registration, and notification requirements directly and solely to the crime of conviction, Senate Bill 10 has created a sex-offender registration scheme that is no longer remedial and civil in nature. Sex-offender registration, as it functions under Senate Bill 10, is purely punitive and is in fact part of the original sentence. As such, the retroactive application of Senate Bill 10 is violative of the Ex Post Facto and Double Jeopardy Clauses of the United States Constitution and the Retroactivity Clause of the Ohio Constitution. Section 10, Article I of the United States Constitution; Fifth Amendment to the United States Constitution; Section 28, Article II of the Ohio Constitution.

A. The retroactive application of Senate Bill 10 to Mr. Dehler violates both the separation-of-powers doctrine and the remedy as this Court formulated in *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424.

As noted above, Mr. Dehler received his Tier III classification from Ohio's Attorney General. Section 1, Article IV of the Ohio Constitution states that "[t]he judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law." And "[a]lthough the Ohio Constitution does not contain explicit language establishing the doctrine of separation of powers, it is inherent in the constitutional framework of government defining the scope of authority conferred upon the three separate branches of government." *State v. Sterling*, 113 Ohio St.3d 255, 2007-Ohio-1790, at ¶22.

In *State ex rel. Bryant v. Akron Metro. Park Dist.* (1929), 120 Ohio St. 464, 473, this Court held "that powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments, and further that none of them ought to possess directly or indirectly an overruling influence over the others. And in *State ex rel. Johnston v. Taulbee* (1981), 66 Ohio St.2d 417, at paragraph one of the syllabus, this Court

explained that “the administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers.” See *State v. Sterling*, 113 Ohio St.3d 255, 2007-Ohio-1790, at ¶24.

A review of Ohio law demonstrates that Senate Bill 10, as applied to Mr. Dehler and those similarly situated to him, improperly interferes with judicial functions. In *State v. Hochhausler*, 76 Ohio St.3d 455, 1996-Ohio-374, this Court addressed the constitutionality of former R.C. 4511.191(H)(1), which at the time specified that after a driver received an administrative license suspension following a D.U.I. violation, no court had jurisdiction to grant a stay of the license suspension, and that any court order purporting to grant a stay “shall not be given administrative effect.” *Hochhausler* at 465-466 (Internal citations omitted.) This Court declared the law unconstitutional, holding that the statute “deprives courts of their ability to grant a stay of an administrative license suspension,” and therefore “improperly interferes with the exercise of a court’s judicial functions.” Accordingly, the Court held that former R.C. 4511.191(H)(1) violated the doctrine of separation of powers. *Hochhausler*, 76 Ohio St.3d at 463-464.

Similarly, in *State v. Sterling*, 113 Ohio St.3d 255, 2007-Ohio-1790, this Court reviewed a constitutional challenge to former R.C. 2953.82(D), which required courts to obtain the approval of a prosecuting attorney before issuing an order for DNA testing. *Sterling* at ¶32. According to the statute, the prosecuting attorney’s disagreement was final and not appealable by any person to any court. *Id.* This Court determined that R.C. 2953.82(D) was unconstitutional, as it “authorized the executive branch to prosecute and impose punishment for a crimeIn our constitutional scheme, the judicial power resides in the judicial branch. Section 1, Article IV of the Ohio Constitution. The determination of guilt in a criminal matter *and the sentencing of a*

defendant convicted of a crime are solely the province of the judiciary.” Sterling at ¶31, citing State ex rel. Bray v. Russell (2000), 89 Ohio St.3d 132, 136 (Emphasis added).

Like R.C. 2953.82(D), Senate Bill 10 divests the judicial branch of its power to sentence a defendant. See *State v. Clayborn*, 125 Ohio St.3d 450, 2010-Ohio-2123, at ¶16 (“an appeal of an R.C. Chapter 2950 sexual-offender classification is an appeal of a criminal matter that must be filed pursuant to App.R. 4(A) within 30 days after judgment is entered”). By directing Ohio’s Attorney General to automatically place an old-law offender into a specific tier based on the crime with which a defendant is convicted, the legislature, through the executive branch, is acting as “judge, prosecutor, and jury, which [goes] beyond the role of the executive [or legislative] branch.” *Sterling* at ¶31. See also, *State v. Hochhausler*, 76 Ohio St.3d at 463-464. By applying Senate Bill 10 to those offenders who had classifications under old law, the legislative and executive branches of Ohio government have divested the judicial branch from the ability to conduct a hearing to determine Mr. Dehler’s risk of future dangerousness, and therefore his sexual-offender classification. Former R.C. 2950.09(C)(2)(a) (repealed January 1, 2008).

But even if reclassification does not on its own encroach on a judicial function, the automatic classification of Mr. Dehler as a Tier III offender replaces his current classification as a sexually oriented offender. Reclassification of Mr. Dehler under Senate Bill 10 therefore violates the severance remedy that this Court developed in *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424. On June 3, 2010, this Court found that portions of Senate Bill 10 violated Ohio’s separation-of-powers doctrine for offenders who had received a prior judicial adjudication under House Bill 180. As a remedy, this Court severed R.C. 2950.031 and

2050.032, “excising” them and holding “that after severance, they may not be enforced.” *Id.* at ¶66.

After considering the available remedies, one of which was severing the unconstitutional provisions of Senate Bill 10, this Court specifically held:

Applying these standards, we conclude that severance of R.C. 2950.031 and 2950.032, the reclassification provisions in the AWA, is the proper remedy. By excising the unconstitutional component, we do not “detract from the overriding objectives of the General Assembly,” i.e., to better protect the public from the recidivism of sex offenders, and the remainder of the AWA, “which is capable of being read and of standing alone, is left in place.” [*State v.] Foster*, [109 Ohio St.3d 1, 2006-Ohio-856] at ¶98. *We therefore hold that R.C. 2950.031 and 2950.032 are severed and, that after severance, they may not be enforced.* R.C. 2950.031 and 2950.032 may not be applied to offenders previously adjudicated by judges under Megan’s Law, and the classifications and community-notification and registration orders imposed previously by judges are reinstated.

Id. at ¶66 (Emphasis added). See also *State v. Bodyke*, 126 Ohio St.3d 1235, 2010-Ohio-3737 (hereinafter *Bodyke II*, overruling motion for reconsideration) and *id.* at ¶¶4-5 (Cupp, J., dissenting).

In *Bodyke*, this Court severed all of the statutory provisions that allowed Ohio’s Attorney General to classify anyone. See *State v. Watkins*, 10th Dist. No. 09AP-669, 2010-Ohio-4187, at ¶18 (“[w]ith the severance of R.C. 2950.031, no petition process exists, and any error regarding the court’s exercise of jurisdiction within that petition process is moot”). Although this Court added that R.C. 2950.031 and 2950.032 violated the separation-of-powers doctrine on the basis that various offenders had received prior adjudications by judges, the fact remains that Ohio’s Attorney General has no power to classify any offender, whether or not that offender received a House Bill 180 hearing. Cf. *Bodyke II* at ¶¶4-5 (Cupp, J., dissenting). In accordance with the *Bodyke* severance remedy, courts of Ohio should apply former law to individuals like Mr.

Dehler. And as this Court noted in *Bodyke*, this procedure is analogous to the actions of Ohio trial courts in the wake of *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. See *Bodyke* at ¶¶62-66.

In fact, the legislature has already directed this result. Revised Code Section 1.58 provides:

(A) The reenactment, amendment, or repeal of a statute does not, except as provided in division (B) of this section:

(1) Affect the prior operation of the statute or any prior action taken thereunder;

(2) Affect any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred thereunder.

The effect of R.C. 1.58 as it relates to Senate Bill 10 and House Bill 180 is that those individuals who were, or should have been, classified under House Bill 180 will have to continue registering as if the former statutes had not been repealed. And as noted above, Mr. Dehler was already classified by operation of law—at the time that Mr. Dehler received his Tier III status from the Attorney General, he was already a “sexually oriented offender” under former R.C. Chapter 2950. See *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169, at paragraph two of the syllabus.

According to this Court in *Bodyke*, the Attorney General had no legitimate authority to reclassify Mr. Dehler as a Tier III offender. And while Senate Bill 10 repealed the codified statutes that comprised House Bill 180, R.C. 1.58 is unambiguously states that “the repeal of [House Bill 180] does not...[a]ffect any...obligation or liability previously acquired, accrued, accorded, or incurred thereunder.” The duty to register in accordance with the terms of House Bill 180 is an “obligation or liability” that falls into this category. See *Columbus City School*

District Bd. Of Edn. v. Wilkins, 101 Ohio St.3d 112, 2004-Ohio-296, at ¶26 (“The primary rule of statutory construction is to look to the language of the statute itself to determine the legislative intent. If a review of the statute conveys a meaning that is clear, unequivocal, and definite, the court need look no further.”). Accordingly, Mr. Dehler (and others like him) already stand classified under former law, and it would violate both the state constitutional separation of powers doctrine and this Court’s decision in *Bodyke* to permit his Senate Bill 10 reclassification to stand.

B. The retroactive application of Senate Bill 10 to crimes committed before July 1, 2007 violates the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution.

Section 28, Article II of the Ohio Constitution provides that “the general assembly shall have no power to pass retroactive laws.” Additionally, Section 10, Article I of the United States Constitution prohibits any legislation that “changes the punishment, and inflicts greater punishment, than the law annexed to the crime, when committed.” *Miller v. Florida* (1987), 482 U.S. 423, 429. Ex post facto laws are prohibited in order to ensure that legislative acts “give fair warning to their effect and permit individuals to rely on their meaning until explicitly changed.” *Weaver v. Graham* (1981), 450 U.S. 24, 28-29.

1. Senate Bill 10 violates Section 10, Article I of the United States Constitution.

The Ex Post Facto Clause of the United States Constitution prevents the legislature from abusing its authority by enacting arbitrary or vindictive legislation aimed at disfavored groups. See *Miller v. Florida*, 482 U.S. at 429; *Carmell v. Texas* (2000), 529 U.S. 513, 536 (a bill of attainder can also be an example of an ex post facto law). But the Ex Post Facto Clause applies only to criminal statutes. *California Dept. of Corrections v. Morales* (1995), 514 U.S. 499, 504;

Collins v. Youngblood (1990), 497 U.S. 37, 43. And even if a statute is “criminal” for purposes of ex post facto analysis, it will not violate the Clause unless it meets two critical elements: it must be retrospective, and it must disadvantage the offender affected by it. *Miller*, 482 U.S. at 430. Accordingly, to conclude that Senate Bill 10 violates the Ex Post Facto Clause of the United States Constitution, it must conclude that the statute is criminal, that it is retroactive, and that it disadvantages those affected by it.

Many courts, including this Court, have used the “intent-effects test” to delineate between civil and criminal statutes for the purposes of an ex post facto analysis of sex-offender registration and notification statutes. See, e.g., *State v. Cook* (1998), 83 Ohio St.3d 404, 415-417 (the intent of the General Assembly in enacting former Revised Code Chapter 2950 was remedial, not punitive) and *Smith v. Doe* (2003), 538 U.S. 84, 92. And although the United States Supreme Court has declined to set out a specific test for determining whether a statute is criminal or civil for purposes of the Ex Post Facto Clause, see *Morales*, 514 U.S. at 508-509, the Court has used a set of definite factors to inform the “effects” analysis when analyzing whether an Act of Congress is penal or regulatory in nature. See *Kennedy v. Mendoza-Martinez* (1963), 372 U.S. 144, 168-169, applied by *Cook*, 83 Ohio St.3d at 418-23. See also *Smith*, 538 U.S. at 96-106 (cited by *Bodyke*, at ¶2 and ¶8 fn.3).

When applying the intent-effects test, a reviewing court must first determine whether the legislature, “in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other.” *United States v. Ward* (1980), 448 U.S. 242, 248-249. But even if the legislature indicated an intention to establish a civil penalty, a statute will be determined to be criminal if “the statutory scheme [is] punitive either in purpose or effect as to negate that intention.” *Id.*

The Intent of Senate Bill 10

In the intent prong of the analysis, this Court must determine whether the General Assembly's objective in promulgating Senate Bill 10 was penal or remedial. A court must look to the language and purpose of the statute in order to determine legislative intent. *State v. S.R.* (1992), 63 Ohio St.3d 590, 594-595; *Provident Bank v. Wood* (1973), 36 Ohio St.2d 101, 105.

The provisions of Senate Bill 10 demonstrate the General Assembly's intent for the new statutory scheme to be punitive. While Senate Bill 10 retains former House Bill 180's language that the "exchange or release of [registration] information is not punitive," compare R.C. 2950.02 with *State v. Cook*, 83 Ohio St.3d at 417 (interpreting former R.C. 2950.02). the actual provisions of Senate Bill 10 demonstrate that the legislature's intent was primarily to punish.

As with former law, Senate Bill 10 is primarily codified within Title 29, Ohio's Criminal Code. See *Mikaloff v. Walsh* (N.D. Ohio 2007), 2007 U.S. Dist. LEXIS 65076, at *15 ("[w]here a legislature chooses to codify a statute suggests its intent"). More importantly, though, the specific classification and registration duties are a direct consequence of the offense of conviction. Furthermore, the failure to comply with registration, verification, or notification requirements subjects an individual to seriously enhanced criminal prosecution and penalties, and the severity of those penalties is also, as a result of Senate Bill 10, directly determined by the offense of conviction. R.C. 2950.99. Cf. *State v. Williams*, 114 Ohio St.3d 103, 2007-Ohio-3268, at ¶10 (This Court determined that although "the registration requirements of [former] R.C. Chapter 2950 may have been enacted generally as remedial measures, R.C. 2950.06 defined a crime: the offense of failure to verify current address."); *State v. Strickland*, 11th Dist. No. 2008-L-034, 2009-Ohio-5424, at ¶19 ("pursuant to R.C. 2950.99, failure to comply with provisions of R.C. Chapter 2950 is a felony").

The following mandates by the legislature are most indicative of its intent for the new classification to be a criminal punishment. First, R.C. 2929.19(B)(4)(a), codified within the Penalties and Sentencing Chapter states that “[t]he court *shall include in the offender’s sentence* a statement that the offender is a tier III sex offender” (Emphasis added.) Additionally, R.C. 2929.23(A), in that same chapter, states that “the judge *shall include in the offender’s sentence* a statement that the offender is a tier III sex offender/child victim offender [and] shall comply with the requirements of section 2950.03 of the Revised Code” (Emphasis added.) R.C. 2929.23(B) states that “[i]f an offender is being sentenced for a sexually oriented offense or a child-victim oriented offense that is a misdemeanor . . . , the judge *shall include in the sentence* a summary of the offender’s duties imposed under R.C. 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code and the duration of the duties.” (Emphasis added.)

As defined by the Ohio Revised Code, a “sentence” is “the sanction or combination of sanctions imposed by the sentencing court on an offender who is convicted of or pleads guilty to an offense.” R.C. 2929.01(E). “Sanction” is defined in R.C. 2929.01(D) as “any penalty imposed upon an offender who is convicted of or pleads guilty to an offense, *as punishment for the offense.*” (Emphasis added.) In short, the legislature’s own statutory definitions, when combined with the plain language of Senate Bill 10, evidences the intent of the General Assembly to transform classification and registration into a punitive scheme.

In *Cook*, this Court analyzed the 1997 version of R.C. Chapter 2950 and concluded that the provisions were not punitive, since the General Assembly’s purpose was “to promote public safety and bolster the public’s confidence in Ohio’s criminal and mental health systems.” *Cook*, 83 Ohio St.3d at 417. The Court emphasized the former statutory scheme’s “narrowly tailored attack on th[e] problem[,] stating “the notification provisions apply automatically *only* to sexual

predators or, at the court's discretion, to habitual sex offenders Required dissemination of registered information to neighbors and selected community officials likewise is an objectively reasonable measure to warn those in the community who are most likely to be potential victims." Id. (Internal citations omitted.) Accordingly, this Court noted that the dissemination of the required information was available for inspection *only by law-enforcement officials and "those most likely to have contact with the offender, e.g., neighbors, the director of children's services, school superintendents, and administrators of preschool and day care centers."* Id. at 422. (Emphasis added.) While the statute at issue in *Cook* restricted the access of an offender's information to "those persons necessary in order to protect the public[,]" Senate Bill 10 requires the offender's information to be open to public inspection and to be included in the internet sex-offender and child-victim offender database. R.C. 2950.081.

Moreover, not only does the public have unfettered access to an offender's personal information, but under Senate Bill 10 an offender has a legal duty to provide far more information than was required under former R.C. Chapter 2950. See current R.C. 2950.04(C); R.C. 2950.081. As part of the general registration form, the offender must indicate: his or her full name and any aliases, his or her social security number and date of birth, the address of his or her residence, the name and address of his or her employer, the name and address of any type of school he or she is attending, the license plate number of any motor vehicle he or she owns, the license plate number of any vehicle he or she operates as part of his or her employment, a description of where his or her motor vehicles are typically parked, his or her driver's license number, a description of any professional or occupational license he or she may have, any e-mail addresses, all internet identifiers or telephone numbers that are registered to, or used by, the offender, and any other information that is required by the bureau of criminal identification and

investigation. R.C. 2950.04(C). Much of this information, including addresses, photographs, and license plate numbers is placed onto an statewide internet registry. R.C. 2950.081. See also <http://www.esorn.ag.state.oh.us/>. In short, the “narrow tailoring” upon the disclosure and dissemination of information, relied upon to confirm the legislature’s regulatory and remedial intent in *Cook*, is simply absent from Senate Bill 10.

In *Cook*, this Court determined that former R.C. Chapter 2950, on its face, “is not punitive because it seeks ‘to protect the safety and general welfare of the people of this state’” *Cook*, 83 Ohio St.3d at 417, citing former R.C. 2950.02 (A)(2). Recognizing this concept, in *State v. Eppinger*, 91 Ohio St.3d 158, 165, 2001-Ohio-247, this Court stressed the importance of a sexual-offender classification and hearing and the significance of classifying offenders appropriately:

[I]f we were to adjudicate all sexual offenders as sexual predators, we run the risk of “being flooded with a number of persons who may or may not deserve to be classified as high-risk individuals, with the consequence of diluting both the purpose behind and the credibility of the law. This could be tragic for many.” *State v. Thompson* (1999), Cuyahoga App. No. 73492, unreported, 140 Ohio App.3d 638, 1998 WL 1032183. Moreover, the legislature would never have provided for a hearing if it intended for one conviction to be sufficient for an offender to be labeled a “sexual predator.”

Also of significance, in *Eppinger*, this Court noted that “[o]ne sexually oriented offense is not a clear predictor of whether that person is likely to engage in the future in one or more sexually oriented offenses, particularly if the offender is not a pedophile. Thus, we recognize that one sexually oriented conviction, without more, may not predict future behavior.” *Id.* at 162.

Unlike the statute at issue in *Cook* and *Eppinger*, an individual’s registration and classification obligations under Senate Bill 10 depend solely on his or her crime, not upon his or her ongoing threat to the community. The result is a ministerial rubber stamp on all offenders,

regardless of any mitigating facts in the individual case. This apparently rests upon a theory that all sex offenders fit into one of two groups: those who have offended more than once; and those who have offended once but are likely to offend again. There is no scientific, statistical, or practical basis for this theory—in fact, everything we know about the likelihood of recidivism for sex offenders suggests precisely the opposite. See for example, Merits Brief of Amici Curiae Cleveland Rape Crisis Center and Texas Association Against Sexual Assault, filed in *State v. Williams*, No. 2009-0088, at 4-7 (citing recidivism studies)

Senate Bill 10 has stripped the trial court of its ability to engage in an independent classification hearing to determine an offender’s likelihood of recidivism. Expert testimony is no longer presented; and written reports, victim impact statements, and presentence reports are no longer taken into consideration, nor is the offender’s criminal and social history. Cf. *State v. Eppinger*, 91 Ohio St.3d at 166-67. Gone are the notice, hearing, and judicial review tenants of due process. Thus, there is no longer an independent determination as to the likelihood that a given offender would commit another crime.

Furthermore, a majority of the justices on this Court have concluded that the changes in Ohio’s sex-offender classification mean that it is no longer a “civil” matter. In *State v. Wilson*, Justice Lanzinger, joined by Justice O’Connor, stated that the “restraints on liberty are the consequences of specific criminal convictions and should be recognized as part of the punishment that is imposed as a result of the offender’s actions.” *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202 at ¶46 (Lanzinger, J., concurring in part and dissenting in part). More recently, Justice Lanzinger again voiced her concern in a dissenting opinion in *State v. Ferguson*, in which she stated that “R.C. 2950.09 has been transformed from remedial to punitive.” *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824 at ¶45 (Lanzinger, J., dissenting). Her dissenting

opinion in *Ferguson* was joined by Justices Pfeifer and Lundberg Stratton. Thus, at one time or another, Justices Lanzinger, Lundberg Stratton, O'Connor, and Pfeifer have all expressed their belief that the former version of Ohio's sex-offender classification system was punitive, rather than remedial.

In short, the changes wrought to R.C. Chapter 2950 themselves demonstrate that the legislature's intent in enacting S.B. 10 was not remedial.

The Effect of Senate Bill 10

But even if this Court were to determine that the General Assembly intended Senate Bill 10 to be remedial, the statute has such a "punitive effect so as to negate a declared remedial intention." *Allen v. Illinois* (1985), 478 U.S. 364, 369. When assessing the punitive effects of a particular statute, the United States Supreme Court has considered the following factors:

1. Whether the sanction involves an affirmative disability or restraint;
2. Whether it has historically been regarded as punishment;
3. Whether it comes into play only on a finding of scienter;
4. Whether its operation will promote the traditional aims of punishment—retribution and deterrence;
5. Whether the behavior to which it applies is already a crime;
6. Whether an alternative purpose to which it may rationally be connected is assignable for it; and
7. Whether it appears excessive in relation to the alternative purpose assigned.

Kennedy v. Mendoza-Martinez, 372 U.S. at 168-169. Mr. Dehler acknowledges that this Court and other courts have previously used the *Kennedy* factors to conclude that other sex-offender registration laws were remedial and civil. See, e.g., *State v. Cook*, 83 Ohio St.3d 404 and *State v. Wilson*, 113 Ohio St.3d 282, 2007-Ohio-2202. at ¶¶41-42. See also, *Smith v. Doe* (2003), 538

U.S. 84 (finding Alaska's sex-offender registration law to be civil and remedial). But other courts have used those same factors to reach the opposite conclusion. See *Doe v. State* (Ak. 2008), 189 P.2d 999 (on remand, held to violate state constitution using *Kennedy* factors) and *Wallace v. Indiana* (2009), 905 N.E.2d 371 (finding Indiana's version of the Adam Walsh Act to be a criminal statute based upon the *Kennedy* factors). And the statutes at issue in *Cook* and *Wilson* were significantly less onerous than Senate Bill 10.

The flexible nature of the *Kennedy* factors evidences the Supreme Court's recognition that there is a sliding scale between purely remedial and purely punitive statutes, which will require reevaluation of prior pronouncements on similar statutes. In Ohio, what began as a regulatory scheme designed to protect the community from dangerous sex offenders has expanded significantly in both breadth and scope. And applying the *Kennedy* factors to Senate Bill 10 demonstrates that Ohio's sex-offender registration law is punishment, and this Court's prior consideration of entirely different statutory schemes cannot alter that conclusion.

a. Senate Bill 10 imposes affirmative obligations, disabilities, and restraints.

Senate Bill 10 imposes significant affirmative obligations, in addition to a severe stigma, upon every individual to whom it applies. It imposes significant affirmative obligations, to which few, if any, other citizens are subjected. And those obligations, including registration and disclosure of private information, are discharged under threat of criminal prosecution. R.C. 2950.06(F) and 2950.06(G). Moreover, the time periods associated with the affirmative obligation to register are significant and intrusive. (See p. 8, *supra*). In addition, several counties have instituted a fee that must be paid each time an individual registers. See *Sheriffs to Start Charging Registered Sex Offenders*, Dayton Daily News, Apr. 24, 2009, at A3 (reporting that the Montgomery County Sheriff will charge \$25 per year for Tier I and II offenders and

\$100 per year for Tier III offenders). Such obligations cannot be construed as de minimus. And Senate Bill 10's residency restrictions impose significant restraints with respect to where registrants may lawfully reside. In fact, in Franklin County alone, sex offenders are effectively barred from 60% of all residential property in the county and more than 80% of property in low-income areas. Beth Red Bird, *Assessing Housing Availability Under Ohio's Sex Offender Residency Restrictions*, (March 25, 2009), The Ohio State University, p. 5.² This constitutes an additional and significant disability for convicted sex offenders.

Finally, the aggressive community notification provisions and broad dissemination of personal information mandated by Senate Bill 10 subjects even the least serious offenders to profound levels of humiliation and community-wide ostracism. Not only does the distribution of such information subject offenders to serious risk of "vigilante justice" in the form of both threats and actual physical violence, it also directly contributes to lost employment opportunities, denials of housing, evictions, and other forms of discrimination. Again, such far-reaching and significant consequences must be construed as substantial disabilities for reclassified offenders.

b. *Senate Bill 10 imposes sanctions that have historically been considered punishment.*

Application of this factor is often challenging because sex-offender registration laws are of relatively recent origin and may lack a historical corollary. However, community notification cards, coupled with widespread dissemination of information on the internet, share a common thread with traditional shaming punishments. In large part, the public-notification scheme is designed to mark the offender as one who is to be shunned, which is precisely the goal of

²http://www.redbird.net/ASSESSING_HOUSING_AVAILABILITY_UNDER_OHIOS_SEX_OFFENDER_RESIDENCY_RESTRICTIONS.pdf

shaming punishments in the historical sense. See *Smith v. Doe*, 538 U.S. at 115-116 (Ginsburg, J., dissenting).

Furthermore, because of Senate Bill 10's residency restrictions, many sex offenders are being "expelled" from communities. *Id.* at 97-8. And such expulsion is far directly punitive than the registration requirements that were at issue in *Cook*, 83 Ohio St.3d at 419. See, also, *State v. Williams*, 88 Ohio St.3d 513, 526, 2000-Ohio-428 ("There is nothing in the community notification provisions in R.C. Chapter 2950 that hampers the right to seek out or acquire property"). The "banishment" of sex offenders is so widespread, that "sex-offender ghettos" are becoming commonplace within certain communities. See Radio Interview with Franklin County Sheriff's Office Chief Deputy Stephan Martin, WOSO Radio (June 10, 2010).³ See, also, Stephen P. Garvey, *Can Shaming Punishments Educate?*, 65 U. Chi. L. Rev. 733, 739 (1998) ("Punishments widely described as 'shaming' penalties thus come in two basic but very different forms: those that rely on public exposure and aim at shaming; and those that do not rely on public exposure and aim at educating."); Henry M. Hart, Jr., *The Aims of the Criminal Law*, 23 Law & Contemp. Probs. 401, 404 (1958) ("What distinguishes a criminal from a civil sanction and all that distinguishes it, it is ventured, is the judgment of community condemnation which accompanies and justifies its imposition."); Paul Robinson, *The Criminal-Civil Distinction and the Utility of Desert*, 76 B.U.L. Rev. 201, 202 (1996) (noting that "criminal sanctions signal condemnation").

Finally, the registration and reporting scheme is now so onerous that it is becoming difficult to distinguish registration from probation, parole, and other forms of supervised release, which have traditionally been considered punishment for criminal acts. See *Wallace v. Indiana*,

³ <http://www.wosu.org/allsides/?archive=1&date=06/10/2010>

905 N.E.2d at 380 (noting that sex-offender registration and notification bears substantial similarity to supervised probation or parole). See also, Andrea E. Yang, Comment, *Historical Criminal Punishments, Punitive Aims and Un-“Civil” Post-Custody Sanctions on Sex-Offenders*, 75 U. Cin. L. Rev. 1299, 1328 (2007) (arguing that the supervision of sex offenders actually exceeds that of probationers and parolees). Even the most ardent supporter of sex-offender registration laws must admit that at some point, laws require so much supervision of and so much participation by offenders that they become punitive. Cf. 128 Ohio S.B. No. 217 (As Introduced; would require Tier III offenders to report to all registration counties every month).

c. Senate Bill 10 comes into play only upon a finding of scienter.

Because Senate Bill 10 is tied solely to a criminal conviction, and nearly all of the triggering crimes include a mens rea element, this factor also weighs in favor of finding that the sanction imposed is punitive and part of the criminal sentence.

d. Senate Bill 10 serves the traditional aims of punishment.

Given the substantial restraints on physical liberty and the ostracism associated with sex-offender registration and notification, it defies reason to suggest that Senate Bill 10 is not designed in large part to have both a retributive and deterrent effect. While other secondary objectives, including a desire to protect the community, may also be present, the intention to deter future offenders and condemn past offenders cannot be understated. And there is overwhelming empirical evidence which indicates that sex-offender registration and notification laws do little to protect the community. See e.g., Lindsay A. Wagner, Note, *Sex Offender Residency Restrictions: How Common Sense Places Children at Risk*, 1 Drexel L. Rev. 175, 195 (2009) (addressing the extent to which residency restrictions actually increase recidivism); Bob Vasquez, *The Influence of Sex Offender Registration and Notification Laws in the United States*,

54 Crime & Delinquency 175, 179, 188 (2008) (noting that empirical research indicates that sex-offender legislation seems to have had no uniform and observable influence on the number of rapes reported); J.J. Prescott, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?*, NBER Working Paper No. 13803 (February 2008) (no evidence that sex-offender registries reduce recidivism or protect the public).⁴ In light of the evidence demonstrating that sex-offender registration laws do not reduce recidivism, and in fact may increase the risk to the public by providing a false sense of security, the only remaining explanation for the increasingly harsh sanctions imposed on sex-offenders are punishment and deterrence, which are the specific justifications for criminal sentencing under Ohio law. See R.C. 2929.11 (stating that “[t]he overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender”).

e. Senate Bill 10 applies only to behavior which is already a crime.

The statute applies only to behavior that is already, and in fact, exclusively, criminal. Indeed, the entire category of persons subject to Senate Bill 10 are individuals previously convicted of certain enumerated criminal acts. Nothing in Senate Bill 10 contemplates application of its provisions to any form of behavior other than that proscribed as a sexual offense or child-victim offense. Because the registration and notification obligations under Senate Bill 10 are triggered exclusively by the existence of a criminal conviction, it cannot be disputed that this factor weighs in favor of finding the statute to be punitive.

f. Senate Bill 10 is excessive in relation to any non-punitive interest.

⁴ <http://www.law.umich.edu/centersandprograms/olin/papers.htm>;
<http://www.psc.isr.umich.edu/pscinfoserv/?p=426>.

The final two *Kennedy* factors—whether the statute advances a non-punitive interest and whether the sanction imposed is excessive in relation to the purported non-punitive purpose—must be considered in tandem. Senate Bill 10 purports to advance a legitimate, regulatory purpose: the protection of the public from dangerous sexual offenders. And while Senate Bill 10 does little to promote public safety, it must be recognized that it at least arguably advocates a non-punitive goal.

But the sanction is excessive in relation to its stated goals. First, a Senate Bill 10 classification is tied solely to the fact of conviction, as opposed to any finding of future dangerousness. Thus, for a potentially large number of convicted offenders, there is absolutely no threat to public safety, and imposition of registration duties and community notification cannot reasonably advance the stated goal of protecting the public. Moreover, in light of empirical evidence that demonstrates the inefficacy of sex-offender registration laws in actually protecting the public from harm, the sanctions imposed are excessive in relation to any public safety goal. Setting aside its rhetoric, Senate Bill 10 actually does very little to advance public safety. Rather, its primary function is to continue to punish sex offenders in perpetuity for their past criminal conduct.

Having weighed the seven *Kennedy* factors, only one—purporting to advance a non-punitive purpose—weighs in favor of finding the statute to impose a remedial sanction. On balance, the remaining six factors weigh in favor of finding that the statute imposes criminal punishment. As such, because Senate Bill 10 is criminal in nature and has a punitive effect, this Court must determine whether its retroactive application disadvantages Mr. Dehler and those like him, and therefore violates Section 10, Article I of the United States Constitution.

As noted above, an unconstitutional ex post facto criminal law is retrospective--i.e. applying to events occurring before its enactment--and disadvantages the offender affected by it. *Miller v. Florida*, 482 U.S. at 430.

Senate Bill 10 is Retrospective.

The General Assembly has mandated that Senate Bill 10 be applied retroactively. See R.C. 2950.07(C)(2). See, also, S.B. 10, 127th General Assembly, § 2, 3, 4, and 5 (Amended Substitute Senate Bill Number 10) (2007-2008). A law is retrospective if it “changes the legal consequences of acts completed before its effective date.” *Id.* at 431, citing *Weaver v. Graham* (1981), 450 U.S. 24, 31. As to the second element, the United States Supreme Court explained that it is “axiomatic that for a law to be ex post facto it must be more onerous than the prior law.” *Id.* (Internal citation omitted.) This Court described the requirements and consequences of former R.C. Chapter 2950 as “onerous” in *State v. Brewer*, 86 Ohio St.3d 160, 164, 1999-Ohio-146. And it is beyond argument both that Senate Bill 10 imposes far more demanding registration obligations than former R.C. Chapter 2950, and changes the consequences of acts committed prior to its enactment. See, e.g. *Bodyke* at ¶¶20-28 (stating that Senate Bill 10 is “retroactive” and noting that the frequency, duration, location and disclosure of information are all expanded under Senate Bill 10 when compared with former R.C. Chapter 2950).

Senate Bill 10 Disadvantages Mr. Dehler.

At the time that Mr. Dehler received his Tier III status from the Attorney General, he was a sexually oriented offender by operation of law. See *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169, at paragraph two of the syllabus holding that under former Chapter 2950, “if a defendant has been convicted of a sexually oriented offense as defined in R.C. 2950.01(D), and is neither a habitual sex offender nor a sexual predator, the sexually oriented offender

designation attaches as a matter of law”). As such Mr. Dehler was subject to only ten years of registration requirements. Cf. *Cook*, 83 Ohio St.3d at 408 (describing reporting requirements under former R.C. Chapter 2950). However, under Senate Bill 10’s classification system, Mr. Dehler is automatically placed into “Tier III,” and must comply with registration requirements every 90 days for the rest of his life. R.C. 2950.07(B)(1). (November 30, 2007 Letter from Attorney General to Lambert Dehler, attached to Lambert Dehler’s February 1, 2008 Request for a Hearing Pursuant to R.C. 2950.032(E)).

Senate Bill 10 is criminal, retrospective, and disadvantages Mr. Dehler and all those similarly situated to him. As such, it is an ex post facto law that violates Section 10, Article I of the United States Constitution.

2. Senate Bill 10 violates Section 28, Article II of the Ohio Constitution.

Section 28, Article II of the Ohio Constitution forbids the enactment of retroactive laws. *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St.3d 100, 106. Ohio’s Constitution affords its citizens greater protection against retroactive laws than does the Ex Post Facto Clause of the United States Constitution. *Van Fossen*, 36 Ohio St.3d at 105, fn. 5 (“[Ohio’s Constitution of 1851 provides a] much stronger prohibition than the more narrowly constructed provision in Ohio’s Constitution of 1802”). “The retroactivity clause nullifies those new laws that reach back and create new burdens, new duties, new obligations, or new liabilities not existing at the time the statute becomes effective.” *Smith v. Smith*, 109 Ohio St.3d 285, 2006-Ohio-2419, at ¶6.

A two-step standard is followed to decide if the retroactive application of a statute will be deemed to violate the clause. *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, at ¶9-10. In accordance with the first prong of the “retroactive” test, the language of the statute is reviewed to determine whether the legislature expressly stated that retroactive application was intended.

Id. (Internal citation omitted.) If the wording of the General Assembly is sufficiently explicit to demonstrate a retroactive intent, the statute is then reviewed to determine if it affects a substantive or remedial matter. Id. (Internal citation omitted.)

A substantive statute is one that “impairs vested rights, affects an accrued substantive right, or imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction.” *Smith v. Smith*, 109 Ohio St.3d 285, 2006-Ohio-2419, at ¶6. (Internal citation omitted.) A statute that applies retroactively and that is substantive violates Section 28, Article II of the Ohio Constitution. Id. (Internal citation omitted.)

A review of various provisions in the present version of R.C. Chapter 2950 confirms that the General Assembly has indicated that offenders who were classified under the prior version of the scheme are obligated to comply with the new requirements. (See p. 30, supra). See, also, R.C. 2950.03 and 2950.033(A). Therefore, since the first prong of the test for the retroactive application of a statute has been met, the analysis must focus on whether the provisions should be characterized as substantive or remedial.

And because Senate Bill 10 has an adverse affect upon Mr. Dehler’s substantive rights and directly attaches new burdens to a past transaction, the retroactive application of Senate Bill 10 is a violation of Ohio’s Retroactivity Clause. The General Assembly has transformed Ohio’s prior, remedial, sex-offender classification and notification system into a form of punishment, thereby affecting Mr. Dehler’s substantive right to due process and the prohibition against double jeopardy. Fifth and Fourteenth Amendments to the United States Constitution; Sections 10 and 16, Article I of the Ohio Constitution. Sex-offender registration, as it functions under Senate Bill 10, is purely punitive and is in fact part of the original sentence. (See Argument II(B)(1), pp. 15-30).

But even if this Court concludes that Senate Bill 10 is not purely punitive, see, e.g., *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824 at ¶¶37-9, it is sufficiently punitive so as to distinguish it from prior, less onerous registration and notification schemes—analysis of the *Kennedy* factors establishes this point. This conclusion is supported most specifically by two legislative decisions: first, the law’s elimination the judicial classification hearing, which this Court previously recognized as being crucial to both the “purpose behind and the credibility of the law,” see *State v. Eppinger* (2001), 91 Ohio St.3d 158, 165, quoted in *Bodyke* at ¶22 fn.5. As this Court has observed, “[o]ne sexually oriented offense is not a clear predictor of whether that person is likely to engage in the future in one or more sexually oriented offenses [and] one sexually oriented conviction, without more, may not predict future behavior.” *Eppinger*, 91 Ohio St.3d at 162.

Second, and most crucially, it is supported by the legislature’s decision to tie classification directly to the offense of conviction. It cannot seriously be argued that a statute that retroactively increases an offender’s “duties and obligations” based solely on the code section of the offense for which the offender was convicted does not “impose new or additional burdens, duties, obligations, or liabilities as to a past transaction.” *Smith* at ¶6, quoting *Bielat v. Bielat* (2000), 87 Ohio St.3d 350, 352-53. So long as the hearing required by *Eppinger* and former law was held, onerous registration and notification requirements could be justified by an offender’s future dangerousness. But once that hearing is eliminated, and the requirements are tied directly to the offense of conviction, it became impossible to argue that Senate Bill 10 does not attach new duties to a past transaction: the original offense of conviction.

Moreover, the punitive nature of the statute is indirectly demonstrated by the most obvious effect of Senate Bill 10: a huge number of offenders who had previously been adjudged

to be at a low risk of recidivism were reclassified as Tier III offenders. Thousands of those offenders filed challenges to their extended registration in Ohio courts. This Court alone has seen hundreds of challenges to the changes in classification and registration. See *In Re Sexual Offender Classification Cases*, 126 Ohio St.3d 322, 2010-Ohio-3753, and *In Re Sexual Offender Classification Cases*, Slip Op. 2010-Ohio-4725. The undeniable difficulties directly caused by those changes—on finances, employment, habitation, and compliance with the requirements—demonstrate that Senate Bill 10 has the effect of impairing the vested rights of those who have been affected by it. Accordingly, retroactive application of Senate Bill 10 violates Section 28, Article II of the Ohio Constitution.

C. Senate Bill 10 violates the Double Jeopardy Clause of the United States Constitution and Section 10, Article I of the Ohio Constitution.

The Double Jeopardy Clause states that no person shall “be subject for the same offence to be twice put in jeopardy of life or limb.” Fifth Amendment to the United States Constitution. See, also, Section 10, Article I, Ohio Constitution. Because Senate Bill 10 is punitive in both its intent and effect, (See Argument II(B)(1), pp. 15-30) the registration and notification requirements operate as a second punishment. As such, Senate Bill 10 violates the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution by unconstitutionally inflicting a second punishment upon a sex offender for a singular offense.

SECOND PROPOSITION OF LAW⁵

Petitioners in Senate Bill 10 classification proceedings are entitled to court-appointed counsel. Sixth and Fourteenth Amendments of the United States Constitution; Section 16, Article I of the Ohio Constitution.

I. Introduction.

As argued above, this Court's decision in *Bodyke* applies to Mr. Dehler. Therefore, no reclassification hearing is necessary or permissible, because this Court severed R.C. 2950.031, which provided individuals the statutory right to contest his or her Senate Bill 10 classification. *State v. Bodyke*, 2010-Ohio-2424, at ¶66. And Senate Bill 10 remains criminal in nature, and may not be retroactively applied to individuals such as Mr. Dehler. Nonetheless, this case presents this Court with the issue as to whether offenders such as Mr. Dehler should receive one of the most fundamental of procedural protections embodied in our Constitution—the right to counsel.

II. Argument.

A. Sex-offender reclassification hearings conducted under the provisions of Senate Bill 10 are criminal proceedings.

By its own terms, the Sixth Amendment applies to “all criminal prosecutions.” In *Gagnon v. Scarpelli* (1973), 411 U.S. 778, 789, the Supreme Court observed that “a criminal trial under our system is an adversary proceeding with its own unique characteristics.” These characteristics generally include the extent to which the proceeding is adversarial, the level of formality attendant to the proceeding, whether the proceeding is presided over by a judicial officer, whether the State is represented by a prosecutor, and the type of sanction imposed at the conclusion of the proceedings. *Id.* at 787-90. Often these factors are weighed against the stated

⁵ This Proposition of Law was presented in Mr. Dehler's MISJ as Proposition of Law IV.

purpose of the proceedings in either statute or administrative regulations. See *Kennedy*, 372 U.S. 144. Thus, the criminal character of a particular proceeding is evidenced in large part by the structure of the proceeding itself.

The Supreme Court engaged in a similar analysis in *In Re Gault* (1967), 387 U.S. 1. In *Gault*, the Court focused on the fact that the juvenile delinquency adjudication bore many indicia of criminal proceedings. See *Gagnon*, 411 U.S. at 789, fn. 12 (acknowledging *Gault*'s reliance on the fact that such proceedings were "functionally akin to a criminal trial"). But in *Gault*, the Court relied most heavily on two factors: the fact that the child was adjudicated delinquent as a result of alleged illegal conduct, and the fact that he could be committed to a state institution upon a finding of delinquency. *Gault*, 387 U.S. at 27. That approach is consistent with the Supreme Court's broader analysis of what constitutes a criminal proceeding, which has focused almost entirely on the punitive nature of the sanction imposed. See *Kennedy*, 372 U.S. 144; *United States v. Ward* (1980), 448 U.S. 242; and *Dept. of Revenue v. Kurth Ranch* (1994), 511 U.S. 767.

Senate Bill 10 is a quintessentially penal statute; therefore, reclassification hearings, like original classification hearings, are criminal proceedings. *Kennedy v. Mendoza-Martinez* sets forth the proper approach for distinguishing between criminal and non-criminal sanctions and proceedings. (See discussion at pp. 22-29, *supra*). Consideration of the *Kennedy* factors with respect to Senate Bill 10 demonstrates that Ohio's sex-offender registration law imposes a punitive sanction, and upon establishing that Senate Bill 10 is criminal in nature, the question then becomes whether a Senate Bill 10 hearing is a critical stage of a criminal proceeding. Mr. Dehler addresses that issue in Part B, below.

B. A Senate Bill 10 reclassification challenge hearing is a critical stage of the criminal proceedings.

As recognized in *Gideon v. Wainwright* (1963), 372 U.S. 335, a criminal defendant has a constitutional right to the assistance of counsel. Sixth and Fourteenth Amendments to the United States Constitution; Section 10, Article I of the Ohio Constitution. The right to counsel is fundamental and must be provided to any defendant who stands in jeopardy of life or liberty regardless of his or her financial means. *Johnson v. Zerbst* (1938), 304 U.S. 458, 462-63 .

The right to counsel is not confined to representation during the trial on the merits. *Moore v. Michigan* (1957), 355 U.S. 155, 160. Rather, the defendant has the right to have counsel present during all critical stages of an adversarial encounter with the government. *Mempa v. Rhay* (1967), 389 U.S. 128, 135. See also *Estelle v. Smith* (1981), 451 U.S. 454, 469. The Supreme Court has held that the time of sentencing is a critical stage in a criminal case, and counsel's presence is therefore necessary. *Mempa v. Rhay*, 389 U.S. at 135 ("the necessity for the aid of counsel in marshaling the facts, introducing evidence of mitigating circumstances and in general aiding and assisting the defendant to present his case as to sentence is apparent"). Following *Mempa*, the Supreme Court further defined the term "critical stage of the proceeding," focusing in large part on the historical purpose and meaning of the Sixth Amendment right to counsel.

For example, in *United States v. Ash* (1973), 413 U.S. 300, the Court decided that a pretrial photographic identification was not a critical stage of a criminal proceeding. In *Ash*, the Court specifically identified two historical developments that were critical in the genesis of the Sixth Amendment right to counsel. The first was the institution of a professional "public prosecutor." *Id.* at 308. According to the Court, the Framers aimed to correct the imbalance that arises when a lay defendant is pitted against a professional prosecutor. *Id.* The second historical fact identified by the Court in *Ash* was the development of a complex procedural judicial system,

which gave rise to concerns that “an unaided layman had little skill in arguing the law or in coping with an intricate procedural system.” *Id.* at 355. Thus, the right to counsel is primarily, and historically, aimed at “minimiz[ing] the imbalance in the adversary system that otherwise resulted[.]” *Id.* at 307-09. Accord *Gideon*, 372 U.S. at 344-45; *Argersinger v. Hamlin* (1972), 407 U.S. 25, 31; *Powell v. Alabama* (1932), 287 U.S. 45.

Senate Bill 10 classification challenge hearings create many of the same imbalances and dangers that the Framers sought to avoid by enacting the Sixth Amendment. Petitioners are forced to confront a prosecutor (mandated by Senate Bill 10) who is trained in the law, familiar with court procedures, and who handles these types of cases on a daily basis. Cf. *Gagnon v. Scarpelli* (1973), 411 U.S. 778, 789 (probationers are not always entitled to court-appointed counsel at probation revocation hearings because a non-lawyer probation officer represents the state’s interest rather than a prosecutor). Petitioners are required to navigate through a complex procedural process that confuses even learned judges. See, e.g., *Gildersleeve v. State*, 8th Dist. Nos. 91515-91519 and 91521-91532, 2009-Ohio-2031 at ¶56 (citing *In re S.R.B.*, 2nd Dist. No. 08-CA-8, 2008-Ohio-6340, at ¶6) (commenting that “[t]he enactment of the ‘Adam Walsh Act’ by the Ohio legislature, [has] resulted in a confusing array of very poorly worded statutory provisions that require a trial court to constantly refer to the law in effect prior to the enactment of the Adam Walsh Law in order to apply the current law.”). Senate Bill 10 reclassification challenge hearings are complicated proceedings, and both parties require legal representation. The hearing is a petitioner’s sole mechanism to raise challenges to his or her classification, so it must be a meaningful proceeding. Only by providing for the assistance of counsel will this Court ensure the petitioner a meaningful opportunity to assert claims regarding misclassification and relief from community notification, or to assert constitutional challenges to the application of

Senate Bill 10. In light of the dangers facing an unrepresented petitioner, there is no question that the reclassification hearing is a critical stage of the criminal proceeding—particularly given the historical roots of the Sixth Amendment right to counsel. The appointment of counsel is required to correct the substantial imbalance in these proceedings.

C. Petitioners in Senate Bill 10 classification proceedings are entitled to court-appointed counsel under the Fourteenth Amendment's Due Process Clause regardless of the civil or criminal nature of those proceedings.

Senate Bill 10 is a criminal statute, and Mr. Dehler is therefore entitled to appointed counsel by operation of the Sixth Amendment. However, even if Senate Bill 10 were a remedial civil statute, due process demands that Mr. Dehler be provided appointed counsel at his reclassification hearing.

1. In order to achieve the “fundamental fairness” required by the Due Process Clause, indigent petitioners must be afforded the right to appointed counsel at Senate Bill 10 classification hearings.

Due process of law is a necessary and vital component in any civilized system of justice. A due-process analysis consists of “discover[ing] what ‘fundamental fairness’ consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake.” *Lassiter v. Dep’t. of Soc. Serv’s* (1981), 452 U.S. 18, 24. In the instant case, consideration of “relevant precedents” and “assessment of the interests at stake” compel the conclusion that indigent petitioners are entitled—as a matter of due process—to appointed counsel at their reclassification hearings.

In *Lassiter*, the Supreme Court considered whether an indigent parent was entitled to court-appointed counsel in a parental-rights termination case. Ultimately, the Court concluded that there is a presumption against appointed counsel when the litigant does not directly face

confinement, but such a presumption may be rebutted. *Lassiter*, 452 U.S. at 26-27. A litigant may be entitled to counsel, as a matter of due process, but that issue must be decided on a case-by-case basis by weighing the factors set out in *Mathews v. Eldridge* (1970), 424 U.S. 319, those factors being: (1) the private interests at stake; (2) the government's interest; and (3) the risk that the procedures used will lead to erroneous decisions. *Eldridge*, 424 U.S. at 335.

As discussed above, *Gideon* recognized the importance of counsel to ensure the integrity of the adversarial process and the fairness of legal proceedings. And the logic that supports the holding in *Gideon*—that the right to be heard means little without the right to be heard by counsel, and that lawyers are necessities, not luxuries—is often as applicable to civil proceedings as it is to criminal ones. Its logic applies most directly in those proceedings that have a punitive component—where the result of the hearing may be a deprivation of rights or the attachment of duties that make the case similar to a criminal proceeding. Cf. *Kennedy*, 372 U.S. 144 and discussion at pp. 22-29, *supra*.

2. Senate Bill 10 petitioners have an inviolable and absolute right to appointed counsel under the Fourteenth Amendment because they face a loss of personal freedom based upon the outcome of such proceedings.

The United States Supreme Court has recognized an absolute right to appointed counsel in those circumstances in which a litigant faces a loss of personal freedom without consideration of the criminal or civil nature of such proceedings. For example, the Supreme Court has observed that “it is the defendant’s interest in personal freedom, and not simply the special Sixth and Fourteenth Amendments right to counsel in criminal cases, which triggers the right to appointed counsel.” *Lassiter*, 452 U.S. at 25. (Internal citations omitted.) And both the United States Supreme Court and this Court have held that due process requires that counsel be provided at state expense to indigent litigants in certain situations where confinement is not at stake. See,

e.g., *State ex rel. Heller v. Miller* (1980), 61 Ohio St.2d 6, paragraph two of the syllabus (right to counsel in parental termination proceedings); *State ex rel. Cody v. Toner* (1983), 8 Ohio St.3d 22, 24 (right to counsel in paternity proceedings); *Lassiter*, 452 U.S. at 31 (right to counsel in some cases in parental termination proceedings).

Thousands of sex offenders face significantly enhanced reporting obligations under Senate Bill 10. Under Ohio's Megan's Law, sex offenders were predominately classified at the lowest (least restrictive) level. Specifically, adult sex offender classifications were comprised as follows:

- 77% sexually oriented or child-victim offenders (17,356 individuals);
- 2% habitual sex or child-victim offenders without notification (510 individuals);
- 2% habitual sex or child-victim offenders with notification (395 individuals);
- 18% sexual predators or child-victim predators (4115 individuals).⁶

Accordingly, most classified offenders had to register annually for ten years without community notification. See, generally, former R.C. 2950.04, 2950.05, 2950.06, 2950.07. Only 20% of registered adult sex or child-victim offenders under House Bill 180 faced community notification.

⁶ These figures are based on discovery provided by the Ohio Attorney General in *Doe v. Dann*, Case No. 1:08-CV-00220 (N.D. Ohio) and do not include 85 individuals classified as “aggravated sexually oriented offenders.” The Cuyahoga County Public Defender’s Office was counsel for petitioner. See May 4, 2009 Brief of Amici Curiae Cuyahoga County Public Defender et al. In Support of Appellant Roman Chojnacki, Ohio Supreme Court Case Number 2008-0992, pp. 4-5.

The administrative reclassification of sex offenders in accordance with Senate Bill 10 changes this picture dramatically. Under the Senate Bill 10, most adult sex offenders fall under the higher (more restrictive) levels:

- 13% Tier I sex offenders and child-victim offenders (2842);
- 33% Tier II sex offenders and child-victim offenders (7492);
- 54% Tier III sex offenders and child-victim offenders (12,006).⁷

Thus, almost 90% of reclassified sex offenders have to register every 180 days for 25 years or every 90 days for life. See, generally, R.C. 2950.04, 2950.05, 2950.06, 2950.07. These changes also mean that 7,167 reclassified sex offenders are subject to community notification, *for the first time*, as a direct result of their reclassification under Senate Bill 10.⁸

Indeed, for the duration of their reporting period, which has increased for most offenders from ten years to twenty-five years or life, these individuals face a threat of lengthy incarceration for non-compliance. See R.C. 2950.05; *State v. Mitchell*, 1st Dist. App. No. C-080340, 2009-Ohio-1264. Thus, for many petitioners previously classified as “sexually oriented offenders” or “habitual sex offenders,” the threat of incarceration has increased significantly based upon their classification within the Senate Bill 10 tier classification system. This threat to personal liberty, and the risk of incarceration, is sufficient to trigger the right to counsel under the Fourteenth Amendment.

⁷ These figures are based on discovery provided by the Ohio Attorney General in *Doe v. Dann*, Case No. 1:08-CV-00220 (N.D. Ohio) and do not include 890 cases that have been “stayed by Court” or 824 juvenile offenders. The Cuyahoga County Public Defender’s Office was counsel for petitioner. See May 4, 2009 Brief of Amici Curiae Cuyahoga County Public Defender et al. In Support of Appellant Roman Chojnacki, Ohio Supreme Court Case Number 2008-0992, pp. 4-5.

⁸ Figure from discovery provided by the Attorney General in *Doe v. Dann*, Case No. 1:08-CV-00220 (N.D. Ohio).

While petitioners like Mr. Dehler do not necessarily face a new threat of incarceration, because they were also subject to incarceration under Ohio's previous sex-offender laws, this does not change the due-process analysis. In *Vitek v. Jones* (1980), 445 U.S. 480, the Supreme Court considered the due-process rights to be afforded to a state inmate being transferred from prison to a state mental institution. The State argued that the inmate was not entitled to any additional process, because he had been afforded procedural protections at trial and he faced no new threat of confinement. The Supreme Court held that before a state prisoner is involuntarily transferred to a state mental hospital, the Fourteenth Amendment Due Process Clause requires certain procedural protections, including the availability of legal counsel, furnished by the state, if the prisoner is financially unable to furnish his own. *Id.* at 483.

Central to the Court's decision in *Vitek* was the fact that the prisoner was subjected to a major change in the conditions of confinement and faced the stigmatizing consequences attendant to a transfer to a mental hospital. *Id.* at 488. Accordingly, the prisoner had a liberty interest sufficient to trigger the protections of the Fourteenth Amendment. The same result obtains in this case. First, petitioners are subject to a significant change in the terms of their registrations duties, which significantly increases the risk of incarceration. Second, many petitioners who were previously found to have a low risk of future dangerousness have been reclassified and placed in the highest tier level. The stigmatizing consequences of this change and the risk of incarceration require that certain procedural protections, including appointed counsel, be afforded to petitioners.

3. **Senate Bill 10 petitioners are entitled to appointed counsel under the Fourteenth Amendment because the rights involved are significant and the proceedings are complex.**

Even in those cases in which litigants do not face a direct threat to personal liberty, the Due Process Clause may still require the appointment of counsel. In such cases, the courts generally look to the nature and character of the interests involved and consider whether the effectiveness of the hearing may “depend upon the use of skills which the [petitioner] is unlikely to possess.” *Gagnon*, 411 U.S. at 786-87. While there is a presumption against appointed counsel when the litigant does not directly face confinement, that a presumption may be rebutted. *Lassiter*, 452 U.S. at 26-27. Whether or not counsel must be appointed is decided on a case-by-case basis by weighing the factors set out in *Mathews v. Eldridge* (1970), 424 U.S. 319. *Lassiter*, 115 U.S. at 27.

In *Eldridge*, the Supreme Court set out three factors to determine what due process requires in a particular case: (1) the private interests at stake; (2) the government’s interest; and (3) the risk that the procedures used will lead to erroneous decisions. *Eldridge*, 424 U.S. at 335. In the instant case, this Court must “balance these elements against each other, and then set their net weight in the scales against the presumption that there is a right to appointed counsel only where the indigent, if he is unsuccessful, may lose his personal freedom.” *Lassiter*, 452 U.S. at 27.

a. The private interests at stake are substantial.

All Senate Bill 10 petitioners have an interest in ensuring that the statute is applied in a manner that respects their constitutional rights. And even if Senate Bill 10 were constitutionally sound, defendants would have an interest in being properly classified under Senate Bill 10’s tier classification system. The consequences of being placed in the wrong tier are substantial, given the varying obligations placed upon offenders within different tier levels. Moreover, a significant number of offenders are entitled to petition the court to relieve them from community

notification. Any failure to properly contest an individual's classification will result in the waiver of these significant rights. And, when viewed through the prism of *Kennedy v. Mendoza-Martinez* (1963), 372 U.S. 144, 168-169, seem all the more crucial—because the disabilities and duties imposed under Senate Bill 10 are either within the realm of punishment itself or so close to being punishment, the offender's private interest in being free of those disabilities and duties is unquestionable.

b. There is a significant risk of erroneous decisions if counsel is not appointed.

There is a significant risk that erroneous decisions will be rendered in Senate Bill 10 classification hearings if counsel is not provided. People like Mr. Dehler, whose crime occurred before the enactment of Senate Bill 10, have three basic arguments that new sex-offender scheme, in part or in its entirety cannot be applied to them: 1) its retroactive application violates several substantive state and federal constitutional rights; 2) this Court's decision in *State v. Bodyke* applies to them and therefore they are not subject to reclassification procedures; and 3) Senate Bill 10 has been misapplied by the Attorney General in classifying them. Given the breadth and complexity of these issues, appointed counsel is invaluable to avoid the misapplication of a very complex law.

Even for those individuals who successfully navigate the procedural obstacles associated with filing some sort of challenge to their Senate Bill 10 classification, they are unlikely to properly identify and litigate all of the complex legal issues present in their particular case. Every reclassified sex offender could raise numerous complex constitutional arguments regarding the application of Senate Bill 10. Those constitutional issues include claims that the retroactive application of the law violates the Ex Post Facto Clause of the United States Constitution, the Retroactivity Clause of the Ohio Constitution, the Double Jeopardy and Due

Process Clauses of both the United States and Ohio Constitutions, and the constitutional prohibition on cruel and unusual punishment.

Moreover, certain offenders may have additional claims depending on the particular circumstances of their case. For instance, every reclassified sex offender who entered into a plea agreement with the State of Ohio has a claim that the State's reclassification constitutes a breach of contract and a constitutional impairment on the obligation of contracts. Furthermore, all reclassified Tier III sex offenders—at least 7,000 individuals—may claim that they should not be subject to community notification. Indeed, some such individuals have, with the assistance of counsel, successfully raised such arguments. See *Gildersleeve v. State*, 2009-Ohio-2031, at ¶77; *In re S.R.B.*, 2nd Dist. No. 08-CA-8, 2008-Ohio-6340, at ¶6 (describing the enactment of Senate Bill 10 as resulting in “a confusing array of very poorly worded statutory provisions”).

Setting aside the fact that Senate Bill 10 is an incredibly complex law and that the procedure for challenging classification is very vague, the potential challenges to Senate Bill 10 involve nuanced arguments of law that the average defendant is unlikely to understand. The complexity of the legal challenges and the unclear procedural process is further compounded by the fact that the State is represented at these hearings by a skilled legal advocate. Without counsel to advocate his or her cause, it is highly unlikely that a petitioner can adequately protect the substantive and procedural rights associated with a Senate Bill 10 classification challenge.

c. The State's interest is served by appointing counsel.

The final factor to be considered under the *Eldridge* test is the governmental interest at stake. Notably, the State's interest converges in large part with the interests of the petitioners. First, the State's interest favors the accurate classification of offenders in order to ensure that the law is respected and basic fairness prevails. Second, to the extent that Senate Bill 10 is intended

to apprise the public of potentially dangerous offenders, that goal is significantly undercut if the information contained in the database is incorrect. Thus, as it relates to the appointment of counsel, the only countervailing State interest is financial.

Within the *Eldridge* framework, cost is not a “controlling factor,” but the governmental interest in conserving scarce resources is still “a factor that must be weighed.” *Eldridge*, 424 U.S. at 348. But cost alone cannot prevent the State from providing a particular procedural safeguard. *Id.* The precise cost associated with the provision of counsel at Senate Bill 10 reclassification hearings is not known. But it is likely that the erroneous classification of offenders will constitute a greater drain on the State’s resources. The enhanced registration requirements impose a significant financial burden and the State’s fiscal interest may therefore be best served by the provision of counsel.

In total, the *Eldridge* factors weigh in favor of providing counsel to Senate Bill 10 petitioners. Thus, as a matter of fairness and due process, this Court should hold that appointed counsel is required for indigent petitioners at all Senate Bill 10 reclassification hearings.

CONCLUSION

For the foregoing reasons, Mr. Dehler asks this Court to determine that this Court’s decision in *State v. Bodyke*, 2010-Ohio-2424 applies to him. Furthermore, Mr. Dehler asks this Court to determine that Senate Bill 10 is criminal in nature. In the alternative, Mr. Dehler asks this Court to find that he is entitled to court-appointed counsel under the Due Process Clauses of the United States and Ohio Constitutions, regardless of whether those hearings are deemed criminal in nature.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

BY: 

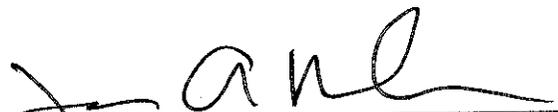
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Merit Brief of Appellant Lambert Dehler** has been sent by regular U.S. mail, postage prepaid, to Deena L. DeVico, Trumbull County Assistant Prosecutor, addressed to her office at Trumbull County Prosecutor's Office, Trumbull County Administration Building, 160 High Street NW, 4th Floor, Warren, Ohio 44481 on this 7th day of October, 2010.



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Assistant State Public Defender
(COUNSEL OF RECORD)

COUNSEL FOR LAMBERT DEHLER

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

v.

LAMBERT DEHLER,

Defendant-Appellant.

:

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:

:

:

Case No. 2009-1974

On Appeal from the Trumbull
County Court of Appeals
Eleventh Appellate District

Court of Appeals

Case No. 2008-T-0061

APPENDIX TO

MERIT BRIEF FOR APPELLANT LAMBERT DEHLER

ORIGINAL

IN THE SUPREME COURT OF OHIO

09-1974

STATE OF OHIO,
Appellee,

-vs-

Lambert Dehler,
Petitioner-Appellant.

) Case No. _____
) On Appeal from the Trumbull
) County Court of Appeals,
) Eleventh Appellate District

) Court of Appeals
) Case No. 2008-T-0061

NOTICE OF APPEAL OF APPELLANT LAMBERT DEHLER

Lambert Dehler, #273-819
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Counsel for Petitioner-Appellant, *pro se*

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COUNSEL FOR APPELLEE, STATE OF OHIO

RECEIVED
OCT 29 2009
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FILED
OCT 29 2009
CLERK OF COURT
SUPREME COURT OF OHIO

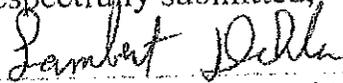
Notice of Appeal of Appellant Lambert Dehler

Appellant Lambert Dehler hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Trumbull County Court of Appeals, Eleventh Appellate District, entered in Court of Appeals case No. 2008-T-0061 on September 28, 2009.

This case involves a felony, and is a claimed direct appeal as a matter of right.

A timely Motion to Certify a Conflict was filed in the court of appeals on October 6, 2009, and is still pending.

Respectfully submitted,



Lambert Dehler, #273-819

Trumbull Correctional Institution

PO Box 901

Leavittsburg, OH 44430-0901

COUNSEL FOR APPELLANT, *PRO SE*

Certificate of Service

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to counsel for appellee, Deena L. DeVico, at 160 High Street, N.W., 4th Floor, Warren, OH, 44481 on this 24th day of October, 2009.



Lambert Dehler, #273-819

COUNSEL FOR APPELLANT, *PRO SE*

2009-ohio-5059

FILED
COURT OF APPEALS

SEP 28 2009

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO

STATE OF OHIO, : OPINION
Respondent-Appellee, :
- vs - : CASE NO. 2008-T-0061
LAMBERT DEHLER, :
Petitioner-Appellant. :

Civil Appeal from the Court of Common Pleas, Case No. 2008 CV 402.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *Deena L. DeVico*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Respondent-Appellee).

Lambert Dehler, pro se, PID: 273-819, Trumbull Correctional Institution, P.O. Box 901, Leavittsburg, OH 44430-0901 (Petitioner-Appellant).

MARY JANE TRAPP, P.J.

~~¶1~~ Mr. Lambert Dehler appeals from the trial court's grant of summary judgment in favor of the state, finding that he was properly classified as a Tier III offender based upon his convictions of two counts of rape and gross sexual imposition, as well as its finding that the new Sexual Offender Registration and Notification Act (SORN or the "Act"), R.C. Chapter 2950 (also known as Senate Bill 10, Ohio's version of the Adam Walsh Act or AWA) is constitutional.

Exhibit A

2

{¶2} We affirm, determining that Mr. Dehler was properly classified, that his classification and duty to register arose by operation of law solely by virtue of his convictions of rape and gross sexual imposition, and that when viewed through the prism of prior precedent set by a superior court, the new sexual offender registration provisions challenged by Mr. Dehler are constitutional.

{¶3} Substantive and Procedural History

{¶4} In 1992, a jury found Mr. Dehler guilty of two counts of rape and two counts of gross sexual imposition. Mr. Dehler was then sentenced to concurrently serve seven to 25 years on each count of rape; and to serve two consecutive terms of 18 months on each count of gross sexual imposition concurrently to the rape sentences.

{¶5} Mr. Dehler, who remains incarcerated, was notified of his new classification as a Tier III offender by the Attorney General on January 7, 2008. The notice informed Mr. Dehler that his classification and registration duties upon release will change due to the newly enacted R.C. Chapter 2950 SORN provisions. He was also notified of his new duties to register and his right to contest the application of the classification and requirements.

{¶6} Mr. Dehler timely filed his petition to contest the classification, and several days later filed a request for a second hearing, as well as other motions. Through these filings Mr. Dehler raised numerous arguments. Among them was an argument that the state was barred from classifying him as a sex offender because he had never been classified under prior versions of Ohio's sexual offender registration law. Thus, Mr. Dehler argued that the state was barred from classifying him as a sex offender due to the affirmative defenses of collateral estoppel, res judicata, and laches. He also

asserted that the Department of Rehabilitation and Correction ("DRC") "lost jurisdiction" after December 1, 2007, to serve written notice of the new registration and classification duties, and that inasmuch as his notice was served on January 1, 2008, and there is no statutory provision for late service, he is not subject to the Act. He further alleged double jeopardy, ex post facto, and separation of powers violations.

{¶7} The state did not file an answer brief opposing Mr. Dehler's motion for summary judgment, but filed its own motion for summary judgment, arguing that Mr. Dehler was properly classified as a Tier III offender because he committed rape, and that the new Act is constitutional.

{¶8} Before the trial court were Mr. Dehler's request for a hearing on the reclassification, both parties' motions for summary judgment, Mr. Dehler's motion for the immediate appointment of counsel, and Mr. Dehler's motion to dismiss the state's motion for summary judgment.

{¶9} The court found the new sex offender classification scheme was constitutional, and that Mr. Dehler was properly classified as a Tier III offender. The court denied Mr. Dehler's motions, including his request for an oral hearing. Finding no genuine issues of material fact remained for determination, the court granted the state's motion for summary judgment.

{¶10} Mr. Dehler timely appealed, raising five assignments of error:

{¶11} "[1.] The trial court erred by not granting Petitioner's Motion for Summary Judgment because the Department of Rehabilitation and Correction lost jurisdiction to distribute to adult prison inmates the Notice of New Classification and Registration Duties after December 1, 2007.

{¶12} “[2.] The trial court erred by not granting a hearing pursuant to R.C. 2950.032(E).

{¶13} “[3.] The trial court erred when it failed to provide the mandatory hearing under R.C. 2950.11(F)(2).

{¶14} “[4.] The trial court erred when it denied the appointment of counsel because the Petitioner filed timely requests for counsel under the Adam Walsh Act.

{¶15} “[5.] The Adam Walsh Act (AWA) amendments to R.C. 2950.01 et seq., do not apply to the Defendant because he was sentenced in 1992 and the state previously declined to avail itself of the prior law (“Megan’s Law”) and the current application of the AWA violates the doctrine of laches, res judicata, Clause I, Section 10, Article I, of the United States Constitution as ex post facto legislation, and violates Section 28, Article II, of the Ohio Constitution as retroactive legislation, and further violates R.C. 1.48 and 1.58, et. seq.”

{¶16} Senate Bill 10 and the New SORN Act Provisions

{¶17} “Ohio’s new sexual offender law was adopted by the Ohio General Assembly in Senate Bill 10. The legislation was enacted so that the state law would be consistent with the federal Adam Walsh Child Protection and Safety Act of 1996.

{¶18} “Prior to Senate Bill 10, when a defendant was found guilty of a sexually oriented offense, he could be classified as a sexually oriented offender, a habitual sex offender, or a sexual predator. The prior statutory scheme provided that a defendant’s designation under the three categories would be predicated upon the nature of the underlying offense and findings of fact made by the trial court during a sexual classification hearing.

{¶19} "Under the new legislation, those three labels are no longer applicable. Instead, a defendant who has committed a sexually oriented offense can only be designated as either a sex offender or a child victim offender. There are now three tiers of sexual offenders. The extent of the defendant's registration and notification requirements will depend on the tier. Furthermore, the placement in a tier turns solely on the crime committed.

{¶20} "Another change of the sexual offender classification system implemented under the new law concerns the duration of the registration and notification requirements for the sex offenders. Prior to Senate Bill 10, if a defendant was deemed a sexually oriented offender, he was required to register once each year for a period of 10 years, but there was no notification requirement; if he was labeled as a habitual sex offender, he had to register once every six months for 20 years, and the community could be given notice of his presence at the same rate; and, if he was designated a sexual predator, the duty to register was once every three months for life, and notification could also take place at the same rate for life.

{¶21} "Under the new statutory scheme set forth in current R.C. Chapter 2950, the registration and community notification requirements are increased for sex offenders. If the defendant's sexual offense places him in the 'Tier I' category, he is required to register once every year for a period of 15 years, but there is no community notification; if the defendant's offense falls under the 'Tier II' category, registration must take place once every six months for 25 years, and there is still no notification requirement; and, if the sexual offense places the defendant in the 'Tier III' category, the requirements are essentially the same as for a sexual predator, in that there is a duty to

register once every three months for life, and community notification can occur at that same rate for life. Community notification under the new scheme requires the sheriff to give the notice of an offender's name, address, and conviction to all residents, schools, and day care centers within 1,000 feet of the offender's residence. The new law also prohibits all sex offenders from residing within 1,000 feet of a school or day care center. These registration and notification requirements under the Adam Walsh Act are retroactive and applicable to offenders whose crimes were committed before the effective date of the statute." *State v. Charette*, 11th Dist. No. 2008-L-069, 2009-Ohio-2952, ¶¶7-11.

{¶22} In Mr. Dehler's case, he is automatically classified as a Tier III offender because rape is a Tier III offense. See R.C. 2950.01(G)(1)(a).

{¶23} **Summary Judgment Standard of Review**

{¶24} Mr. Dehler first contends that the trial court erred in granting summary judgment to the state because the DRC "lost jurisdiction" to give inmates the Notice of New Classification and Registration Duties after December 1, 2007. He asserts that as there is no question he received his notice on January 8, 2007, he is entitled to a judgment as a matter of law that he is not subject to the new classification.

{¶25} "Pursuant to Civ.R. 56(C), summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Welch v. Zicarelli*, 11th Dist. No. 2006-L-229, 2007-Ohio-4374, ¶36, citing *Holik v. Richards*, 11th Dist. No. 2005-A-0006, 2006-Ohio-2644, ¶12, citing *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. "In addition, it must appear from the evidence and stipulations that reasonable minds can come to only one conclusion,

which is adverse to the nonmoving party.” *Id.*, citing Civ.R. 56(C). “Further, the standard in which we review the granting of a motion for summary judgment is *de novo*.” *Id.*, citing *Holik* at 293, citing *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105.

{¶26} “Accordingly, [s]ummary judgment may not be granted until the moving party sufficiently demonstrates the absence of a genuine issue of material fact. The moving party bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party’s claim.” *Id.* at ¶37, citing *Brunstetter v. Keating*, 11th Dist. No. 2002-T-0057, 2003-Ohio-3270, ¶12, citing *Dresher* at 292. “Once the moving party meets the initial burden, the nonmoving party must then set forth specific facts demonstrating that a genuine issue of material fact does exist that must be preserved for trial, and if the nonmoving party does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party.” *Id.*, citing *Brunstetter*, citing *Dresher* at 293.

{¶27} “Since summary judgment denies the party his or her ‘day in court’ it is not to be viewed lightly as docket control or as a ‘little trial.’ The jurisprudence of summary judgment standards has placed burdens on both the moving and the nonmoving party. In *Dresher v. Burt*, the Supreme Court of Ohio held that the moving party seeking summary judgment bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record before the trial court that demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party’s claim. The evidence must be in the record or the motion cannot succeed. The moving party cannot discharge its initial burden under Civ.R. 56 simply

by making a conclusory assertion that the nonmoving party has no evidence to prove its case but must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) that affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. If the moving party has satisfied its initial burden, the nonmoving party has a reciprocal burden outlined in the last sentence of Civ.R. 56(E) to set forth specific facts showing there is a genuine issue for trial. If the nonmoving party fails to do so, summary judgment, if appropriate shall be entered against the nonmoving party based on the principles that have been firmly established in Ohio for quite some time in *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112.

{¶28} "The court in *Dresher* went on to say that paragraph three of the syllabus in *Wing v. Anchor Media, Ltd. of Texas* (1991), 59 Ohio St.3d 108, is too broad and fails to account for the burden Civ.R. 56 places upon a moving party. The court, therefore, limited paragraph three of the syllabus in *Wing* to bring it into conformity with *Mitseff*." *Id.* at ¶40-41.

{¶29} Thus, in *Dresher*, the Supreme Court of Ohio held that "when neither the moving nor nonmoving party provides evidentiary materials demonstrating that there are no material facts in dispute, the moving party is not entitled to a judgment as a matter of law as the moving party bears the initial responsibility of informing the trial court of the basis for the motion, and 'identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim.'" *Id.* at ¶42, citing *Dresher* at 276.

{¶30} Specifically, Mr. Dehler contends that the trial court erred in granting the state's motion for summary judgment because pursuant to R.C. 2950.032(A)(2), the DRC was required to notify offenders of their new reclassification and registration duties by December 1, 2007. His theory on summary judgment is that he is entitled to judgment as a matter of law as he is not subject to the Act because the DRC was without "jurisdiction" to serve him with notice after December 1, 2007. He also contends that the state waived any defense to this argument because the state did not file an answer brief in opposition to his motion for summary judgment. Rather, the state filed its own motion for summary judgment presenting three grounds.

{¶31} The state argued that as a matter of law there is no factual dispute as to classification based upon Mr. Dehler's rape conviction. The state also argued that Mr. Dehler's constitutional arguments are not properly raised within the rubric of a R.C. 2950.031(E) and R.C. 2950.032(E) hearing. Thirdly, the state argued that assuming the constitutional challenge was properly before the court, the Act is presumptively constitutional and Mr. Dehler cannot meet his burden of proof.

{¶32} On April 8, 2008, the court set a non-oral hearing date of May 30, 2008, for the summary judgment motion. Upon the submitted briefs and evidentiary materials, the court found there was no genuine issue of material fact in that Mr. Dehler was properly notified and classified. Thus, the court granted the state's motion for summary judgment and denied the relief sought in Mr. Dehler's various motions.

{¶33} We agree with the trial court that there is no genuine issue of material fact remaining for determination, and we determine that the court properly granted the state's motion for summary judgment.

{¶34} Mr. Dehler had never been classified as a sex offender, but his status as a Tier III offender arose by operation of law when he was convicted of rape in 1992. Furthermore, he received timely notice of his classification and duties to register under the new Act pursuant to R.C. 2950.03.

{¶35} Timeliness of Receipt of Notice

{¶36} Mr. Dehler is correct in his assertion that pursuant to R.C. 2950.032, the Attorney General was required to determine the offender's classification relative to the offender's offense between July 1, 2007 and December 1, 2007. See R.C. 2950.032(A)(1).

{¶37} Further, pursuant to R.C. 2950.032(A)(2), the DRC was required to provide written notice between July 1, 2007 and December 1, 2007, to all such offenders, *except that "[t]he department *** [is] not required to provide the written notice to an offender *** if the attorney general included in the document provided to the particular department *** notice that the attorney general will be sending that offender *** a registered letter and that the department is not required to provide to that offender *** the written notice."* (Emphasis added.)

{¶38} It is axiomatic that statutes in pari materia are to be construed together; thus R.C. 2950.032 must be read in conjunction with the primary notice to offender statute, R.C. 2950.03.

{¶39} R.C. 2950.03(A)(1), notice to offender of duty to register, provides in relevant part:

{¶40} "Regardless of when the person committed the sexually oriented offense *** , if the person is an offender who is sentenced to a prison term, a term of

imprisonment, or any other type of confinement for any offense, and *if on or after January 1, 2008, the offender is serving that term*, *** the official in charge of the jail, workhouse, state correctional institution, or other institution in which the offender serves the prison term, ***, shall provide the notice to the offender *before the offender is released* ***." (Emphasis added.)

{¶41} While the statutory language is a tad convoluted, Mr. Dehler's argument that the provision of the new Act cannot apply to him because he received his notice after December 1, 2007, must fail because he remains incarcerated. None of his rights have been abused. His classification under either the old sex offender registration framework or the newly enacted one arose by operation of law, and the failure to classify Mr. Dehler and notify him of his classification and registration duties would be a failure only if it occurred after his release.

{¶42} Mr. Dehler's "Notice of New Classification and Registration Duties" is a part of our record. He received the notice on January 7, 2008. The notice was dated November 30, 2007, thus it is clear that the Attorney General made the determination that Mr. Dehler was a Tier III offender on that date. The notice was then timely provided, pursuant to R.C. 2950.03(A)(1), which clearly states that regardless of when the sexually oriented offense was committed and if, on or after January 1, 2008, the offender is incarcerated for that offense, notice shall be provided before the offender is released.

{¶43} This statutory interpretation is further reinforced by a reading of R.C. 2950.033, which applies to offenders whose duties to register are scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008.

{¶44} R.C. 2950.033(A)(5) states in relevant part:

{¶45} "If the offender *** is in a category described in division (A)(1)(a) of section R.C. 2950.032 *** but does not receive a notice from the department of rehabilitation and correction *** pursuant to (A)(2) of that section, *notwithstanding the failure of the offender *** to receive the registered letter or the notice, the offender's *** duty to comply with Sections R.C. 2950.04, 2950.041, 2950.05, and 2950.06 shall continue in accordance with, and for the duration specified in, the provisions of Chapter 2950 of the Revised Code as they will exist under the changes to the provisions that will be implemented on January 1, 2008.*" (Emphasis added.)

{¶46} Thus, even those offenders who did not receive notice between July 1, 2007 and December 1, 2007, and whose duties were set to expire during that time period, are still expected to comply with the new Act. Regardless of whether those offenders received timely notice, their duties have been extended pursuant to the Act.

{¶47} As Mr. Dehler received his notice on January 7, 2008, and is still incarcerated for the 1992 conviction for rape and gross sexual imposition, we fail to see how he is relieved of the mandatory requirements of the Act. Indeed, even offenders whose duties were set to expire, and who did not receive timely notice, are expected to comply.

{¶48} Mr. Dehler's first assignment of error is without merit.

{¶49} **Right to a Hearing Pursuant to R.C. 2950.032(E)**

{¶50} Mr. Dehler next contends that he was entitled to a hearing pursuant to R.C. 2950.032(E). This contention is wholly without merit as the court did hold a hearing, albeit on the motions, briefs, and evidentiary materials supplied by the parties.

Nothing in R.C. 2950.032(E) requires the court to hold an oral hearing upon the petitioner's request for a reclassification hearing.

{¶51} Pursuant to R.C. 2950.031(E), “*** [i]n any hearing under this division, the *Rules of Civil Procedure* *** apply. *** The court shall schedule a hearing, and shall provide notice to the offender *** and prosecutor of the date, time, and place of the hearing.”

{¶52} Firstly, the docket reflects that the court sent proper notice on April 8, 2008, and that a hearing was scheduled for May 30, 2008, on Mr. Dehler's motion for summary judgment.

{¶53} Secondly, Civ.R. 7(B)(2) provides: “To expedite its business, the court may make provision by rule or order for the submission and determination of motion without oral hearing upon brief written statements of reasons in support and opposition.” As the state properly notes, Local Rule 9.06 of the Trumbull County Court of Common Pleas provides that “[e]very motion shall state its nature with specificity, and be submitted and determined upon the papers hereinafter referenced. *Oral argument of motions may be permitted on application and proper showing.* ***.” (Emphasis added.)

{¶54} Thirdly, nothing in Civ.R. 56 requires the court to hold an oral hearing. “[A] trial court is not required to set or hold a hearing prior to ruling on a motion for summary judgment. Rather, the non-moving party is entitled simply to sufficient notice of the filing of the motion [pursuant to] Civ.R. 5, and an adequate opportunity to respond [pursuant to] Civ.R. 56(C).” *Marino v. Oriana House, Inc.*, 9th Dist. No. 23389, 2007-Ohio-1823, ¶12. (Citations omitted.)

{¶55} This is not a case where the court must determine at an evidentiary hearing whether Mr. Dehler was properly classified. Having been convicted on two counts of rape in violation of R.C. 2907.02, as well as two counts of gross sexual imposition in violation of 2907.04, his classification as a Tier III offender automatically arose by operation of law. That is because the determination of the tier turns solely upon the offense committed. Mr. Dehler does not claim that his offenses place him in another tier. Thus, there exists no genuine issue of material fact as to his proper classification.

{¶56} Pursuant to R.C. 2950.01(G)(1)(a), a Tier III sex offender means:

{¶57} ****

{¶58} "A violation of section 2907.02 or 2907.03 of the Revised Code."

{¶59} It makes no difference whether the offender committed the crime with an underage victim, a sexual motivation, or violence. In other words, the trial court need not make any of the determinations that must be made in order to classify an offender as a Tier III offender who has been convicted of other sexual offenses, such as gross sexual imposition, but which are heightened due to the offender's actions or the context of the crime, such as the age of the victim, violations of other laws, sexual motivation, violence, and conspiracy. See R.C. 2950.01(G)(1)(a)-(i).

{¶60} The very fact that Mr. Dehler was convicted on two counts of rape automatically classifies him as a Tier III offender. Once the court determines that the crime fits the tier, nothing remains to be decided. The need for an evidentiary hearing is obviated and summary judgment is appropriately granted.

{¶61} Mr. Dehler's second assignment of error is without merit.

{¶62} Right to a Hearing Pursuant to R.C. 2950.11(F)(2)

{¶63} In his third assignment of error, Mr. Dehler contends that the trial court erred by failing to hold a mandatory hearing pursuant to R.C. 2950.11(F)(2). R.C. 2950.11(F)(2), unlike R.C. 2950.03(E), does not mandate a hearing. Rather, a plain reading of the statute reveals the trial court's decision to hold a hearing is discretionary. Thus, Mr. Dehler's contention is without merit.

{¶64} Specifically, R.C. 2950.11(F)(2) outlines the factors a court must consider if it holds a hearing. Thus, it provides that the community notification provisions of R.C. 2950.11 do not apply if, after considering the eleven factors of R.C. 2950.11(F)(2)(a)-(k), the court determines that the offender would not have been subject to the notification provisions of former R.C. 2950.11.

{¶65} The right to a hearing is clearly discretionary under R.C. 2950.11. The relevant portion of R.C. 2950.11 is located in R.C. 2950.11(H)(1), which states "[u]pon the motion of the offender or the prosecuting attorney *** 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. ***." (Emphasis added.)

{¶66} Thus, it is within the court's discretion to hold a hearing pursuant to R.C. 2950.11 to determine whether community notifications for certain offenders should be considered, and further, the court may dismiss the motion without holding a hearing. The court may not, however, issue an order suspending the community notification requirements without holding a hearing and considering all the relevant factors.

{¶67} In either case, the court dismissed Mr. Dehler's motion for a hearing pursuant to R.C. 2950.11, after finding that there was no error in his classification upon a review of Mr. Dehler's various motions and the state's motion for summary judgment. The court properly found there were no genuine material issues of fact as Mr. Dehler was properly classified pursuant to the new provisions of the Act. The court, quite simply, was not required to hold a hearing pursuant to R.C. 2950.11(F)(2), and upon dismissal, was not required to issue findings of fact. We find no abuse of discretion in the trial court's denial of the request for a hearing.

{¶68} Mr. Dehler's third assignment of error is without merit.

{¶69} Right to Counsel Pursuant to the Adam Walsh Act

{¶70} In his fourth assignment of error, Mr. Dehler contends that he was denied an appointment of counsel, which he timely requested pursuant to the new Act, and that he is entitled to such counsel pursuant to R.C. 120.16, Ohio Atty. Gen. Ops. No. 99-031, and R.C. 2950.11(F)(2). Mr. Dehler's contentions are without merit as he cites to authorities that were in effect under the former provisions which contained a statutory right to appointed counsel.

{¶71} Although former R.C. 2950.09(B)(1) contained a statutory right to counsel, there is no such right under the new Act. Rather, a review of Senate Bill 10 reveals the legislature intended sex offender reclassification hearings to be purely civil and non-punitive in nature; and, most fundamentally, eliminated the statutory right to counsel that was contained in former R.C. 2950.09. Thus, Mr. Dehler's contentions are without merit.

{¶72} We note at the outset that other districts confronted with this issue have similarly found that there is no right to counsel under the new Act. *State v. King*, 2d Dist. No. 08-CA-02, 2008-Ohio-2594, ¶35; *State v. Linville*, 4th Dist. No. 08CA3051, 2009-Ohio-313, ¶17. The General Assembly eliminated the statutory provision for the right to counsel in enacting the new Act, and the Supreme Court of Ohio, in interpreting former R.C. Chapter 2950, has been clear that these proceedings are constitutional, civil, and non-punitive in nature. See *State v. Cook* (1998), 83 Ohio St.3d 404, 413 and *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202 (Lanzinger J., concurring in part and dissenting in part.)

{¶73} “[L]itigants have no generalized right to appointed counsel in civil actions.” *Linville* at ¶14, quoting *Graham v. City of Findlay Police Dept.*, 3d Dist. No. 5-01-32, 2002-Ohio-1215, citing *State ex rel. Jenkins v. Stern* (1987), 33 Ohio St.3d 108; *Roth v. Roth* (1989), 65 Ohio App.3d 768.

{¶74} Thus, Mr. Dehler would only be entitled to counsel if it was statutorily provided or if there was an infringement of his substantial liberty interest or vested right. As succinctly stated by Judge Fain in his concurring opinion in *State v. King*, “[i]ncarceration is not one of the possible outcomes that may result from the proceeding for which [he] seeks the appointment of counsel, and, therefore [he] is not entitled to the appointment of counsel at the State’s expense.” *Id.* at ¶36.

{¶75} Pursuant to R.C. 120.16(A)(1), representation is provided to “indigent adults *** who are charged with the commission of an offense or act that is a violation of a state statute and for which the penalty or any possible adjudication includes the potential loss of liberty ***.”

{¶76} R.C. 120.16, however, is concerned with criminal matters, and the Supreme Court of Ohio has been clear the sexual offender classification and notification provisions, although located in Ohio's criminal code, are civil in nature. See *Cook and Wilson*.

{¶77} More fundamentally, Mr. Dehler has not been deprived of a substantial liberty by being classified as a Tier III sex offender. The Supreme Court of Ohio succinctly stated in *Cook* that "except with regard to constitutional protections against ex post facto laws *** felons have no reasonable right to expect that their conduct will never thereafter be made the subject of legislation." *Id.* at 412, quoting *State ex rel. Matz v. Brown* (1988), 37 Ohio St.3d 279, 281-282. (Emphasis added.) This is so because "where no vested right has been created, 'a later enactment will not burden or attach a new disability to a past transaction or consideration in the constitutional sense, unless the past transaction or consideration created at least a reasonable expectation of finality.'" *Id.*, quoting *Matz* at 281.

{¶78} Ohio has had a sex offender registration statute in effect since 1963. See *Cook* at 406. Further, the "harsh consequences [of] classification and community notification *** come not as a direct result of the sexual offender law, but instead as a direct societal consequence of [the offender's] past actions." *Id.* at 413, quoting *State v. Lyttle* (Dec. 22, 1997), 12th Dist. No. CA97-03-060, 1997 Ohio App. LEXIS 5705.

{¶79} "As a result, convicted sex offenders 'have no reasonable expectation that [their] criminal conduct would not be subject to future versions of R.C. Chapter 2950.'" *Linville* at ¶16, quoting *King* at ¶33. Thus, because Mr. Dehler has no settled

expectation regarding his registration obligations, he has not been deprived of any liberty interest.

{¶80} Mr. Dehler further argues that pursuant to R.C. 2950.11(F)(2), he is entitled to appointed counsel because counsel is necessary "to allow petitioner to present evidence of at least 11 factors which would have shown that he would not have been subject to notification provisions under the prior law." This argument is simply without merit. As we noted in Mr. Dehler's third assignment of error, there is no mandatory right to a hearing pursuant to R.C. 2950.11(F)(2).

{¶81} While R.C. 2950.11(F)(2) allows the court to hold a hearing on the notification provisions, notably absent is a provision providing for a statutory right to counsel at the hearing. This statute simply lists eleven factors the court is required to consider in determining whether "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. ***."

{¶82} Mr. Dehler is correct that former R.C. 2950.09 provided a statutory right to counsel to determine whether an offender was a sexual predator under the former classification scheme. Former R.C. 2950.09, however, has since been repealed under the new Act, and again, notably absent in the new provisions is the former statutorily created right to counsel. Further, the court no longer makes a determination as to the offender's classification, but rather the classification is now automatic based on the offender's crime.

{¶83} As Mr. Dehler has no right to appointed counsel, statutory or otherwise, his fourth assignment of error is without merit.

{¶84} The New Act is Constitutional

{¶85} In his final assignment of error, Mr. Dehler contends that the new Act is not applicable to him because he was sentenced in 1992 and was never classified; thus, the application of the current law as applied to him violates the "doctrines of laches; res judicata; Clause I, Section 10, Article I of the United States Constitution as ex post facto legislation; violates Section 28, Article II of the of the Ohio Constitution as retroactive legislation, and further violates R.C. 1.48 and 1.58, et. seq."

{¶86} First, the fact that Mr. Dehler has never been classified as a sex offender under the old sex offender classification scheme is of no consequence so long as he is classified prior to his release from confinement.

{¶87} In *State v. Brewer* (1999), 86 Ohio St.3d 160, the Supreme Court of Ohio reviewed the version of R.C. 2950.03 then in effect, which required "that the offender be provided with notice, including information regarding registration duties, and including a statement as to whether the offender has been adjudicated as being a sexual predator. *** This notice must be provided by the appropriate official 'at least ten days before the offender is released.'" Id. at 165, citing former R.C. 2950.03(A)(1). Thus, even under the former scheme of R.C. Chapter 2950, classification was proper as long as it occurred prior to the offender's release. As Mr. Dehler is currently still incarcerated, he may now for the first time be classified.

{¶88} Furthermore, under the new scheme, sex offender hearings prior to classification no longer exist. "S.B. 10 abolished prior sex offender classifications in former R.C. Chapter 2950. *State v. Williams*, 12th Dist. No. CA2008-02-029, 2008-Ohio-6195, ¶15. Designations like 'sexual predator' no longer exist, nor do sex offender

hearings under the former law. *Williams* at ¶15. Now, under S.B. 10, an offender who commits a sex offense is classified as either a sex offender or a child-victim offender. *Williams* at ¶16. Depending on the sex offense committed, the offender is placed in Tier I, Tier II, or Tier III. *Id.* Trial courts no longer have discretion in imposing a certain classification on offenders, and the offender's likelihood to reoffend is no longer considered. *Id.* Rather, offenders are now classified solely on the offense for which they were convicted. *Id.* As an exception, offenders are automatically placed in a higher tier if (1) they have a prior conviction for a sexually-oriented or child victim-oriented offense, or (2) they have been previously classified as sexual predators. *Id.*" *State v. Gilfillan*, 10th Dist. No. 08AP-317, 2009-Ohio-1104, ¶110.

{¶89} "Each tier under S.B. 10 has registration requirements, but they differ in terms of the duration of the duty and the frequency of the in-person address verification." *Gilfillan* at ¶111, citing *Williams* at ¶18. Mr. Dehler is a Tier III offender because rape is a Tier III offense. *Id.*, citing R.C. 2950.01(G)(1)(a). As such, "Tier III offenders are required to register for life and to verify their addresses every 90 days; community notification may occur every 90 days for life." *Id.*, citing *Williams* at ¶18.

{¶90} Second, as to the constitutional challenges Mr. Dehler raises, the Supreme Court of Ohio considered these challenges under the former sex offender statutes and determined that because a convicted felon has no reasonable expectation that his or her criminal conduct will not be subject to further legislation, the former version of R.C. Chapter 2950 could be applied to sex offenders who committed their crimes before the legislation took effect. *King* at ¶33, citing *Cook* at 412. Similarly here,

Mr. Dehler could have no reasonable expectation that his criminal conduct would not be subject to future versions of R.C. 2950.

{¶91} As the Second Appellate District noted in *King*: “[i]ndeed, *Cook* indicates that convicted sex offenders have no reasonable ‘settled expectations’ or vested rights concerning the registration obligations imposed on them. If the rule were otherwise, the initial version of R.C. Chapter 2950 could not have been applied retroactively in the first place.” *Id.* at ¶33.

{¶92} Therefore, as to Mr. Dehler’s constitutional challenges of the new Act, we find they are without merit, as we and other districts have recently determined these new provisions, while they may make the registration requirements more onerous and burdensome, do not violate any constitutional rights of offenders.

{¶93} In our recent decision, *State v. Swank*, 11th Dist. No. 2008-L-019, 2008-Ohio-6059, we found that the newly enacted provisions of the Act withstood constitutional challenges with respect to ex post facto, retroactivity, due process, and separation of powers claims. We determined that the newly enacted legislation was civil, remedial, and non-punitive in nature, and although the registration and notification provisions are now heightened depending on the classification of the offender, we determined that based on the prior decisions of the Supreme Court of Ohio in *Cook* and *Wilson*, these provisions were de minimis procedural requirements.¹ See, also,

1. We note, however, as we did in *Charette*, that the Supreme Court of Ohio has become more divided on the issue of whether the registration and notification statute has evolved from a remedial and civil statute into a punitive one. As Justice Lanzinger stated in her concurring in part and dissenting in part opinion in *Wilson*: “I do not believe that we can continue to label these proceedings as civil in nature. These restraints on liberty are the consequences of specific criminal convictions and should be recognized as part of the punishment that is imposed as a result of the offender’s actions.” See, also, *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824 (Lanzinger, J., dissenting). We believe Senate Bill 10 merits review by the Supreme Court of Ohio to address the issue of whether the current version of R.C.

Charette; Gilfillan at ¶109-119; *Sewell v. State*, 1st Dist. No. C-080503, 2009-Ohio-872; *State v. Sewell*, 4th Dist. No. 08CA3042, 2009-Ohio-594, *State v. Desbiens*, 2d Dist. No. 22489, 2008-Ohio-3375.

{¶194} Mr. Dehler's fifth assignment of error is without merit.

{¶195} The judgment of the Trumbull County Court of Common Pleas is affirmed.

DIANE V. GRENDELL, J., concurs in judgment only with a Concurring Opinion,

TIMOTHY P. CANNON, J., dissents with a Dissenting Opinion.

DIANE V. GRENDELL, J., concurs in judgment only with a Concurring Opinion.

{¶196} I concur with the judgment ultimately reached by the majority, but do so for reasons other than those adduced by the majority. Accordingly, I concur in judgment only.

{¶197} In 1992, Dehler was convicted of two counts of Rape and two counts of Gross Sexual Imposition and sentenced to serve two consecutive prison terms of seven to twenty-five years.²

{¶198} In 1996, R.C. Chapter 2950 was rewritten as part of Am.Sub.H.B. No. 180, effective January 1, 1997. Although former R.C. 2950.09(C)(1) provided for the classification of sex offenders convicted prior to H.B. 180 and serving a term of imprisonment as of January 1, 1997, Dehler was never classified as a sexual offender.

Chapter 2950 has been transformed from remedial to punitive law. Before that court revisits the issue, however, we, as an inferior court, are bound to apply its holdings in *Cook and Wilson*.

2. Dehler's convictions for Gross Sexual Imposition were subsequently vacated on appeal. See *State v. Dehler*, 8th Dist. Nos. 65006 and 66020, 1994 Ohio App. LEXIS 2269.

{¶99} There are currently many pending appeals by offenders who have been classified under the Adam Walsh Act, but who were convicted and classified in final sentencing judgments prior to its enactment. In these cases, where there is an existing prior final sentencing judgment, re-classification under the provisions of the Adam Walsh Act violates the constitutional doctrine of separation of powers.

{¶100} "It is well settled that the legislature has no right or power to invade the province of the judiciary, by annulling, setting aside, modifying, or impairing a final judgment previously rendered by a court of competent jurisdiction." *Cowen v. State ex rel. Donovan* (1922), 101 Ohio St. 387, 394; *Bartlett v. Ohio* (1905), 73 Ohio St. 54, 58 ("it is well settled that the legislature cannot annul, reverse or modify a judgment of a court already rendered"). In effect, the separation of powers doctrine applies the principle of *res judicata*, typically used as a bar to further litigation by parties, to legislative action. Cf. *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 1995-Ohio-331, at paragraph one of the syllabus ("[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").

{¶101} An offender's classification as a sexual offender constitutes such a valid final judgment. *State v. Washington*, 11th Dist. No. 99-L-015, 2001-Ohio-8905, 2001 Ohio App. LEXIS 8905, at *9 ("a defendant's status as a sexually Oriented offender *** arises from a finding rendered by the trial court, which in turn adversely affects a defendant's rights by the imposition of registration requirements").

{¶102} Thus, where an offender has been previously classified as a Sexually Oriented Offender, Habitual Sex Offender, or Sexual Predator in a valid judgment entry

rendered by a court of competent jurisdiction, that judgment may not be impaired by subsequent legislative enactment. See *Spangler v. State*, 11th Dist. No. 2008-L-062, 2009-Ohio-3178, at ¶¶55-64.

{¶103} In contrast to the majority of these cases, Dehler has not been previously classified as a sexual offender. As the application of the Adam Walsh Act to Dehler does not disturb the settled judgment of a court of competent jurisdiction, there is no constitutional impediment to his classification.

TIMOTHY P. CANNON, J., dissenting.

{¶104} I respectfully dissent. The majority concludes that Dehler's right to a hearing was not compromised. I disagree.

{¶105} Dehler filed a request for a hearing pursuant to R.C. 2950.032(E) to contest his classification as a Tier III offender. This request was filed within 60 days of Dehler receiving notice of his classification, thus it was timely. R.C. 2950.032(E).

{¶106} Dehler had a right to a hearing pursuant to R.C. 2950.032(E), which provides, in pertinent part:

{¶107} "An offender or delinquent child who is provided a notice under division (A)(2) or (B) of this section may request *as a matter of right* a court hearing to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950 of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008." (Emphasis added.)

{¶108} R.C. 2950.032(E) states that the provisions in R.C. 2950.031 apply regarding the conduct of the hearing. R.C. 2950.031(E) provides, in part:

{¶109} “[If a hearing is properly requested, the] court shall schedule a hearing, and shall provide notice to the offender or delinquent child and prosecutor *of the date, time, and place of the hearing.* ***

{¶110} “*** If an offender or delinquent child requests a hearing in accordance with this division, *at the hearing, all parties are entitled to be heard, and the court shall consider all relevant information and testimony* presented relative to the application to the offender or delinquent child of the new registration requirements under Chapter 2950 of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. ***” (Emphasis added.)

{¶111} The “non-oral hearing” that occurred in this matter did not give Dehler an opportunity to be heard or to present testimony. Also, it did not occur at a specific “date, time, and place.”

{¶112} The majority cites to the following language of R.C. 2950.031(E), which indicates the Rules of Civil Procedure are to apply to these hearings:

{¶113} “In any hearing under this division, the Rules of Civil Procedure *** apply, *except to the extent that those Rules would by their nature be clearly inapplicable.*” (Emphasis added.)

{¶114} The majority uses this language to conclude that non-oral hearings are permitted in summary judgment exercises pursuant to Civ.R. 56 and, thus, a hearing was not required in this matter. The majority also notes that Civ.R. 7(B)(2) and Loc.R.

9.06 of the Trumbull County Court of Common Pleas permit certain motions to be decided without an oral hearing.

{¶115} I believe rules of civil procedure (or local rules) that are in direct conflict to the mandate of the statute to conduct a hearing are "by their nature *** clearly inapplicable." See R.C. 2950.031(E). Moreover, pursuant to the language of the statute, the Rules of Civil Procedure apply *at the hearing*.

{¶116} The requirement of having a hearing appears, on its face, to be somewhat nonsensical. The limited issues the trial court is permitted to consider appear to be capable of resolution by simple administrative review. However, by mandating a hearing, it appears the legislature has attempted to provide a procedural safeguard to an otherwise unattractive due process picture. Whatever the reason, the legislature did not *suggest* a hearing, nor did it make the hearing an *option*. I believe the clear language, no matter how empty a right it supports, can only be read to *mandate* a hearing. As a result, I do not believe the legislature intended for a court to use a rule of civil procedure or a local rule to supersede its unambiguous directive that a hearing occur.

{¶117} The statute calls for a hearing. Dehler did not receive a hearing. Accordingly, I would reverse the judgment of the Trumbull County Court of Common Pleas and remand this matter to the trial court in order for the trial court to provide Dehler with his statutory right to a hearing.³

3. I note that, pursuant to R.C. 2950.032(E), this hearing should occur by video conferencing, if such technology is available, unless the trial court determines that "the interests of justice" require Dehler to be physically present.

STATE OF OHIO)
)SS.
COUNTY OF TRUMBULL)

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

STATE OF OHIO,

JUDGMENT ENTRY

Respondent-Appellee,

CASE NO. 2008-T-0061

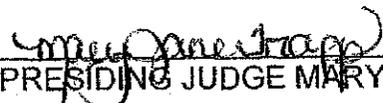
- vs -

LAMBERT DEHLER,

Petitioner-Appellant.

For the reasons stated in the opinion of this court, appellant's assignments of error are without merit. It is the judgment and order of this court that the judgment of the Trumbull County Court of Common Pleas is affirmed.

Costs to be taxed against appellant.



PRESIDING JUDGE MARY JANE TRAPP

DIANE V. GRENDELL, J., concurs in judgment only with a Concurring Opinion,
TIMOTHY P. CANNON, J., dissents with a Dissenting Opinion.

FILED
COURT OF APPEALS

SEP 28 2009

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

Exhibit B

ORIGINAL

IN THE SUPREME COURT OF OHIO

09-1974

State of Ohio,	:	Case No. _____
	:	
Plaintiff-Appellee,	:	On Appeal from the Trumbull
	:	County Court of Appeals,
v.	:	Eleventh Appellate District
	:	
Lambert Dehler,	:	Court of Appeals
	:	Case No. 2008-T-0061
Defendant-Appellant.	:	

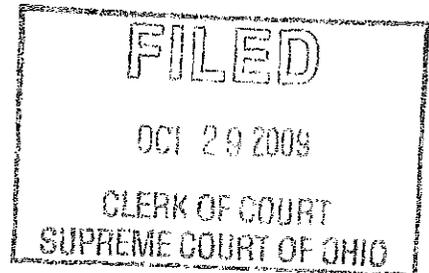
**NOTICE THAT A MOTION TO CERTIFY A CONFLICT IS PENDING
IN THE COURT OF APPEALS**

Deena L. DeVico, Assistant Prosecutor
160 High Street, N.W. 4th Floor
Warren, OH 44481-1092

COUNSEL FOR APPELLEE, STATE OF OHIO

Lambert Dehler, //273-819
Trumbull Correctional Institution
PO Box 901
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COUNSEL FOR APPELLANT, *PRO SE*

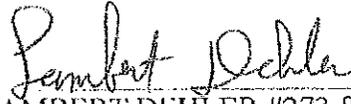


IN THE SUPREME COURT OF OHIO

State of Ohio,	:	Case No. _____
	:	
Plaintiff-Appellee,	:	On Appeal from the Trumbull
	:	County Court of Appeals,
v.	:	Eleventh Appellate District
	:	
Lambert Dehler,	:	Court of Appeals
	:	Case No. 2008-T-0061
Defendant-Appellant.	:	

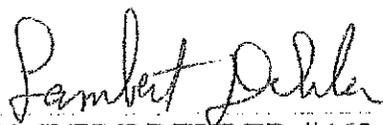
Now comes Defendant-Appellant Lambert Dehler, pro se, pursuant to **S.Ct.Rule IV, Sect.4.(A)**, to file, "Notice that a Motion to Certify a Conflict is Pending in the Court of Appeals." Attached, as **Exhibit A** is a time-stamped copy of said motion which shows it was timely-filed on October 6, 2009. It is still pending.

Respectfully submitted,


LAMBERT DEHLER #273-819
Trumbull Correctional Institution
PO Box 901
Leavittsburg, OH
44430-0901
Defendant-Appellant, *pro se*

Certificate of Service

I certify that a copy of this Motion was sent by ordinary U.S. mail to counsel for appellee, Deena L. DeVico, Assistant Prosecutor, at 160 High Street, N.W. 4th Floor, Warren, OH 44481-1092, on this 24th day of October, 2009.

 c.o.
LAMBERT DEHLER #463-038-273-819
Defendant-Appellant, *pro se*

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO

STATE OF OHIO,

Respondent-Appellee,

-vs-

LAMBERT DEHLER,

Petitioner-Appellant.

Case No. 2008-T-0061

FILED
COURT OF APPEALS

OCT 06 2009

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

APPELLANT'S MOTION TO CERTIFY A CONFLICT

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**COUNSEL FOR APPELLEE,
STATE OF OHIO**

APPELLANT, PRO SE

STATE OF OHIO)
)SS.
COUNTY OF TRUMBULL)

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

LAMBERT DEHLER,
Petitioner-Appellant,

JUDGMENT ENTRY

- vs -

CASE NO. 2008-T-0061

FILED
COURT OF APPEALS

DEC 10 2009

STATE OF OHIO

Respondent-Appellee

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

This matter is before the court upon appellant Lambert Dehler's Motion to Certify a Conflict pursuant to App.R. 25 and Loc.App.R. 25.

Mr. Dehler contends this court's holding in *State v. Dehler*, 11th Dist. No. 2008-T-0061, 2009-Ohio-5059, is in conflict with several decisions from other districts in the state of Ohio. He proposes two questions for certification.

Section 3(B)(4), Article IV, of the Ohio Constitution states that: "Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced *upon the same question* by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and determination." (Emphasis added.)

In *Dehler*, this court affirmed the trial court's award of summary judgment in favor of the state upon Mr. Dehler's various petitions and motion for summary judgment on his reclassification pursuant to R.C. 2950.032(E), and community notification requirements pursuant to R.C. 2950.11(F)(2). The state filed a

e-mailed
Lambert Dehler
H-Dehler
D. DeVico

motion for summary judgment in response, and, in turn, Mr. Dehler filed a motion to dismiss the state's motion for summary judgment.

On appeal, Mr. Dehler contended that his right to an oral hearing, pursuant to R.C. 2950.032(E) and R.C. 2950.11(F)(2), was violated because the trial court held a hearing solely on the various petitions and motions for summary judgment. The trial court granted the state's motion for summary judgment, finding that there were no genuine issues of material fact to be determined. Specifically, the trial court found that Mr. Dehler did not submit any evidence that would warrant a change in his classification as a Tier III offender for committing the offenses of rape and gross sexual imposition, which arose by operation of law, or that community notifications did not apply.

We affirmed, holding that “[n]othing in R.C. 2950.032(E) requires the court to hold an *oral hearing* upon the petitioner’s request for a reclassification hearing.” (Emphasis added.) *Id.* at ¶50. We explained that pursuant to R.C. 2950.031(E), the rules of civil procedure apply. The court is required to schedule a hearing and provide notice to the offender and prosecutor of the date, time, and place of the hearing, and, accordingly, hold a hearing. *Id.* at ¶51.

Mr. Dehler’s right to a hearing was not violated as the trial court sent notice on April 8, 2008, that a hearing was scheduled for May 30, 2008, on Mr. Dehler’s various petitions and the motions for summary judgment.

In holding that neither R.C. 2950.032(E) nor R.C. 2950.11(F)(2) required the court to hold an oral hearing in Mr. Dehler’s case, we reviewed the Ohio Rules of Civil Procedure, as well as the Local Rules of Trumbull County.

Firstly, nothing in Civ.R. 56 requires the court to hold an *oral* hearing on a motion for summary judgment. "A trial court is not required to set or hold a hearing prior to ruling on a motion for summary judgment. Rather, "the non-moving party is entitled simply to sufficient notice of the filing of the motion [pursuant to] Civ.R. 5, and an adequate opportunity to respond [pursuant to] Civ.R. 56(C)." *Id.* at ¶54, citing *Marino v. Oriana House Inc.*, 9th Dist. No. 23389, 2007-Ohio-1823, ¶12 (citations omitted).

Secondly, pursuant to Civ.R. 7(B)(2), "[t]o expedite its business, the court may make provision by rule or order for the submission and determination of a motion without oral hearing upon brief written statements of reasons in support and opposition." *Id.* at ¶53.

Thirdly, Local Rule 9.06 of the Trumbull County Court of Common Pleas further provides that "[e]very motion shall state its nature with specificity, and be submitted and determined upon the papers hereinafter referenced. *Oral argument of motions may be permitted on application and proper showing. ***.*" *Id.* (Emphasis added.)

Nor was Mr. Dehler's right to an oral hearing pursuant to R.C. 2950.11(F)(2) violated. The right to a hearing, oral or otherwise, is clearly discretionary under R.C. 2950.11(H)(1), which states: "[u]pon the motion of the offender or the prosecuting attorney *** 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 notification requirements *without holding a hearing* and considering all the relevant factors.” (Emphasis added.)

We agreed with the trial court that no genuine issues of material fact remained to be determined by a trier of fact as Mr. Dehler was properly classified pursuant to the new provisions of the Act. The court was not required to hold a hearing pursuant to R.C. 2950.11(F)(2), and upon dismissal was not required to issue findings of fact. Thus, we found no abuse of discretion in the trial court’s award of summary judgment in favor of the state.

Mr. Dehler’s proposed questions for certification state:

“[1.] An oral hearing is required under R.C. 2950.032(E) when a timely and properly filed petition is made under that section.

“[2.] An oral hearing is required under R.C. 2950.11(F)(2) when a timely and properly filed petition is made under that section, notwithstanding wording in R.C. 2950.11.”

Hearing Pursuant to R.C. 2950.032(E)

Mr. Dehler contends that our determination that a hearing held on his petition and motion for summary judgment pursuant to R.C. 2950.032(E) solely on the briefs and evidence submitted by the parties is in conflict with the following decisions of our sister courts: *State v. Reddish*, 2d No. 22866, 2009-Ohio-3643; *Holcomb v. State*, 3d Nos. 8-08-23, 8-08-24, 8-08-25, and 8-08-26, 2009-Ohio-782; *Downing v. State*, 3d Dist. No. 8-08-29, 2009-Ohio-1834; *State v. Pletcher*, 4th Dist. No. 08CA3044, 2009-Ohio-1819; *Brooks v. State*, 9th Dist. No. 08CA009452, 2009-Ohio-1825; *Moran v. State*, 12th Dist. No. CA2008-05-057,

2009-Ohio-1840; and *Brewer v. State*, 12th Dist. No. CA2009-02-041, 2009-Ohio-3157.

At the outset we must clarify that Mr. Dehler was not deprived of a hearing. He was properly notified of the hearing, the trial court conducted the hearing, albeit solely on the briefs and evidentiary materials submitted by the parties, and, finding no genuine issues of material fact remained to be determined, awarded summary judgment to the state.

All of the cases cited by Mr. Dehler are factually and legally distinguishable. None of the cases were before the trial court by way of a petitioner's motion for summary judgment, and the issues raised in those cases dealt with the constitutionality of the Act and the offender's new classifications.

In *Reddish*, the issues presented to the court were not whether an oral hearing must be held pursuant to R.C. 2950.032(E), but, rather, whether the trial court erred in failing to inform him of his classification as a Tier III offender and the reporting requirements for a Tier III sex offender. *Id.* at ¶14. The court held that "[b]ecause Reddish's classification arises by operation of law, based on his offenses, the *trial court was not required to hold a hearing*, nor was the court required to advise Reddish of his duties as a Tier III sex offender." (Emphasis added.) *Id.* at ¶21.

Similarly, an oral hearing pursuant to R.C. 2950.032(E) was not at issue in *Holcomb*. In *Holcomb*, the appellant appealed his classification as a Tier II sex offender, contending that the Act denied his right to due process because he was reclassified without a hearing. The court dismissed the appellant's argument,

noting that the legislature provided an avenue to challenge the reclassification by filing a petition for a hearing pursuant to R.C. 2950.11. *Id.* at ¶14.

Mr. Dehler next contends our decision is in conflict with the Third Appellate District's holding in *Downing* because the trial court held an evidentiary hearing on the appellant's petition. The issue in *Downing* was whether the appellant was properly classified as a Tier II sex offender. That the trial court held an evidentiary hearing upon the appellant's petition was simply a procedural fact. *Id.* at ¶5.

The same situation occurred in *Pletcher, Brooks, and Moran*, where, quite simply, the issue was not whether an oral hearing must be held pursuant to R.C. 2950.032(E), but, rather, whether the appellants in those cases failed to produce any evidence that would negate their new classifications.

Finally, Mr. Dehler contends that the court's statement in *Brewer*, that "[w]e think it clear from a reading of R.C. 2950.031(E) that the plain language of the statute mandates a hearing upon a timely and properly filed petition under that section," is in conflict with the non-oral hearing in his case. *Id.* at ¶10. Thus, once again, whether the hearing must be oral was not an issue in the case, nor was *Brewer* decided on summary judgment.

It is clear that all of the cases cited by Mr. Dehler either restate the law or simply mention in the recitation of the procedural facts that a hearing was held. None of the cases were determined upon a summary judgment motion, a procedural vehicle chosen by Mr. Dehler himself.

Most fundamentally, Mr. Dehler was not denied his day in court. A hearing was held, albeit solely on the various petitions and motions for summary judgment. A disagreement with our reasoning does not equate to a conflict between our decision and those cited by Mr. Dehler as they are procedurally and legally distinct.

Hearing Pursuant to R.C. 2950.11(F)(2)

Mr. Dehler raises the same argument in his second question for certification, albeit pursuant to R.C. 2950.11, arguing that an oral hearing must be held when a petitioner timely and properly files a petition, "notwithstanding wording in R.C. 2950.11."

As we determined in *Dehler*, a plain reading of R.C. 2950.11 reveals that a court's authority to hold a hearing is clearly discretionary. R.C. 2950.11(H)(1) states: "[u]pon the motion of the offender or the prosecuting attorney *** 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. ***." (Emphasis added.)

Mr. Dehler contends our determination that the right to a hearing pursuant to R.C. 2950.11(F)(2), is in conflict with the following decisions of our sister courts: *Allison v. State*, 1st Dist. No. C-080439, 2009-Ohio-498; *State v. Barker*, 2d Dist. No. 22963, 2009-Ohio-2774; *Pletcher, State v. Stockman*, 6th Dist. No. L-08-1077, 2009-Ohio-266; *Gildersleeve v. State*, 8th Dist. Nos. 91515, 91516,

91517, 91518, 91519 and 91521, 91522, 91523, 91524, 91525, 91526, 91527, 91528, 91529, 91530, 91531, 91532, 2009-Ohio-2031; *State v. Bradley*, 8th Dist. No. 90810, 2009-Ohio-2116; *State v. McConville*, 182 Ohio App.3d 99, 2009-Ohio-1713; *State v. Gruzka*, 9th Dist. No. 08CA009515, 2009-Ohio-3926; *Moran v. State*, 12th Dist. No. CA2008-05-057, 2009-Ohio-1840; *Ritchie v. State*, 12th Dist. No. CA2008-07-073, 2009-Ohio-1841.

Once again, Mr. Dehler fails to cite to a case that is in conflict with our holding in *Dehler* and that was determined by way of the petitioner's motion for summary judgment.

Allison concerned a case where the trial court, after holding a hearing on the appellant's R.C. 2950.31 petition, found that the appellee's registration requirements expired. Thus, the trial court concluded he was not subject to the new registration requirements of S.B. 10. The First Appellate District reversed, however, because the trial court did not determine if the appellee's reporting requirements in another state had expired. *Id.* at ¶10. In *Barker*, the Second Appellate District simply noted in appellant's appeal, which concerned the constitutionality of the Act, that the appellant had an avenue of relief via a request for a hearing R.C. 2950.11(F)(2) to demonstrate that the new notification provisions should not apply to her. *Id.* at ¶16.

The Eighth Appellate District in *Gildersleeve* concluded that R.C. 2950.11(F)(2) is "ambiguous as to whether a court must hold a hearing and consider the community-notification factors for sex offenders who were previously classified under Ohio's Megan's Law." (Emphasis added.) *Id.* at ¶72.

Quite simply, the issue of whether the court must hold an “oral” hearing is not an issue in any of the cases cited by Mr. Dehler. Although some cases, such as *Gildersleeve* and *Stockman* held that the trial court is required to hold a hearing solely for offenders being *initially* classified, none set forth a conflicting rule of law in regard to petitions determined upon a motion for summary judgment and a hearing that was conducted on the briefs and evidentiary materials submitted as in *Dehler*.

Similarly, the issues in the remaining cases cited in support of his motion to certify a conflict do not address hearings upon a motion for summary judgment. In *Bradley*, the new requirements of Chapter 2950 are not even applied. *McConville* held that a hearing pursuant to R.C. 2950.11(F)(2) is not mandatory, stating that “[a]lthough division (F)(1) defines which offenders may be subject to community notification, division (F)(2) states that the notification provisions of division (F)(1) do not apply *if the judge conducts a hearing and makes circumscribed findings. The statute does not establish when such a hearing may be held* and does not prohibit the hearing to be conducted in conjunction with sentencing. It also does not forbid the court from commencing the hearing *sua sponte*.” (Emphasis added.) *Id.* at ¶12.

In *Gruzka*, the court concluded that a hearing pursuant to R.C. 2950.11(F)(2) was not *res judicata* for *offenders* classified by the attorney general. *Id.* at ¶13. In *Moran*, the court did not address any aspect of relief from community notification stating that “the trial court granted appellant’s request for relief from the Tier III notification requirements and therefore, we will not address

any aspect of that requirement in this appeal. *Id.* at 7. Finally, in *Ritchie*, it was simply a procedural fact that the trial court held a hearing pursuant to the appellant's R.C. 2950.11(F)(2) petition. *Id.* at ¶3.

In sum, Mr. Dehler cites to no case that presented the unusual circumstances of his case and set forth a conflicting rule of law as to whether these types of hearings must be oral. Mr. Dehler filed petitions pursuant to R.C. 2950.032 and R.C. 2950.11 and a motion for summary judgment. The court, following the Rules of Civil Procedure, sent timely notice of the date of the hearing, held a hearing, and passed judgment. Nothing in Civ.R. 56 requires the court to hold an *oral* hearing. Indeed, Civ.R. 5 and Trumbull Loc.R. 9 support this conclusion.

None of the cases cited by Mr. Dehler involve the same procedural issues we determined in *Dehler*. Consequently, our decision in *Dehler* cannot be said to be in conflict on his proposed questions with the cited decisions from the other districts.

For the foregoing reasons, we decline to certify Mr. Dehler's proposed questions. Mr. Dehler's Motion to Certify a Conflict is overruled.


PRESIDING JUDGE MARY JANE TRAPP

DIANE V. GRENDALL, J., concurs,

TIMOTHY P. CANNON, J., concurs in judgment only.

FILED
COURT OF APPEALS

DEC 02 2009

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

**IN THE COURT OF COMMON PLEAS
- GENERAL DIVISION-
TRUMBULL COUNTY, OHIO**

CASE NUMBER: 2008 CV 402

**STATE OF OHIO
PLAINTIFF**

VS.

JUDGE JOHN M STUARD

**LAMBERT DEHLER
DEFENDANT**

JUDGMENT ENTRY

This matter is before the Court on the following motions: (1) Request for Hearing on Reclassification as filed by the Defendant, Lambert Dehler; (2) Motion for Summary Judgment as filed by Dehler; (3) Motion for Immediate Counsel as filed by Dehler; (4) Motion for Summary Judgment as filed by the State of Ohio; and (5) Motion to Dismiss or Stay as filed by Dehler. The Court has reviewed the motions, affidavits, pleadings, memorandum, exhibits and the relevant and applicable law.

On October 23, 1992 in the Cuyahoga County Court of Common Pleas, Dehler was convicted of two counts of Rape in violation of R.C. 2907.02 and two counts of Gross Sexual Imposition in violation of R.C. 2907.05. Dehler was sentenced to an imprisonment term of seven to 25 years each on the Rape counts and eighteen months each on the Gross Sexual Imposition counts.

On January 7, 2008, Dehler received notice of his reclassification as a Tier III sex offender from the Ohio Attorney General's Office pursuant to R.C. 2950.031(A)(1). Dehler petitioned this Court for a hearing so he can challenge his new classification as a Tier III sex offender. More specifically, he is requesting that this Court hold a hearing

and then vacate his reclassification or in the alternative stay any enforcement of the reclassification. Dehler asserts that the reclassification scheme recently adopted in Ohio is unconstitutional.

The Ohio Supreme Court addressed the constitutionality of House Bill 180 and the revised version of R.C. 2950 requiring classification, registration, and community notification in *State v. Cook* (1998), 83 Ohio St.3d 404. The Supreme Court held that R.C. Chapter 2950 did not violate either the Retroactivity Clause of Section 28, Article I of the Ohio Constitution or the *Ex Post Facto* Clause of Section 10, Article I of the U.S. Constitution. *Id.* at paragraphs one and two of the syllabus. The Court found the classification, registration, and community notification requirements were merely remedial and not substantive, and as such the law was deemed constitutional. *Id.* at 410-414. The Court further found that the intent of the law was not punitive but was narrowly tailored to protect the public. *Id.* at 417.

The current framework for the reclassification of certain sex offenders is set forth in Ohio's version of the Adam Walsh Act, Senate Bill 10. The law sets forth a new classification scheme, different registration requirements, and increased community notification requirements effective January 1, 2008. *Id.* The same analysis that applied to House Bill 180 in the *Cook* case applies to Senate Bill 10. Therefore, for the same reasons the revised version of R.C. 2950 et seq. was found to be constitutional in *Cook*, this Court finds the new classification mechanism likewise to be constitutional and thereby rejects Dehler's arguments in toto.

The Court agrees that it was proper for the Attorney General to classify the Plaintiff as a Tier III sex offender according to R.C. 2950.01. Therefore, the motion for

summary judgment filed by the State of Ohio is well taken as there are no genuine issues of material fact. As a result, the Court denies the following motions filed by Dehler: (1) Request for Hearing on Reclassification; (2) Motion for Summary Judgment; (3) Motion for Immediate Counsel; (4) Motion to Dismiss or Stay.

This is a final and appealable order and there is no just cause for delay.

Costs to be paid by Petitioner-Defendant, Lambert Dehler.


JUDGE JOHN M STUARD

Date: 6/18/08
Copies to:
DEENA L DEVICO
LAMBERT DEHLER, PRO SE

**TO THE CLERK OF COURTS: You Are Ordered to Serve
Copies of this Judgment on all Counsel of Record
or Upon the Parties who are Unrepresented Forthwith
by Ordinary Mail.**


JUDGE JOHN M STUARD

FILED
COURT OF COMMON PLEAS
JUN 23 2008
TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim or the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I: BILL OF RIGHTS

§ 10 [Trial of accused persons and their rights; depositions by state and comment on failure to testify in criminal cases.]

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense. (As amended September 3, 1912.)

USCS Const. Art. I, § 10, Cl 1

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CONSTITUTION OF THE UNITED STATES OF AMERICA
ARTICLE I. LEGISLATIVE DEPARTMENT

USCS Const. Art. I, § 10, Cl 1

Sec. 10, Cl 1. Powers denied states--Treaties--Money--Ex post facto laws--Obligation of contracts.

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I: BILL OF RIGHTS

§ 16 REDRESS FOR INJURY; DUE PROCESS

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

CONSTITUTION OF THE STATE OF OHIO

ARTICLE II: LEGISLATIVE

§ 28 Retroactive laws

The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I: BILL OF RIGHTS

§ 4 RIGHT TO BEAR ARMS

The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.

LEXSTAT ORC 1.58

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

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

Go to the Ohio Code Archive Directory

ORC Ann. 1.58 (2010)

§ 1.58. Effect of reenactment, amendment, or repeal

(A) The reenactment, amendment, or repeal of a statute does not, except as provided in division (B) of this section:

- (1) Affect the prior operation of the statute or any prior action taken thereunder;
- (2) Affect any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred thereunder;
- (3) Affect any violation thereof or penalty, forfeiture, or punishment incurred in respect thereto, prior to the amendment or repeal;
- (4) Affect any investigation, proceeding, or remedy in respect of any such privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

(B) If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.

HISTORY:

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

LEXSTAT ORC 2929.01

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
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TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2929. PENALTIES AND SENTENCING
 IN GENERAL

Go to the Ohio Code Archive Directory

ORC Ann. 2929.01 (2010)

§ 2929.01. Definitions

As used in this chapter:

(A) (1) "Alternative residential facility" means, subject to division (A)(2) of this section, any facility other than an offender's home or residence in which an offender is assigned to live and that satisfies all of the following criteria:

(a) It provides programs through which the offender may seek or maintain employment or may receive education, training, treatment, or habilitation.

(b) It has received the appropriate license or certificate for any specialized education, training, treatment, habilitation, or other service that it provides from the government agency that is responsible for licensing or certifying that type of education, training, treatment, habilitation, or service.

(2) "Alternative residential facility" does not include a community-based correctional facility, jail, halfway house, or prison.

(B) "Basic probation supervision" means a requirement that the offender maintain contact with a person appointed to supervise the offender in accordance with sanctions imposed by the court or imposed by the parole board pursuant to section 2967.28 of the Revised Code. "Basic probation supervision" includes basic parole supervision and basic post-release control supervision.

(C) "Cocaine," "crack cocaine," "hashish," "L.S.D.," and "unit dose" have the same meanings as in section 2925.01 of the Revised Code.

(D) "Community-based correctional facility" means a community-based correctional facility and program or district community-based correctional facility and program developed pursuant to sections 2301.51 to 2301.58 of the Revised Code.

(E) "Community control sanction" means a sanction that is not a prison term and that is described in section 2929.15, 2929.16, 2929.17, or 2929.18 of the Revised Code or a sanction that is not a jail term and that is described in section 2929.26, 2929.27, or 2929.28 of the Revised Code. "Community control sanction" includes probation if the sentence involved was imposed for a felony that was committed prior to July 1, 1996, or if the sentence involved was imposed for a misdemeanor that was committed prior to January 1, 2004.

(F) "Controlled substance," "marihuana," "schedule I," and "schedule II" have the same meanings as in section 3719.01 of the Revised Code.

(G) "Curfew" means a requirement that an offender during a specified period of time be at a designated place.

(H) "Day reporting" means a sanction pursuant to which an offender is required each day to report to and leave a center or other approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center.

(I) "Deadly weapon" has the same meaning as in section 2923.11 of the Revised Code.

(J) "Drug and alcohol use monitoring" means a program under which an offender agrees to submit to random chemical analysis of the offender's blood, breath, or urine to determine whether the offender has ingested any alcohol or other drugs.

(K) "Drug treatment program" means any program under which a person undergoes assessment and treatment designed to reduce or completely eliminate the person's physical or emotional reliance upon alcohol, another drug, or alcohol and another drug and under which the person may be required to receive assessment and treatment on an outpatient basis or may be required to reside at a facility other than the person's home or residence while undergoing assessment and treatment.

(L) "Economic loss" means any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the commission of the offense. "Economic loss" does not include non-economic loss or any punitive or exemplary damages.

(M) "Education or training" includes study at, or in conjunction with a program offered by, a university, college, or technical college or vocational study and also includes the completion of primary school, secondary school, and literacy curricula or their equivalent.

(N) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

(O) "Halfway house" means a facility licensed by the division of parole and community services of the department of rehabilitation and correction pursuant to section 2967.14 of the Revised Code as a suitable facility for the care and treatment of adult offenders.

(P) "House arrest" means a period of confinement of an offender that is in the offender's home or in other premises specified by the sentencing court or by the parole board pursuant to section 2967.28 of the Revised Code and during which all of the following apply:

(1) The offender is required to remain in the offender's home or other specified premises for the specified period of confinement, except for periods of time during which the offender is at the offender's place of employment or at other premises as authorized by the sentencing court or by the parole board.

(2) The offender is required to report periodically to a person designated by the court or parole board.

(3) The offender is subject to any other restrictions and requirements that may be imposed by the sentencing court or by the parole board.

(Q) "Intensive probation supervision" means a requirement that an offender maintain frequent contact with a person appointed by the court, or by the parole board pursuant to section 2967.28 of the Revised Code, to supervise the offender while the offender is seeking or maintaining necessary employment and participating in training, education, and treatment programs as required in the court's or parole board's order. "Intensive probation supervision" includes intensive parole supervision and intensive post-release control supervision.

(R) "Jail" means a jail, workhouse, minimum security jail, or other residential facility used for the confinement of alleged or convicted offenders that is operated by a political subdivision or a combination of political subdivisions of this state.

(S) "Jail term" means the term in a jail that a sentencing court imposes or is authorized to impose pursuant to section 2929.24 or 2929.25 of the Revised Code or pursuant to any other provision of the Revised Code that authorizes a term in a jail for a misdemeanor conviction.

(T) "Mandatory jail term" means the term in a jail that a sentencing court is required to impose pursuant to division (G) of section 1547.99 of the Revised Code, division (E) or (G) of section 2929.24 of the Revised Code, division (E) of section 2903.06 or division (D) of section 2903.08 of the Revised Code, division (B) of section 4510.14 of the

Revised Code, or division (G) of section 4511.19 of the Revised Code or pursuant to any other provision of the Revised Code that requires a term in a jail for a misdemeanor conviction.

(U) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.

(V) "License violation report" means a report that is made by a sentencing court, or by the parole board pursuant to section 2967.28 of the Revised Code, to the regulatory or licensing board or agency that issued an offender a professional license or a license or permit to do business in this state and that specifies that the offender has been convicted of or pleaded guilty to an offense that may violate the conditions under which the offender's professional license or license or permit to do business in this state was granted or an offense for which the offender's professional license or license or permit to do business in this state may be revoked or suspended.

(W) "Major drug offender" means an offender who is convicted of or pleads guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains at least one thousand grams of hashish; at least one hundred grams of crack cocaine; at least one thousand grams of cocaine that is not crack cocaine; at least two thousand five hundred unit doses or two hundred fifty grams of heroin; at least five thousand unit doses of L.S.D. or five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form; or at least one hundred times the amount of any other schedule I or II controlled substance other than marihuana that is necessary to commit a felony of the third degree pursuant to section 2925.03, 2925.04, 2925.05, or 2925.11 of the Revised Code that is based on the possession of, sale of, or offer to sell the controlled substance.

(X) "Mandatory prison term" means any of the following:

(1) Subject to division (X)(2) of this section, the term in prison that must be imposed for the offenses or circumstances set forth in divisions (F)(1) to (8) or (F)(12) to (18) of section 2929.13 and division (D) of section 2929.14 of the Revised Code. Except as provided in sections 2925.02, 2925.03, 2925.04, 2925.05, and 2925.11 of the Revised Code, unless the maximum or another specific term is required under section 2929.14 or 2929.142 [2929.14.2] of the Revised Code, a mandatory prison term described in this division may be any prison term authorized for the level of offense.

(2) The term of sixty or one hundred twenty days in prison that a sentencing court is required to impose for a third or fourth degree felony OVI offense pursuant to division (G)(2) of section 2929.13 and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code or the term of one, two, three, four, or five years in prison that a sentencing court is required to impose pursuant to division (G)(2) of section 2929.13 of the Revised Code..

(3) The term in prison imposed pursuant to division (A) of section 2971.03 of the Revised Code for the offenses and in the circumstances described in division (F)(11) of section 2929.13 of the Revised Code or pursuant to division (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code and that term as modified or terminated pursuant to section 2971.05 of the Revised Code.

(Y) "Monitored time" means a period of time during which an offender continues to be under the control of the sentencing court or parole board, subject to no conditions other than leading a law-abiding life.

(Z) "Offender" means a person who, in this state, is convicted of or pleads guilty to a felony or a misdemeanor.

(AA) "Prison" means a residential facility used for the confinement of convicted felony offenders that is under the control of the department of rehabilitation and correction but does not include a violation sanction center operated under authority of section 2967.141 of the Revised Code.

(BB) "Prison term" includes either of the following sanctions for an offender:

(1) A stated prison term;

(2) A term in a prison shortened by, or with the approval of, the sentencing court pursuant to section 2929.20, 2967.26, 5120.031 [5120.03.1], 5120.032 [5120.03.2], or 5120.073 [5102.07.3] of the Revised Code.

(CC) "Repeat violent offender" means a person about whom both of the following apply:

(1) The person is being sentenced for committing or for complicity in committing any of the following:

(a) Aggravated murder, murder, any felony of the first or second degree that is an offense of violence, or an attempt to commit any of these offenses if the attempt is a felony of the first or second degree;

(b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense described in division (CC)(1)(a) of this section.

(2) The person previously was convicted of or pleaded guilty to an offense described in division (CC)(1)(a) or (b) of this section.

(DD) "Sanction" means any penalty imposed upon an offender who is convicted of or pleads guilty to an offense, as punishment for the offense. "Sanction" includes any sanction imposed pursuant to any provision of sections 2929.14 to 2929.18 or 2929.24 to 2929.28 of the Revised Code.

(EE) "Sentence" means the sanction or combination of sanctions imposed by the sentencing court on an offender who is convicted of or pleads guilty to an offense.

(FF) "Stated prison term" means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court pursuant to section 2929.14, 2929.142 [2929.14.2], or 2971.03 of the Revised Code or under section 2919.25 of the Revised Code. "Stated prison term" includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison for the offense and any time spent under house arrest or house arrest with electronic monitoring imposed after earning credits pursuant to section 2967.193 [2967.19.3] of the Revised Code.

(GG) "Victim-offender mediation" means a reconciliation or mediation program that involves an offender and the victim of the offense committed by the offender and that includes a meeting in which the offender and the victim may discuss the offense, discuss restitution, and consider other sanctions for the offense.

(HH) "Fourth degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the fourth degree.

(II) "Mandatory term of local incarceration" means the term of sixty or one hundred twenty days in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility that a sentencing court may impose upon a person who is convicted of or pleads guilty to a fourth degree felony OVI offense pursuant to division (G)(1) of section 2929.13 of the Revised Code and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code.

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

(KK) "Sexually oriented offense," "child-victim oriented offense," and "tier III sex offender/child-victim offender," have the same meanings as in section 2950.01 of the Revised Code.

(LL) An offense is "committed in the vicinity of a child" if the offender commits the offense within thirty feet of or within the same residential unit as a child who is under eighteen years of age, regardless of whether the offender knows the age of the child or whether the offender knows the offense is being committed within thirty feet of or within the same residential unit as the child and regardless of whether the child actually views the commission of the offense.

(MM) "Family or household member" has the same meaning as in section 2919.25 of the Revised Code.

(NN) "Motor vehicle" and "manufactured home" have the same meanings as in section 4501.01 of the Revised Code.

(OO) "Detention" and "detention facility" have the same meanings as in section 2921.01 of the Revised Code.

(PP) "Third degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the third degree.

(QQ) "Random drug testing" has the same meaning as in section 5120.63 of the Revised Code.

(RR) "Felony sex offense" has the same meaning as in section 2967.28 of the Revised Code.

(SS) "Body armor" has the same meaning as in section 2941.1411 [2941.14.11] of the Revised Code.

(TT) "Electronic monitoring" means monitoring through the use of an electronic monitoring device.

(UU) "Electronic monitoring device" means any of the following:

- (1) Any device that can be operated by electrical or battery power and that conforms with all of the following:

(a) The device has a transmitter that can be attached to a person, that will transmit a specified signal to a receiver of the type described in division (UU)(1)(b) of this section if the transmitter is removed from the person, turned off, or altered in any manner without prior court approval in relation to electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with, that can transmit continuously and periodically a signal to that receiver when the person is within a specified distance from the receiver, and that can transmit an appropriate signal to that receiver if the person to whom it is attached travels a specified distance from that receiver.

(b) The device has a receiver that can receive continuously the signals transmitted by a transmitter of the type described in division (UU)(1)(a) of this section, can transmit continuously those signals by a wireless or landline telephone connection to a central monitoring computer of the type described in division (UU)(1)(c) of this section, and can transmit continuously an appropriate signal to that central monitoring computer if the device has been turned off or altered without prior court approval or otherwise tampered with. The device is designed specifically for use in electronic monitoring, is not a converted wireless phone or another tracking device that is clearly not designed for electronic monitoring, and provides a means of text-based or voice communication with the person.

(c) The device has a central monitoring computer that can receive continuously the signals transmitted by a wireless or landline telephone connection by a receiver of the type described in division (UU)(1)(b) of this section and can monitor continuously the person to whom an electronic monitoring device of the type described in division (UU)(1)(a) of this section is attached.

(2) Any device that is not a device of the type described in division (UU)(1) of this section and that conforms with all of the following:

(a) The device includes a transmitter and receiver that can monitor and determine the location of a subject person at any time, or at a designated point in time, through the use of a central monitoring computer or through other electronic means.

(b) The device includes a transmitter and receiver that can determine at any time, or at a designated point in time, through the use of a central monitoring computer or other electronic means the fact that the transmitter is turned off or altered in any manner without prior approval of the court in relation to the electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with.

(3) Any type of technology that can adequately track or determine the location of a subject person at any time and that is approved by the director of rehabilitation and correction, including, but not limited to, any satellite technology, voice tracking system, or retinal scanning system that is so approved.

(VV) "Non-economic loss" means nonpecuniary harm suffered by a victim of an offense as a result of or related to the commission of the offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

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

(XX) "Continuous alcohol monitoring" means the ability to automatically test and periodically transmit alcohol consumption levels and tamper attempts at least every hour, regardless of the location of the person who is being monitored.

(YY) A person is "adjudicated a sexually violent predator" if the person is convicted of or pleads guilty to a violent sex 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 that violent sex offense or if the person is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that designated homicide, assault, or kidnapping offense.

(ZZ) An offense is "committed in proximity to a school" if the offender commits the offense in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises, regardless of whether the offender knows the offense is being committed in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises.

(AAA) "Human trafficking" means a scheme or plan to which all of the following apply:

(1) Its object is to compel a victim or victims to engage in sexual activity for hire, to engage in a performance that is obscene, sexually oriented, or nudity oriented, or to be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented.

(2) It involves at least two felony offenses, whether or not there has been a prior conviction for any of the felony offenses, to which all of the following apply:

(a) Each of the felony offenses is a violation of section 2905.01, 2905.02, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323 [2907.32.3], or division (B)(1), (2), (3), (4), or (5) of section 2919.22 of the Revised Code or is a violation of a law of any state other than this state that is substantially similar to any of the sections or divisions of the Revised Code identified in this division.

(b) At least one of the felony offenses was committed in this state.

(c) The felony offenses are related to the same scheme or plan, are not isolated instances, and are not so closely related to each other and connected in time and place that they constitute a single event or transaction.

(BBB) "Material," "nudity," "obscene," "performance," and "sexual activity" have the same meanings as in section 2907.01 of the Revised Code.

(CCC) "Material that is obscene, sexually oriented, or nudity oriented" means any material that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.

(DDD) "Performance that is obscene, sexually oriented, or nudity oriented" means any performance that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 445 (Eff 9-3-96); 146 v H 480 (Eff 10-16-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 147 v H 378 (Eff 3-10-98); 147 v S 111 (Eff 3-17-98); 148 v S 9 (Eff 3-8-2000); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 349 (Eff 9-22-2000); 148 v S 222 (Eff 3-22-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 327. Eff 7-8-2002; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 1, Eff 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v S 57, § 1, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 95, § 1, eff. 8-3-06; 151 v H 162, § 1, eff. 10-12-06; 151 v S 260, § 1, eff. 1-2-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08; 152 v S 220, § 1, eff. 9-30-08; 152 v H 280, § 1, eff. 4-7-09; 152 v H 130, § 1, eff. 4-7-09; 153 v S 162, § 1, eff. 9-13-10.

LEXSTAT ORC 2929.11

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2929. PENALTIES AND SENTENCING
PENALTIES FOR FELONY

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ORC Ann. 2929.11 (2010)

§ 2929.11. Purposes of felony sentencing; discrimination prohibited

(A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

(B) A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

(C) A court that imposes a sentence upon an offender for a felony shall not base the sentence upon the race, ethnic background, gender, or religion of the offender.

HISTORY:

146 v S 2. Eff 7-1-96.

LEXSTAT ORC ANN. 2929.19

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CHAPTER 2929. PENALTIES AND SENTENCING
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ORC Ann. 2929.19 (2010)

§ 2929.19. Sentencing hearing

(A) The court shall hold a sentencing hearing before imposing a sentence under this chapter upon an offender who was convicted of or pleaded guilty to a felony and before resentencing an offender who was convicted of or pleaded guilty to a felony and whose case was remanded pursuant to section 2953.07 or 2953.08 of the Revised Code. At the hearing, the offender, the prosecuting attorney, the victim or the victim's representative in accordance with section 2930.14 of the Revised Code, and, with the approval of the court, any other person may present information relevant to the imposition of sentence in the case. The court shall inform the offender of the verdict of the jury or finding of the court and ask the offender whether the offender has anything to say as to why sentence should not be imposed upon the offender.

(B) (1) At the sentencing hearing, the court, before imposing sentence, shall consider the record, any information presented at the hearing by any person pursuant to division (A) of this section, and, if one was prepared, the presentence investigation report made pursuant to section 2951.03 of the Revised Code or Criminal Rule 32.2, and any victim impact statement made pursuant to section 2947.051 [2947.05.1] of the Revised Code.

(2) The court shall impose a sentence and shall make a finding that gives its reasons for selecting the sentence imposed in any of the following circumstances:

(a) Unless the offense is a violent sex offense or designated homicide, assault, or kidnapping offense for which the court is required to impose sentence pursuant to division (G) of section 2929.14 of the Revised Code, if it imposes a prison term for a felony of the fourth or fifth degree or for a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and that is specified as being subject to division (B) of section 2929.13 of the Revised Code for purposes of sentencing, its reasons for imposing the prison term, based upon the overriding purposes and principles of felony sentencing set forth in section 2929.11 of the Revised Code, and any factors listed in divisions (B)(1)(a) to (i) of section 2929.13 of the Revised Code that it found to apply relative to the offender.

(b) If it does not impose a prison term for a felony of the first or second degree or for a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and for which a presumption in favor of a prison term is specified as being applicable, its reasons for not imposing the prison term and for overriding the presumption, based upon the overriding purposes and principles of felony sentencing set forth in section 2929.11 of the Revised Code, and the basis of the findings it made under divisions (D)(1) and (2) of section 2929.13 of the Revised Code.

(c) If it imposes consecutive sentences under section 2929.14 of the Revised Code, its reasons for imposing the consecutive sentences;

(d) If the sentence is for one offense and it imposes a prison term for the offense that is the maximum prison term allowed for that offense by division (A) of section 2929.14 of the Revised Code or section 2929.142 [2929.14.2] of the Revised Code, its reasons for imposing the maximum prison term;

(e) If the sentence is for two or more offenses arising out of a single incident and it imposes a prison term for those offenses that is the maximum prison term allowed for the offense of the highest degree by division (A) of section 2929.14 of the Revised Code or section 2929.142 [2929.14.2] of the Revised Code, its reasons for imposing the maximum prison term.

(3) Subject to division (B)(4) of this section, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

(a) Impose a stated prison term and, if the court imposes a mandatory prison term, notify the offender that the prison term is a mandatory prison term;

(b) In addition to any other information, include in the sentencing entry the name and section reference to the offense or offenses, the sentence or sentences imposed and whether the sentence or sentences contain mandatory prison terms, if sentences are imposed for multiple counts whether the sentences are to be served concurrently or consecutively, and the name and section reference of any specification or specifications for which sentence is imposed and the sentence or sentences imposed for the specification or specifications;

(c) Notify the offender that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentenced for a felony of the first degree or second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person. If a court imposes a sentence including a prison term of a type described in division (B)(3)(c) of this section on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(3)(c) of this section that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the mandatory period of supervision that is required for the offender under division (B) of section 2967.28 of the Revised Code. Section 2929.191 [2929.19.1] of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(3)(c) of this section and failed to notify the offender pursuant to division (B)(3)(c) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.

(d) Notify the offender that the offender may be supervised under section 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree that is not subject to division (B)(3)(c) of this section. Section 2929.191 [2929.19.1] of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(3)(d) of this section and failed to notify the offender pursuant to division (B)(3)(d) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.

(e) Notify the offender that, if a period of supervision is imposed following the offender's release from prison, as described in division (B)(3)(c) or (d) of this section, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of section 2967.131 [2967.13.1] of the Revised Code, the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender. If a court imposes a sentence including a prison term on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(3)(e) of this section that the parole board may impose a prison term as described in division (B)(3)(e) of this section for a violation of that supervision or a condition of post-release control imposed under division (B) of section 2967.131 [2967.13.1] of the Revised Code or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the authority of the parole board to so impose a prison term for a violation of that nature if, pursuant to division (D)(1) of section 2967.28 of the Revised Code, the parole board notifies the offender prior to the offender's release of the board's authority to so impose a prison term. Section 2929.191 [2929.19.1] of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term and failed to notify the offender pursuant to division (B)(3)(e) of this section regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control.

(f) Require that the offender not ingest or be injected with a drug of abuse and submit to random drug testing as provided in section 341.26, 753.33, or 5120.63 of the Revised Code, whichever is applicable to the offender who is serving a prison term, and require that the results of the drug test administered under any of those sections indicate that the offender did not ingest or was not injected with a drug of abuse.

(4) (a) The court shall include in the offender's sentence a statement that the offender is a tier III sex offender/child-victim offender, and the court shall comply with the requirements of section 2950.03 of the Revised Code if any of the following apply:

(i) The offender is being sentenced for a violent sex offense or designated homicide, assault, or kidnapping offense that the offender committed on or after January 1, 1997, and the offender is adjudicated a sexually violent predator in relation to that offense.

(ii) The offender is being sentenced for a sexually oriented offense that the offender committed on or after January 1, 1997, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iii) The offender is being sentenced on or after July 31, 2003, for a child-victim oriented offense, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iv) The offender is being sentenced under section 2971.03 of the Revised Code for a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after January 2, 2007.

(v) The offender is sentenced to a term of life without parole under division (B) of section 2907.02 of the Revised Code.

(vi) The offender is being sentenced for attempted rape committed on or after January 2, 2007, and 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.

(vii) The offender is being sentenced under division (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code for an offense described in those divisions committed on or after January 1, 2008.

(b) Additionally, if any criterion set forth in divisions (B)(4)(a)(i) to (vii) of this section is satisfied, in the circumstances described in division (G) of section 2929.14 of the Revised Code, the court shall impose sentence on the offender as described in that division.

(5) If the sentencing court determines at the sentencing hearing that a community control sanction should be imposed and the court is not prohibited from imposing a community control sanction, the court shall impose a community control sanction. The court shall notify the offender that, if the conditions of the sanction are violated, if the offender commits a violation of any law, or if the offender leaves this state without the permission of the court or the offender's probation officer, the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender and shall indicate the specific prison term that may be imposed as a sanction for the violation, as selected by the court from the range of prison terms for the offense pursuant to section 2929.14 of the Revised Code.

(6) Before imposing a financial sanction under section 2929.18 of the Revised Code or a fine under section 2929.32 of the Revised Code, the court shall consider the offender's present and future ability to pay the amount of the sanction or fine.

(7) If the sentencing court sentences the offender to a sanction of confinement pursuant to section 2929.14 or 2929.16 of the Revised Code that is to be served in a local detention facility, as defined in section 2929.36 of the Revised Code, and if the local detention facility is covered by a policy adopted pursuant to section 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code and section 2929.37 of the Revised Code, both of the following apply:

(a) The court shall specify both of the following as part of the sentence:

(i) If the offender is presented with an itemized bill pursuant to section 2929.37 of the Revised Code for payment of the costs of confinement, the offender is required to pay the bill in accordance with that section.

(ii) If the offender does not dispute the bill described in division (B)(7)(a)(i) of this section and does not pay the bill by the times specified in section 2929.37 of the Revised Code, the clerk of the court may issue a certificate of judgment against the offender as described in that section.

(b) The sentence automatically includes any certificate of judgment issued as described in division (B)(7)(a)(ii) of this section.

(8) The failure of the court to notify the offender that a prison term is a mandatory prison term pursuant to division (B)(3)(a) of this section or to include in the sentencing entry any information required by division (B)(3)(b) of this section does not affect the validity of the imposed sentence or sentences. If the sentencing court notifies the offender at the sentencing hearing that a prison term is mandatory but the sentencing entry does not specify that the prison term is mandatory, the court may complete a corrected journal entry and send copies of the corrected entry to the offender and the department of rehabilitation and correction, or, at the request of the state, the court shall complete a corrected journal entry and send copies of the corrected entry to the offender and department of rehabilitation and correction.

(C) (1) If the offender is being sentenced for a fourth degree felony OVI offense under division (G)(1) of section 2929.13 of the Revised Code, the court shall impose the mandatory term of local incarceration in accordance with that division, shall impose a mandatory fine in accordance with division (B)(3) of section 2929.18 of the Revised Code, and, in addition, may impose additional sanctions as specified in sections 2929.15, 2929.16, 2929.17, and 2929.18 of the Revised Code. The court shall not impose a prison term on the offender except that the court may impose a prison term upon the offender as provided in division (A)(1) of section 2929.13 of the Revised Code.

(2) If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, the court shall impose the mandatory prison term in accordance with that division, shall impose a mandatory fine in accordance with division (B)(3) of section 2929.18 of the Revised Code, and, in addition, may impose an additional prison term as specified in section 2929.14 of the Revised Code. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may impose a community control sanction on the offender, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(D) The sentencing court, pursuant to division (K) of section 2929.14 of the Revised Code, may recommend placement of the offender in a program of shock incarceration under section 5120.031 [5120.03.1] of the Revised Code or an intensive program prison under section 5120.032 [5120.03.2] of the Revised Code, disapprove placement of the offender in a program or prison of that nature, or make no recommendation. If the court recommends or disapproves placement, it shall make a finding that gives its reasons for its recommendation or disapproval.

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 349 (Eff 9-22-2000); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-8-2002); 149 v H 170. Eff 9-6-2002; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 1, Eff 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 137, § 1, eff. 7-11-06; 151 v S 260, § 1, eff. 1-2-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08; 152 v H 130, § 1, eff. 4-7-09.

LEXSTAT ORC ANN. 2929.23

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2929. PENALTIES AND SENTENCING
PENALTIES FOR MISDEMEANOR

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ORC Ann. 2929.23 (2010)

§ 2929.23. Sentencing for sexually oriented offense or child-victim misdemeanor offense committed on or after January 1, 1997

(A) If an offender is being sentenced for a sexually oriented offense or child-victim oriented offense that is a misdemeanor committed on or after January 1, 1997, and the offender is a tier III sex offender/child-victim offender relative to the offense or the offense is any offense listed in division (D)(1) to (3) of section 2901.07 of the Revised Code, the judge shall include in the offender's sentence a statement that the offender is a tier III sex offender/child-victim offender, shall comply with the requirements of section 2950.03 of the Revised Code, and shall require the offender to submit to a DNA specimen collection procedure pursuant to section 2901.07 of the Revised Code.

(B) If an offender is being sentenced for a sexually oriented offense or a child-victim oriented offense that is a misdemeanor committed on or after January 1, 1997, the judge shall include in the sentence a summary of the offender's duties imposed under sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code and the duration of the duties. The judge shall inform the offender, at the time of sentencing, of those duties and of their duration. If required under division (A)(2) of section 2950.03 of the Revised Code, the judge shall perform the duties specified in that section or, if required under division (A)(6) of section 2950.03 of the Revised Code, the judge shall perform the duties specified in that division.

HISTORY:

149 v H 490, §§ 1, 2, (eff. 1-1-04); 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 3, eff. 1-1-04; 152 v S 10, § 1, eff. 1-1-08.

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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. 2950.01 (2006)

§ 2950.01. Definitions

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

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

(B) "Habitual sex offender" means, except when a juvenile judge removes this classification pursuant to division (A)(2) of section 2152.84 or division (C)(2) of *section 2152.85 of the Revised Code*, a person to whom both of the following apply:

(1) The person is convicted of or pleads guilty to a sexually oriented offense that is not a registration-exempt sexually oriented offense, or the person 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, was fourteen years of age or older at the time of committing the offense, and is classified a juvenile sex offender registrant based on that adjudication.

(2) One of the following applies to the person:

(a) Regarding a person who is an offender, the person previously was convicted of or pleaded guilty to one or more sexually oriented offenses or child-victim oriented offenses or previously was adjudicated a delinquent child for committing one or more sexually oriented offenses or child-victim oriented offenses and was classified a juvenile offender registrant or out-of-state juvenile offender registrant based on one or more of those adjudications, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense.

(b) Regarding a delinquent child, the person previously was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing one or more sexually oriented offenses or child-victim oriented offenses, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense.

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

(D) "Sexually oriented offense" means any of the following:

(1) Any of the following violations or offenses committed by a person eighteen years of age or older:

(a) Regardless of the age of the victim of the offense, a violation of *section 2907.02, 2907.03, 2907.05, or 2907.07 of the Revised Code*;

(b) Any of the following offenses involving a minor, in the circumstances specified:

(i) A violation of division (A)(4) of *section 2905.01* or *section 2907.04, 2907.06, or 2907.08 of the Revised Code*, when the victim of the offense is under eighteen years of age;

(ii) A violation of *section 2907.21 of the Revised Code* when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under eighteen years of age;

(iii) A violation of division (A)(1) or (3) of *section 2907.321 [2907.32.1]* or *2907.322 [2907.32.2]* of the *Revised Code*;

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

(v) A violation of division (B)(5) of *section 2919.22 of the Revised Code* when the child who is involved in the offense is under eighteen years of age;

(vi) A violation of division (A)(1), (2), (3), or (5) of *section 2905.01*, of *section 2903.211 [2903.21.1]*, *2905.02, 2905.03, or 2905.05*, or of former *section 2905.04 of the Revised Code*, when the victim of the offense is under eighteen years of age and the offense is committed with a sexual motivation.

(c) Regardless of the age of the victim of the offense, a violation of *section 2903.01, 2903.02, 2903.11, or 2905.01 of the Revised Code*, or of division (A) of *section 2903.04 of the Revised Code*, that is committed with a sexual motivation;

(d) A violent sex offense, or a designated homicide, assault, or kidnapping offense if the offender also was convicted of or pleaded guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the designated homicide, assault, or kidnapping offense;

(e) A violation of *section 2907.06 or 2907.08 of the Revised Code* when the victim of the offense is eighteen years of age or older, or a violation of *section 2903.211 [2903.21.1]* of the *Revised Code* when the victim of the offense is eighteen years of age or older and the offense is committed with a sexual motivation;

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

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

(2) An act committed by a person under eighteen years of age that is any of the following:

(a) Subject to division (D)(2)(i) of this section, regardless of the age of the victim of the violation, a violation of *section 2907.02, 2907.03, 2907.05, or 2907.07 of the Revised Code*;

(b) Subject to division (D)(2)(i) of this section, any of the following acts involving a minor in the circumstances specified:

(i) A violation of division (A)(4) of *section 2905.01* or *section 2907.06 or 2907.08 of the Revised Code*, when the victim of the violation is under eighteen years of age;

(ii) A violation of *section 2907.21 of the Revised Code* when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under eighteen years of age;

(iii) A violation of division (B)(5) of *section 2919.22 of the Revised Code* when the child who is involved in the violation is under eighteen years of age;

(iv) A violation of division (A)(1), (2), (3), or (5) of *section 2905.01*, *section 2903.211 [2903.21.1]*, or former *section 2905.04 of the Revised Code*, when the victim of the violation is under eighteen years of age and the offense is committed with a sexual motivation.

(c) Subject to division (D)(2)(i) of this section, any of the following:

(i) Any violent sex offense that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(ii) Any designated homicide, assault, or kidnapping offense if that offense, if committed by an adult, would be a felony of the first, second, third, or fourth degree and if the court determined that, if the child was an adult, the child would be guilty of a sexual motivation specification regarding that offense.

(d) Subject to division (D)(2)(i) of this section, a violation of *section 2903.01, 2903.02, 2903.11, 2905.01, or 2905.02 of the Revised Code*, a violation of division (A) of *section 2903.04 of the Revised Code*, or an attempt to violate any of those sections or that division that is committed with a sexual motivation;

(e) Subject to division (D)(2)(i) of this section, a violation of division (A)(1) or (3) of *section 2907.321 [2907.32.1]*, division (A)(1) or (3) of *section 2907.322 [2907.32.2]*, or division (A)(1) or (2) of *section 2907.323 [2907.32.3] of the Revised Code*, or an attempt to violate any of those divisions, if the person who violates or attempts to violate the division is four or more years older than the minor who is the victim of the violation;

(f) Subject to division (D)(2)(i) of this section, a violation of *section 2907.06 or 2907.08 of the Revised Code* when the victim of the violation is eighteen years of age or older, or a violation of *section 2903.211 [2903.21.1] of the Revised Code* when the victim of the violation is eighteen years of age or older and the offense is committed with a sexual motivation;

(g) Subject to division (D)(2)(i) of this section, any violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in division (D)(2)(a), (b), (c), (d), (e), or (f) of this section and that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(h) Subject to division (D)(2)(i) of this section, any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (D)(2)(a), (b), (c), (d), (e), (f), or (g) of this section;

(i) If the child's case has been transferred for criminal prosecution under *section 2152.12 of the Revised Code*, the act is any violation listed in division (D)(1)(a), (b), (c), (d), (e), (f), or (g) of this section or would be any offense listed in any of those divisions if committed by an adult.

(E) "Sexual predator" means a person to whom either of the following applies:

(1) The person has been convicted of or pleaded guilty to committing a sexually oriented offense that is not a registration-exempt sexually oriented offense and is likely to engage in the future in one or more sexually oriented offenses.

(2) The person has been adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, was fourteen years of age or older at the time of committing the offense, was classified a juvenile offender registrant based on that adjudication, and is likely to engage in the future in one or more sexually oriented offenses.

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

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

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

(G) An offender or delinquent child is "adjudicated as being a sexual predator" or "adjudicated a sexual predator" if any of the following applies and if, regarding a delinquent child, that status has not been removed pursuant to *section 2152.84, 2152.85, or 2950.09 of the Revised Code*:

(1) The offender 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 any of the following apply:

(a) The sexually oriented offense is a violent sex offense or a designated homicide, assault, or kidnapping offense, and the offender is adjudicated a sexually violent predator in relation to that offense.

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

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

(2) Regardless of when the sexually oriented offense was committed, on or after January 1, 1997, the offender is sentenced for a sexually oriented offense that is not a registration-exempt sexually oriented offense, and the sentencing judge determines pursuant to division (B) of *section 2950.09 of the Revised Code* that the offender is a sexual predator.

(3) The delinquent child is adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, was fourteen years of age or older at the time of committing the offense, and has been classified a juvenile offender registrant based on that adjudication, and the adjudicating judge or that judge's successor in office determines pursuant to division (B) of *section 2950.09* or pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code* that the delinquent child is a sexual predator.

(4) Prior to January 1, 1997, the offender was convicted of or pleaded guilty to, and was sentenced for, a sexually oriented offense that is not a registration-exempt sexually oriented offense, the offender is imprisoned in a state correctional institution on or after January 1, 1997, and the court determines pursuant to division (C) of *section 2950.09 of the Revised Code* that the offender is a sexual predator.

(5) Regardless of when the sexually oriented offense was committed, the offender or delinquent child 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 that is not a registration-exempt sexually oriented offense in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States, as a result of that conviction, plea of guilty, or adjudication, the offender or delinquent child is required, under the law of the jurisdiction in which the offender was convicted or pleaded guilty or the delinquent child was adjudicated, to register as a sex offender until the offender's or delinquent child's death, and, on or after July 1, 1997, for offenders or January 1, 2002, for delinquent children, the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than five days or the offender is required under *section 2950.04 of the Revised Code* to register a school, institution of higher education, or place of employment address in this state, unless a court of common pleas or juvenile court determines that the offender or delinquent child is not a sexual predator pursuant to division (F) of *section 2950.09 of the Revised Code*.

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

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

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

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

(L) "Out-of-state juvenile offender registrant" means a person who is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense, who on or after January 1, 2002, moves to and resides in this state or temporarily is domiciled in this state for more than five days, and who has a duty under *section 2950.04 of the Revised Code* to register in this state and the duty to otherwise comply with that section and *sections 2950.05 and 2950.06 of the Revised Code* if the child committed a sexually oriented offense or has a duty under *section 2950.041 [2950.04.1] of the Revised Code* to register in this state and the duty to otherwise comply with that section and *sections 2950.05 and 2950.06 of the Revised Code* if the child committed a child-victim oriented offense. "Out-of-state juvenile offender registrant" includes a person who, prior to July 31, 2003, was an "out-of-state juvenile sex offender registrant" under the former definition of that former term.

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

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

(O) "Aggravated sexually oriented offense" means a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* committed on or after June 13, 2002, or a violation of division (A)(2) of that section committed on or after July 31, 2003.

(P) (1) "Presumptive registration-exempt sexually oriented offense" means any of the following sexually oriented offenses described in division (P)(1)(a), (b), (c), (d), or (e) of this section, when the offense is committed by a person who previously has not been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing any sexually oriented offense described in division (P)(1)(a), (b), (c), (d), or (e) of this section, any other sexually oriented offense, or any child-victim oriented offense and when the victim or intended victim of the offense is eighteen years of age or older:

(a) Any sexually oriented offense listed in division (D)(1)(e) or (D)(2)(f) of this section committed by a person who is eighteen years of age or older or, subject to division (P)(1)(e) of this section, committed by a person who is under eighteen years of age;

(b) Any violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is committed by a person who is eighteen years of age or older and that is or was substantially equivalent to any sexually oriented offense listed in division (P)(1)(a) of this section;

(c) Subject to division (P)(1)(e) of this section, any violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is committed by a person who is under eighteen years of age, that is or was substantially equivalent to any sexually oriented offense listed in division (P)(1)(a) of this section, and that would be a felony of the fourth degree if committed by an adult;

(d) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (P)(1)(a) or (b) of this section if the person is eighteen years of age or older or, subject to division (P)(1)(e) of this section, listed in division (P)(1)(a) or (c) of this section if the person is under eighteen years of age.

(e) Regarding an act committed by a person under eighteen years of age, if the child's case has been transferred for criminal prosecution under *section 2152.12 of the Revised Code*, the act is any sexually oriented offense listed in division (P)(1)(a), (b), or (d) of this section.

(2) "Presumptive registration-exempt sexually oriented offense" does not include any sexually oriented offense described in division (P)(1)(a), (b), (c), (d), or (e) of this section that is committed by a person who previously has been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing any sexually oriented offense described in division (P)(1)(a), (b), (c), (d), or (e) of this section or any other sexually oriented offense.

(Q) (1) "Registration-exempt sexually oriented offense" means any presumptive registration-exempt sexually oriented offense, if a court does not issue an order under *section 2950.021 [2950.02.1] of the Revised Code* that removes the presumptive exemption and subjects the offender who was convicted of or pleaded guilty to the offense to registration under *section 2950.04 of the Revised Code* and all other duties and responsibilities generally imposed under this chapter upon persons who are convicted of or plead guilty to any sexually oriented offense other than a presumptive registration-exempt sexually oriented offense or that removes the presumptive exemption and potentially subjects the child who was adjudicated a delinquent child for committing the offense to classification as a juvenile offender registrant under *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code* and to registration under *section 2950.04 of the Revised Code* and all other duties and responsibilities generally imposed under this chapter upon persons who are adjudicated delinquent children for committing a sexually oriented offense other than a presumptive registration-exempt sexually oriented offense.

(2) "Registration-exempt sexually oriented offense" does not include a presumptive registration-exempt sexually oriented offense if a court issues an order under *section 2950.021 [2950.02.1] of the Revised Code* that removes the presumptive exemption and subjects the offender or potentially subjects the delinquent child to the duties and responsibilities described in division (Q)(1) of this section.

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

(S) (1) "Child-victim oriented offense" means any of the following:

(a) Subject to division (S)(2) of this section, any of the following violations or offenses committed by a person eighteen years of age or older, when the victim of the violation is under eighteen years of age and is not a child of the person who commits the violation:

(i) A violation of division (A)(1), (2), (3), or (5) of section 2905.01, of section 2905.02, 2905.03, or 2905.05, or of former *section 2905.04 of the Revised Code*;

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

(iii) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (S)(1)(a)(i) or (ii) of this section.

(b) Subject to division (S)(2) of this section, an act committed by a person under eighteen years of age that is any of the following, when the victim of the violation is under eighteen years of age and is not a child of the person who commits the violation:

(i) Subject to division (S)(1)(b)(iv) of this section, a violation of division (A)(1), (2), (3), or (5) of section 2905.01 or of former *section 2905.04 of the Revised Code*;

(ii) Subject to division (S)(1)(b)(iv) of this section, any violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in division (S)(1)(b)(i) of this section and that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(iii) Subject to division (S)(1)(b)(iv) of this section, any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (S)(1)(b)(i) or (ii) of this section;

(iv) If the child's case has been transferred for criminal prosecution under *section 2152.12 of the Revised Code*, the act is any violation listed in division (S)(1)(a)(i), (ii), or (iii) of this section or would be any offense listed in any of those divisions if committed by an adult.

(2) "Child-victim oriented offense" does not include any offense identified in division (S)(1)(a) or (b) of this section that is a sexually violent offense. An offense identified in division (S)(1)(a) or (b) of this section that is a sexually violent offense is within the definition of a sexually oriented offense.

(T) (1) "Habitual child-victim offender" means, except when a juvenile judge removes this classification pursuant to division (A)(2) of section 2152.84 or division (C)(2) of *section 2152.85 of the Revised Code*, a person to whom both of the following apply:

(a) The person is convicted of or pleads guilty to a child-victim oriented offense, or the person is adjudicated a delinquent child for committing on or after January 1, 2002, a child-victim oriented offense, was fourteen years of age or older at the time of committing the offense, and is classified a juvenile offender registrant based on that adjudication.

(b) One of the following applies to the person:

(i) Regarding a person who is an offender, the person previously was convicted of or pleaded guilty to one or more child-victim oriented offenses or previously was adjudicated a delinquent child for committing one or more child-victim oriented offenses and was classified a juvenile offender registrant or out-of-state juvenile offender registrant based on one or more of those adjudications, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense.

(ii) Regarding a delinquent child, the person previously was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing one or more child-victim oriented offenses, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense.

(2) "Habitual child-victim offender" includes a person who has been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing, a child-victim oriented offense and who, on and after July 31, 2003, is automatically classified a habitual child-victim offender pursuant to division (E) of *section 2950.091 [2950.09.1] of the Revised Code*.

(U) "Child-victim predator" means a person to whom either of the following applies:

(1) The person has been convicted of or pleaded guilty to committing a child-victim oriented offense and is likely to engage in the future in one or more child-victim oriented offenses.

(2) The person has been adjudicated a delinquent child for committing a child-victim oriented offense, was fourteen years of age or older at the time of committing the offense, was classified a juvenile offender registrant based on that adjudication, and is likely to engage in the future in one or more child-victim oriented offenses.

(V) An offender or delinquent child is "adjudicated as being a child-victim predator" or "adjudicated a child-victim predator" if any of the following applies and if, regarding a delinquent child, that status has not been removed pursuant to *section 2152.84, 2152.85, or 2950.09 of the Revised Code*:

(1) The offender or delinquent child has been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing, a child-victim oriented offense and, on and after July 31, 2003, is automatically classified a child-victim predator pursuant to division (A) of *section 2950.091 [2950.09.1] of the Revised Code*.

(2) Regardless of when the child-victim oriented offense was committed, on or after July 31, 2003, the offender is sentenced for a child-victim oriented offense, and the sentencing judge determines pursuant to division (B) of *section 2950.091 [2950.09.1] of the Revised Code* that the offender is a child-victim predator.

(3) The delinquent child is adjudicated a delinquent child for committing a child-victim oriented offense, was fourteen years of age or older at the time of committing the offense, and has been classified a juvenile offender registrant based on that adjudication, and the adjudicating judge or that judge's successor in office determines pursuant to division (B) of section 2950.09 or pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code* that the delinquent child is a child-victim predator.

(4) Prior to July 31, 2003, the offender was convicted of or pleaded guilty to a child-victim oriented offense, at the time of the conviction or guilty plea, the offense was considered a sexually oriented offense, on or after July 31, 2003, the offender is serving a term of imprisonment in a state correctional institution, and the court determines pursuant to division (C) of *section 2950.091 [2950.09.1] of the Revised Code* that the offender is a child-victim predator.

(5) Regardless of when the child-victim oriented offense was committed, the offender or delinquent child is convicted, pleads guilty, has been convicted, pleaded 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 in any nation other than the United States for committing a child-victim oriented offense, as a result of that conviction, plea of guilty, or adjudication, the offender or delinquent child is required under the law of the jurisdiction in which the offender was convicted or pleaded guilty or the delinquent child was adjudicated, to register as a child-victim offender or sex offender until the offender's or delinquent child's death, and, on or after July 1, 1997, for offenders or January 1, 2002, for delinquent children the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than five days or the offender is required under *section 2950.041 [2950.04.1] of the Revised Code* to register a school, institution of higher education, or place of employment address in this state, unless a court of common pleas or juvenile court determines that the offender or delinquent child is not a child-victim predator pursuant to division (F) of *section 2950.091 [2950.09.1] of the Revised Code*.

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

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

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

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

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

(BB) "Adjudicated a sexually violent predator" has the same meaning as in *section 2929.01 of the Revised Code*, and a person is "adjudicated a sexually violent predator" in the same manner and the same circumstances as are described in that section.

HISTORY:

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

LEXSTAT ORC ANN. 2950.01

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
 WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
 *** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
 *** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

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

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ORC Ann. 2950.01 (2010)

§ 2950.01. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORY:

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

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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. 2950.02 (2006)

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

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

(1) If the public is provided adequate notice and information about offenders and delinquent children who commit sexually oriented offenses that are not registration-exempt sexually oriented offenses or who commit child-victim oriented offenses, members of the public and communities can develop constructive plans to prepare themselves and their children for the offender's or delinquent child's release from imprisonment, a prison term, or other confinement or detention. This allows members of the public and communities to meet with members of law enforcement agencies to prepare and obtain information about the rights and responsibilities of the public and the communities and to provide education and counseling to their children.

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

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

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

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

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

(B) The general assembly hereby declares that, in providing in this chapter for registration regarding offenders and certain delinquent children who have committed sexually oriented offenses that are not registration-exempt sexually oriented offenses or who have committed child-victim oriented offenses and for community notification regarding sex-

ual predators, child-victim predators, habitual sex offenders, and habitual child-victim offenders who are about to be or have been released from imprisonment, a prison term, or other confinement or detention and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood, it is the general assembly's intent to protect the safety and general welfare of the people of this state. The general assembly further declares that it is the policy of this state to require the exchange in accordance with this chapter of relevant information about sex offenders and offenders who commit child-victim oriented offenses among public agencies and officials and to authorize the release in accordance with this chapter of necessary and relevant information about sex offenders and offenders who commit child-victim oriented offenses to members of the general public as a means of assuring public protection and that the exchange or release of that information is not punitive.

HISTORY:

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

LEXSTAT ORC ANN. 2950.02

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*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

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

Go to the Ohio Code Archive Directory

ORC Ann. 2950.02 (2010)

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

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

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

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

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

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

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

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

(B) The general assembly hereby declares that, in providing in this chapter for registration regarding offenders and certain delinquent children who have committed sexually oriented offenses or who have committed child-victim oriented offenses and for community notification regarding tier III sex offenders/child-victim offenders who are criminal offenders, public registry-qualified juvenile offender registrants, and certain other juvenile offender registrants who are about to be or have been released from imprisonment, a prison term, or other confinement or detention and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood, it is the general assembly's intent to protect the safety and general welfare of the people of this state. The general assembly further de-

clares that it is the policy of this state to require the exchange in accordance with this chapter of relevant information about sex offenders and child-victim offenders among public agencies and officials and to authorize the release in accordance with this chapter of necessary and relevant information about sex offenders and child-victim offenders to members of the general public as a means of assuring public protection and that the exchange or release of that information is not punitive.

HISTORY:

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

LEXSTAT ORC ANN. 2950.03

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 *** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
 *** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

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

Go to the Ohio Code Archive Directory

ORC Ann. 2950.03 (2010)

§ 2950.03. Notice to offender or delinquent child of duty to register and update address

(A) Each person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense or a child-victim oriented offense and who has a duty to register pursuant to section 2950.04 or 2950.041 [2950.04.1] of the Revised Code and each person who is adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and who is classified a juvenile offender registrant based on that adjudication shall be provided notice in accordance with this section of the offender's or delinquent child's duties imposed under sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code and of the offender's duties to similarly register, provide notice of a change, and verify addresses in another state if the offender resides, is temporarily domiciled, attends a school or institution of higher education, or is employed in a state other than this state. The following official shall provide the notice required under this division to the specified person at the following time:

(1) Regardless of when the person committed the sexually oriented offense or child-victim oriented offense, if the person is an offender who is sentenced to a prison term, a term of imprisonment, or any other type of confinement for any offense, and if on or after January 1, 2008, the offender is serving that term or is under that confinement, subject to division (A)(5) of this section, the official in charge of the jail, workhouse, state correctional institution, or other institution in which the offender serves the prison term, term of imprisonment, or confinement, or a designee of that official, shall provide the notice to the offender before the offender is released pursuant to any type of supervised release or before the offender otherwise is released from the prison term, term of imprisonment, or confinement.

(2) Regardless of when the person committed the sexually oriented offense or child-victim oriented offense, if the person is an offender who is sentenced on or after January 1, 2008 for any offense, and if division (A)(1) of this section does not apply, the judge shall provide the notice to the offender at the time of sentencing.

(3) If the person is a delinquent child who is classified a juvenile offender registrant on or after January 1, 2008, the judge shall provide the notice to the delinquent child at the time specified in division (B) of section 2152.82, division (C) of section 2152.83, division (C) of section 2152.84, or division (E) of section 2152.85 of the Revised Code, whichever is applicable.

(4) If the person is a delinquent child who is classified as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant on or after January 1, 2008, the judge shall provide the notice to the delinquent child at the time specified in division (B) of section 2152.86 of the Revised Code.

(5) If the person is an offender or delinquent child in any of the following categories, the attorney general, department of rehabilitation and correction, or department of youth services shall provide the notice to the offender or

delinquent child at the time and in the manner specified in section 2950.031 [2950.03.1] or division (A) or (B) of section 2950.032 [2950.03.2] of the Revised Code, whichever is applicable:

(a) An offender or delinquent child who prior to December 1, 2007, has registered a residence, school, institution of higher education, or place of employment address pursuant to section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code;

(b) An offender or delinquent child who registers with a sheriff pursuant to section 2950.04 or 2950.041 [2950.04.1] of the Revised Code on or after December 1, 2007, previously had not registered under either section with that sheriff or any other sheriff, and was convicted of, pleaded guilty to, or was classified a juvenile offender registrant relative to the sexually oriented offense or child-victim oriented offense upon which the registration was based prior to December 1, 2007;

(c) An offender who on December 1, 2007, is serving a prison term in a state correctional institution for a sexually oriented offense or child-victim oriented offense or each delinquent child who has been classified a juvenile offender registrant relative to a sexually oriented offense or child-victim oriented offense and who on that date is confined in an institution of the department of youth services for the sexually oriented offense or child-victim oriented offense;

(d) An offender or delinquent child who on or after December 2, 2007, commences a prison term in a state correctional institution or confinement in an institution of the department of youth services for a sexually oriented offense or child-victim oriented offense and who was convicted of, pleaded guilty to, or was classified a juvenile offender registrant relative to the sexually oriented offense or child-victim oriented offense prior to that date.

(6) If the person is an offender or delinquent child who on or after July 1, 2007, and prior to January 1, 2008, is convicted of or pleads guilty to a sexually oriented offense or a child-victim oriented offense and is not sentenced to a prison term for that offense or is classified a juvenile offender registrant relative to a sexually oriented offense or child-victim oriented offense and is not committed to the custody of the department of youth services for that offense, the sentencing court or juvenile court shall provide the notice to the offender or delinquent child at the time and in the manner specified in division (C) of section 2950.032 [2950.03.2] of the Revised Code.

(7) If the person is an offender or delinquent child who has a duty to register in this state pursuant to division (A)(4) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, the offender or delinquent child is presumed to have knowledge of the law and of the offender's or delinquent child's duties imposed under sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code.

(B) (1) The notice provided under division (A) of this section shall inform the offender or delinquent child of the offender's or delinquent child's duty to register, to provide notice of a change in the offender's or delinquent child's residence address or in the offender's school, institution of higher education, or place of employment address, as applicable, and register the new address, to periodically verify the offender's or delinquent child's residence address or the offender's school, institution of higher education, or place of employment address, as applicable, and, if applicable, to provide notice of the offender's or delinquent child's intent to reside, pursuant to sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code. The notice shall specify that, for an offender, it applies regarding residence addresses or school, institution of higher education, and place of employment addresses and that, for a delinquent child, it applies regarding residence addresses. Additionally, it shall inform the offender of the offender's duties to similarly register, provide notice of a change in, and verify those addresses in states other than this state as described in division (A) of this section. A notice provided under division (A)(1), (2), (3), or (4) of this section shall comport with the following:

(a) If the notice is provided to an offender under division (A)(1) or (2) of this section, the official, official's designee, or judge shall require the offender to read and sign a form stating that the offender's duties to register, to file a notice of intent to reside, if applicable, to register a new residence address or new school, institution of higher education, or place of employment address, and to periodically verify those addresses, and the offender's duties in other states as described in division (A) of this section have been explained to the offender. If the offender is unable to read, the official, official's designee, or judge shall certify on the form that the official, designee, or judge specifically informed the offender of those duties and that the offender indicated an understanding of those duties.

(b) If the notice is provided to a delinquent child under division (A)(3) or (4) of this section, the judge shall require the delinquent child and the delinquent child's parent, guardian, or custodian to read and sign a form stating that the delinquent child's duties to register, to file a notice of intent to reside, if applicable, to register a new residence address, and to periodically verify that address have been explained to the delinquent child and to the delinquent child's

parent, guardian, or custodian. If the delinquent child or the delinquent child's parent, guardian, or custodian is unable to read, the judge shall certify on the form that the judge specifically informed the delinquent child or the delinquent child's parent, guardian, or custodian of those duties and that the delinquent child or the delinquent child's parent, guardian, or custodian indicated an understanding of those duties.

(2) The notice provided under divisions (A)(1) to (4) of this section shall be on a form prescribed by the bureau of criminal identification and investigation and shall contain all of the information specified in division (A) of this section and all of the information required by the bureau. The notice provided under divisions (A)(1) to (4) of this section shall include, but is not limited to, all of the following:

(a) For any notice provided under divisions (A)(1) to (4) of this section, an explanation of the offender's periodic residence address or periodic school, institution of higher education, or place of employment address verification process or of the delinquent child's periodic residence address verification process, an explanation of the frequency with which the offender or delinquent child will be required to verify those addresses under that process, a statement that the offender or delinquent child must verify those addresses at the times specified under that process or face criminal prosecution or a delinquent child proceeding, and an explanation of the offender's duty to similarly register, verify, and reregister those addresses in another state if the offender resides in another state, attends a school or institution of higher education in another state, or is employed in another state.

(b) If the notice is provided under division (A)(3) or (4) of this section, a statement that the delinquent child has been classified by the adjudicating juvenile court judge or the judge's successor in office a juvenile offender registrant and, if applicable, a public-registry qualified juvenile offender registrant and has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code;

(c) If the notice is provided under division (A)(3) or (4) of this section, a statement that, if the delinquent child fails to comply with the requirements of sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code, both of the following apply:

(i) If the delinquent child's failure occurs while the child is under eighteen years of age, the child is subject to proceedings under Chapter 2152. of the Revised Code based on the failure, but if the failure occurs while the child is eighteen years of age or older, the child is subject to criminal prosecution based on the failure.

(ii) If the delinquent child's failure occurs while the child is under eighteen years of age, unless the child is emancipated, as defined in section 2919.121 [2919.12.1] of the Revised Code, the failure of the parent, guardian, or custodian to ensure that the child complies with those requirements is a violation of section 2919.24 of the Revised Code and may result in the prosecution of the parent, guardian, or custodian for that violation.

(3) (a) After an offender described in division (A)(1) or (2) of this section has signed the form described in divisions (B)(1) and (2) of this section or the official, official's designee, or judge has certified on the form that the form has been explained to the offender and that the offender indicated an understanding of the duties indicated on it, the official, official's designee, or judge shall give one copy of the form to the offender, within three days shall send one copy of the form to the bureau of criminal identification and investigation in accordance with the procedures adopted pursuant to section 2950.13 of the Revised Code, shall send one copy of the form to the sheriff of the county in which the offender expects to reside, and shall send one copy of the form to the sheriff of the county in which the offender was convicted or pleaded guilty if the offender has a duty to register pursuant to division (A)(1) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code.

(b) After a delinquent child described in division (A)(3) or (4) of this section and the delinquent child's parent, guardian, or custodian have signed the form described in divisions (B)(1) and (2) of this section or the judge has certified on the form that the form has been explained to the delinquent child or the delinquent child's parent, guardian, or custodian and that the delinquent child or the delinquent child's parent, guardian, or custodian indicated an understanding of the duties and information indicated on the form, the judge shall give a copy of the form to both the delinquent child and to the delinquent child's parent, guardian, or custodian, within three days shall send one copy of the form to the bureau of criminal identification and investigation in accordance with the procedures adopted pursuant to section 2950.13 of the Revised Code, shall send one copy of the form to the sheriff of the county in which the delinquent child expects to reside, and shall send one copy of the form to the sheriff of the county in which the child was adjudicated a delinquent child if the delinquent child has a duty to register pursuant to division (A)(1) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code.

(C) The official, official's designee, judge, chief of police, or sheriff who is required to provide notice to an offender or delinquent child under divisions (A)(1) to (4) of this section shall determine the offender's or delinquent child's name, identifying factors, and expected future residence address in this state or any other state, shall obtain the offender's or delinquent child's criminal and delinquency history, and shall obtain a photograph and the fingerprints of the offender or delinquent child. Regarding an offender, the official, designee, or judge also shall obtain from the offender the offender's current or expected future school, institution of higher education, or place of employment address in this state, if any. If the notice is provided by a judge under division (A)(2), (3), or (4) of this section, the sheriff shall provide the offender's or delinquent child's criminal and delinquency history to the judge. The official, official's designee, or judge shall obtain this information and these items prior to giving the notice, except that a judge may give the notice prior to obtaining the offender's or delinquent child's criminal and delinquency history. Within three days after receiving this information and these items, the official, official's designee, or judge shall forward the information and items to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to section 2950.13 of the Revised Code, to the sheriff of the county in which the offender or delinquent child expects to reside and to the sheriff of the county in which the offender or delinquent child was convicted, pleaded guilty, or adjudicated a delinquent child if the offender or delinquent child has a duty to register pursuant to division (A)(1) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, and, regarding an offender, to the sheriff of the county, if any, in which the offender attends or will attend a school or institution of higher education or is or will be employed. If the notice is provided under division (A)(3) or (4) of this section and if the delinquent child has been committed to the department of youth services or to a secure facility, the judge, in addition to the other information and items described in this division, also shall forward to the bureau and to the sheriff notification that the child has been so committed. If it has not already done so, the bureau of criminal identification and investigation shall forward a copy of the fingerprints and conviction data received under this division to the federal bureau of investigation.

HISTORY:

146 v H 180 (Eff 1-1-97); 147 v H 93 (Eff 12-31-97); 148 v H 502 (Eff 3-15-2001); 149 v S 3 (Eff 1-1-2002); 149 v H 485. Eff 6-13-2002; 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 152 v S 10, § 1, eff. 1-1-08.

LEXSTAT ORC ANN. 2950.031

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*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

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

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ORC Ann. 2950.031 (2010)

§ 2950.031. Attorney general to determine application of new SORN Law to each offender or delinquent child; registered letter to be sent; right to court hearing to contest application

(A) (1) At any time on or after July 1, 2007, and not later than December 1, 2007, the attorney general shall determine for each offender or delinquent child who prior to December 1, 2007, has registered a residence, school, institution of higher education, or place of employment address pursuant to section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code the offender's or delinquent child's new classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed, and, regarding a delinquent child, whether the child is a public registry-qualified juvenile offender registrant.

(2) At any time on or after July 1, 2007, and not later than December 1, 2007, the attorney general shall send to each offender or delinquent child who prior to December 1, 2007, has registered a residence, school, institution of higher education, or place of employment address pursuant to section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code a registered letter that contains the information described in this division. The registered letter shall be sent return receipt requested to the last reported address of the person and, if the person is a delinquent child, the last reported address of the parents of the delinquent child. The letter sent to an offender or to a delinquent child and the delinquent child's parents pursuant to this division shall notify the offender or the delinquent child and the delinquent child's parents of all of the following:

(a) The changes in Chapter 2950. of the Revised Code that will be implemented on January 1, 2008;

(b) Subject to division (A)(2)(c) of this section, the offender's or delinquent child's new classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed and the duration of those duties, whether the delinquent child is classified a public registry-qualified juvenile offender registrant, and the information specified in division (B) of section 2950.03 of the Revised Code to the extent it is relevant to the offender or delinquent child;

(c) The fact that the offender or delinquent child has a right to a hearing as described in division (E) of this section, the procedures for requesting the hearing, and the period of time within which the request for the hearing must be made.

(d) If the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to January 1, 2008, a summary of the provisions of section 2950.033 [2950.03.3] of the Revised Code and the application of those provisions to the offender or delinquent child, provided that this division applies to a delinquent child only if the child is in a category specified in division (C) of section 2950.033 [2950.03.3] of the Revised Code.

(3) The attorney general shall make the determinations described in division (A)(1) of this section for each offender or delinquent child who has registered an address as described in that division, even if the offender's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date or the delinquent child is in a category specified in division (C) of section 2950.033 [2950.03.3] of the Revised Code and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date. The attorney general shall send the registered letter described in division (A)(2) of this section to each offender or delinquent child who has registered an address as described in that division even if the offender's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of section 2950.033 [2950.03.3] of the Revised Code, and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date. Section 2950.033 [2950.03.3] of the Revised Code applies to any offender who has registered an address as described in division (A)(1) or (2) of this section and whose duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of section 2950.033 [2950.03.3] of the Revised Code, and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date.

(B) If a sheriff informs the attorney general pursuant to section 2950.043 [2950.04.3] of the Revised Code that an offender or delinquent child registered with the sheriff pursuant to section 2950.04 or 2950.041 [2950.04.1] of the Revised Code on or after December 1, 2007, that the offender or delinquent child previously had not registered under either section with that sheriff or any other sheriff, and that the offender or delinquent child was convicted of, pleaded guilty to, or was classified a juvenile offender registrant relative to the sexually oriented offense or child-victim oriented offense upon which the registration was based prior to December 1, 2007, within fourteen days after being so informed of the registration and receiving the information and material specified in division (D) of that section, the attorney general shall determine for the offender or delinquent child all of the matters specified in division (A)(1) of this section. Upon making the determinations, the attorney general immediately shall send to the offender or to the delinquent child and the delinquent child's parents a registered letter pursuant to division (A)(2) of this section that contains the information specified in that division.

(C) The attorney general shall maintain the return receipts for all offenders, delinquent children, and parents of delinquent children who are sent a registered letter under division (A) or (B) of this section. For each offender, delinquent child, and parents of a delinquent child, the attorney general shall send a copy of the return receipt for the offender, delinquent child, or parents to the sheriff with whom the offender or delinquent child most recently registered a residence address and, if applicable, a school, institution of higher education, or place of employment address and to the prosecutor who handled the case in which the offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the sexually oriented offense or child-victim oriented offense that resulted in the offender's or child's registration duty under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code. If a return receipt indicates that the offender, delinquent child, or parents of a delinquent child to whom the registered letter was sent does not reside or have temporary domicile at the listed address, the attorney general immediately shall provide notice of that fact to the sheriff with whom the offender or delinquent child registered that residence address.

(D) The attorney general shall mail to each sheriff a list of all offenders and delinquent children who have registered a residence address or a school, institution of higher education, or place of employment address with that sheriff and to whom a registered letter is sent under division (A) or (B) of this section. The list shall specify the offender's or delinquent child's new classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under

the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed, and, regarding a delinquent child, whether the child is a public registry-qualified juvenile offender registrant.

(E) An offender or delinquent child who is in a category described in division (A)(2) or (B) of this section may request as a matter of right a court hearing to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. The offender or delinquent child may contest the manner in which the letter sent to the offender or delinquent child pursuant to division (A) or (B) of this section specifies that the new registration requirements apply to the offender or delinquent child or may contest whether those new registration requirements apply at all to the offender or delinquent child. To request the hearing, the offender or delinquent child not later than the date that is sixty days after the offender or delinquent child received the registered letter sent by the attorney general pursuant to division (A)(2) of this section shall file a petition with the court specified in this division. If the offender or delinquent child resides in or is temporarily domiciled in this state and requests a hearing, the offender or delinquent child shall file the petition with, and the hearing shall be held in, 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. If the offender does not reside in and is not temporarily domiciled in this state, the offender or delinquent child shall file the petition with, and the hearing shall be held in, the court of common pleas of the county in which the offender registered a school, institution of higher education, or place of employment address, but if the offender has registered addresses of that nature in more than one county, the offender may file such a petition in the court of only one of those counties.

If the offender or delinquent child requests a hearing by timely filing a petition with the appropriate court, the offender or delinquent child shall serve a copy of the petition on the prosecutor of the county in which the petition is filed. The prosecutor shall represent the interests of the state in the hearing. In any hearing under this division, the Rules of Civil Procedure or, if the hearing is in a juvenile court, the Rules of Juvenile Procedure apply, except to the extent that those Rules would by their nature be clearly inapplicable. The court shall schedule a hearing, and shall provide notice to the offender or delinquent child and prosecutor of the date, time, and place of the hearing.

If an offender or delinquent child requests a hearing in accordance with this division, until the court issues its decision at or subsequent to the hearing, the offender or delinquent child shall comply prior to January 1, 2008, with Chapter 2950. of the Revised Code as it exists prior to that date and shall comply on and after January 1, 2008, with Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on that date. If an offender or delinquent child requests a hearing in accordance with this division, at the hearing, all parties are entitled to be heard, and the court shall consider all relevant information and testimony presented relative to the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. If, at the conclusion of the hearing, the court finds that the offender or delinquent child has proven by clear and convincing evidence that the new registration requirements do not apply to the offender or delinquent child in the manner specified in the letter sent to the offender or delinquent child pursuant to division (A) or (B) of this section, the court shall issue an order that specifies the manner in which the court has determined that the new registration requirements do apply to the offender or delinquent child. If at the conclusion of the hearing the court finds that the offender or delinquent child has proven by clear and convincing evidence that the new registration requirements do not apply to the offender or delinquent child, the court shall issue an order that specifies that the new registration requirements do not apply to the offender or delinquent child. The court promptly shall serve a copy of an order issued under this division upon the sheriff with whom the offender or delinquent child 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. The offender or delinquent child and the prosecutor have the right to appeal the decision of the court issued under this division.

If an offender or delinquent child fails to request a hearing in accordance with this division within the applicable sixty-day period specified in this division, the failure constitutes a waiver by the offender or delinquent child of the offender's or delinquent child's right to a hearing under this division, and the offender or delinquent child is bound by the determinations of the attorney general contained in the registered letter sent to the offender or child.

If a juvenile court issues an order under division (A)(2) or (3) of section 2152.86 of the Revised Code that classifies a delinquent child a public-registry qualified juvenile offender registrant and if the child's delinquent act was committed prior to January 1, 2008, a challenge to the classification contained in the order shall be made pursuant to division (D) of section 2152.86 of the Revised Code.

HISTORY:

152 v S 10, § 1, eff. 7-1-07.

LEXSTAT ORC ANN. 2950.032

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

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

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ORC Ann. 2950.032 (2010)

§ 2950.032. Attorney general to determine tier classification for each offender or delinquent child; notice of provisions implemented on January 1, 2008

(A) (1) At any time on or after July 1, 2007, and not later than December 1, 2007, the attorney general shall do all of the following:

(a) For each offender who on December 1, 2007, will be serving a prison term in a state correctional institution for a sexually oriented offense or child-victim oriented offense, determine the offender's classification relative to that offense as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes in that chapter that will be implemented on January 1, 2008, and the offender's duties under Chapter 2950. of the Revised Code as so changed and provide to the department of rehabilitation and correction a document that describes that classification and those duties;

(b) For each delinquent child who has been classified a juvenile offender registrant relative to a sexually oriented offense or child-victim oriented offense and who on December 1, 2007, will be confined in an institution of the department of youth services for the sexually oriented offense or child-victim oriented offense, determine the delinquent child's classification relative to that offense as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes in that chapter that will be implemented on January 1, 2008, the delinquent child's duties under Chapter 2950. of the Revised Code as so changed, and whether the delinquent child is a public registry-qualified juvenile offender registrant and provide to the department a document that describes that classification, those duties, and whether the delinquent child is a public registry-qualified juvenile offender registrant.

(c) For each offender and delinquent child described in division (A)(1)(a) or (b) of this section, determine whether the attorney general is required to send a registered letter to that offender or that delinquent child and delinquent child's parents pursuant to section 2950.031 [2950.03.1] of the Revised Code relative to the sexually oriented offense or child-victim oriented offense for which the offender or delinquent child is serving the prison term or is confined and, if the attorney general is required to send such a letter to that offender or that delinquent child and delinquent child's parents relative to that offense, include in the document provided to the department of rehabilitation and correction or the department of youth services under division (A)(1)(a) or (b) of this section a conspicuous notice that the attorney general will be sending the offender or delinquent child and delinquent child's parent the registered letter and that the department is not required to provide to the offender or delinquent child the written notice described in division (A)(2) of this section.

(2) At any time on or after July 1, 2007, and not later than December 1, 2007, except as otherwise described in this division, the department of rehabilitation and correction shall provide to each offender described in division (A)(1)(a) of this section and the department of youth services shall provide to each delinquent child described in division (A)(1)(b) of this section and to the delinquent child's parents a written notice that contains the information described in this division. The department of rehabilitation and correction and the department of youth services are not required to provide the written notice to an offender or a delinquent child and the delinquent child's parents if the attorney general included in the document provided to the particular department under division (A)(1)(a) or (b) of this section notice that the attorney general will be sending that offender or that delinquent child and the delinquent child's parents a registered letter and that the department is not required to provide to that offender or that delinquent child and parents the written notice. The written notice provided to an offender or a delinquent child and the delinquent child's parents pursuant to this division shall notify the offender or delinquent child of all of the following:

(a) The changes in Chapter 2950. of the Revised Code that will be implemented on January 1, 2008;

(b) Subject to division (A)(2)(c) of this section, the offender's or delinquent child's classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed and the duration of those duties, whether the delinquent child is classified a public registry-qualified juvenile offender registrant, and the information specified in division (B) of section 2950.03 of the Revised Code to the extent it is relevant to the offender or delinquent child;

(c) The fact that the offender or delinquent child has a right to a hearing as described in division (E) of this section, the procedures for requesting the hearing, and the period of time within which the request for the hearing must be made;

(d) If the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to January 1, 2008, a summary of the provisions of section 2950.033 [2950.03.3] of the Revised Code and the application of those provisions to the offender or delinquent child, provided that this division applies regarding a delinquent child only if the child is in a category specified in division (A) of section 2950.033 [2950.03.3] of the Revised Code.

(3) The attorney general shall make the determinations described in divisions (A)(1)(a) and (b) of this section for each offender or delinquent child who is described in either of those divisions even if the offender's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of section 2950.033 [2950.03.3] of the Revised Code, and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date. The department of rehabilitation and correction shall provide to each offender described in division (A)(1)(a) of this section and the department of youth services shall provide to each delinquent child described in division (A)(1)(b) of this section the notice described in division (A)(2) of this section, even if the offender's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of section 2950.033 [2950.03.3] of the Revised Code, and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date. Section 2950.033 [2950.03.3] of the Revised Code applies regarding any offender described in division (A)(1)(a) or (b) of this section whose duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date and any delinquent child who is in a category specified in division (A) of section 2950.033 [2950.03.3] of the Revised Code and whose duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date.

(B) If on or after December 2, 2007, an offender commences a prison term in a state correctional institution or a delinquent child commences confinement in an institution of the department of youth services for a sexually oriented offense or a child-victim oriented offense and if the offender or delinquent child was convicted of, pleaded guilty to, or was classified a juvenile offender registrant relative to the sexually oriented offense or child-victim oriented offense on

or before that date, as soon as practicable, the department of rehabilitation and correction or the department of youth services, as applicable, shall contact the attorney general, inform the attorney general of the commencement of the prison term or institutionalization, and forward to the attorney general information and material that identifies the offender or delinquent child and that describes the sexually oriented offense resulting in the prison term or institutionalization, the facts and circumstances of it, and the offender's or delinquent child's criminal or delinquency history. Within fourteen days after being so informed of the commencement of the prison term or institutionalization and receiving the information and material specified in this division, the attorney general shall determine for the offender or delinquent child all of the matters specified in division (A)(1)(a), (b), or (c) of this section and immediately provide to the appropriate department a document that describes the offender's or delinquent child's classification and duties as so determined.

Upon receipt from the attorney general of a document described in this division that pertains to an offender or delinquent child, the department of rehabilitation and correction shall provide to the offender or the department of youth services shall provide to the delinquent child, as applicable, a written notice that contains the information specified in division (A)(2) of this section.

(C) If, on or after July 1, 2007, and prior to January 1, 2008, an offender is convicted of or pleads guilty to a sexually oriented offense or a child-victim oriented offense and the court does not sentence the offender to a prison term for that offense or if, on or after July 1, 2007, and prior to January 1, 2008, a delinquent child is classified a juvenile offender registrant relative to a sexually oriented offense or a child-victim oriented offense and the juvenile court does not commit the child to the custody of the department of youth services for that offense, the court at the time of sentencing or the juvenile court at the time specified in division (B) of section 2152.82, division (C) of section 2152.83, division (C) of section 2152.84, division (E) of section 2152.85, or division (A) of section 2152.86 of the Revised Code, whichever is applicable, shall do all of the following:

(1) Provide the offender or the delinquent child and the delinquent child's parents with the notices required under section 2950.03 of the Revised Code, as it exists prior to January 1, 2008, regarding the offender's or delinquent child's duties under this chapter as it exists prior to that date;

(2) Provide the offender or the delinquent child and the delinquent child's parents with a written notice that contains the information specified in divisions (A)(2)(a) and (b) of this section;

(3) Provide the offender or the delinquent child and the delinquent child's parents a written notice that clearly indicates that the offender or delinquent child is required to comply with the duties described in the notice provided under division (C)(1) of this section until January 1, 2008, and will be required to comply with the duties described in the notice provided under division (C)(2) of this section on and after that date.

(D) (1) Except as otherwise provided in this division, the officer or employee of the department of rehabilitation and correction or the department of youth services who provides an offender or a delinquent child and the delinquent child's parents with the notices described in division (A)(2) or (B) of this section shall require the offender or delinquent child to read and sign a form stating that the changes in Chapter 2950. of the Revised Code that will be implemented on January 1, 2008, the offender's or delinquent child's classification as a tier I sex offender, a tier II sex offender, or a tier III sex offender, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed and the duration of those duties, the delinquent child's classification as a public registry-qualified juvenile offender registrant if applicable, the information specified in division (B) of section 2950.03 of the Revised Code to the extent it is relevant to the offender or delinquent child, and the right to a hearing, procedures for requesting the hearing, and period of time within which the request for the hearing must be made have been explained to the offender or delinquent child.

Except as otherwise provided in this division, the judge who provides an offender or delinquent child with the notices described in division (C) of this section shall require the offender or delinquent child to read and sign a form stating that all of the information described in divisions (C)(1) to (3) of this section has been explained to the offender or delinquent child.

If the offender or delinquent child is unable to read, the official, employee, or judge shall certify on the form that the official, employee, or judge specifically informed the offender or delinquent child of all of that information and that the offender or delinquent child indicated an understanding of it.

(2) After an offender or delinquent child has signed the form described in division (D)(1) of this section or the official, employee, or judge has certified on the form that the form has been explained to the offender or delinquent child and that the offender or delinquent child indicated an understanding of the specified information, the official, employee,

or judge shall give one copy of the form to the offender or delinquent child, within three days shall send one copy of the form to the bureau of criminal identification and investigation in accordance with the procedures adopted pursuant to section 2950.13 of the Revised Code, and shall send one copy of the form to the sheriff of the county in which the offender or delinquent child expects to reside and one copy to the prosecutor who handled the case in which the offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the sexually oriented offense or child-victim oriented offense that resulted in the offender's or child's registration duty under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code.

(E) An offender or delinquent child who is provided a notice under division (A)(2) or (B) of this section may request as a matter of right a court hearing to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. The offender or delinquent child may contest the matters that are identified in division (E) of section 2950.031 [2950.03.1] of the Revised Code. To request the hearing, an offender or delinquent child who is provided a notice under division (A)(2) of this section shall file a petition with the appropriate court not later than the date that is sixty days after the offender or delinquent child is provided the notice under that division, and an offender or delinquent child who is provided a notice under division (B) of this section shall file a petition with the appropriate court not later than the date that is sixty days after the offender or delinquent child is provided the notice under that division. The request for the hearing shall be made in the manner and with the court specified in division (E) of section 2950.031 [2950.03.1] of the Revised Code, and, except as otherwise provided in this division, the provisions of that division regarding the service of process and notice regarding the hearing, the conduct of the hearing, the determinations to be made at the hearing, and appeals of those determinations also apply to a hearing requested under this division. If a hearing is requested as described in this division, the offender or delinquent child shall appear at the hearing by video conferencing equipment if available and compatible, except that, upon the court's own motion or the motion of the offender or delinquent child or the prosecutor representing the interests of the state and a determination by the court that the interests of justice require that the offender or delinquent child be present, the court may permit the offender or delinquent child to be physically present at the hearing. An appearance by video conferencing equipment pursuant to this division has the same force and effect as if the offender or delinquent child were physically present at the hearing. The provisions of division (E) of section 2950.031 [2950.03.1] of the Revised Code regarding the effect of a failure to timely request a hearing also apply to a failure to timely request a hearing under this division.

If a juvenile court issues an order under division (A)(2) or (3) of section 2152.86 of the Revised Code that classifies a delinquent child a public-registry qualified juvenile offender registrant and if the child's delinquent act was committed prior to January 1, 2008, a challenge to the classification contained in the order shall be made pursuant to division (D) of section 2152.86 of the Revised Code.

HISTORY:

152 v S 10, § 1, eff. 7-1-07.

LEXSTAT ORC ANN. 2950.033

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

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

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ORC Ann. 2950.033 (2010)

§ 2950.033. Offenders and delinquent children whose SORN Law duties are scheduled to terminate on or after 7-1-07 and prior to 1-1-08

(A) If, on or before July 1, 2007, an offender who has been convicted of or pleaded guilty to a sexually oriented offense or a child-victim oriented offense or a delinquent child in a category specified in division (C) of this section has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code based on that offense and if the offender's or delinquent child's duty to comply with those sections based on that offense is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to January 1, 2008, notwithstanding that scheduled termination of those duties, the offender's or delinquent child's duties under those sections shall not terminate as scheduled and shall remain in effect for the following period of time:

(1) If the offender or delinquent child is in a category described in division (A)(1) of section 2950.031 [2950.03.1] of the Revised Code, receives a registered letter from the attorney general pursuant to division (A)(2) of that section, and timely requests a hearing in accordance with division (E) of that section to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, or the tier classification of the offender or delinquent child specified by the attorney general, the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code shall continue at least until the court issues its decision at or subsequent to the hearing. The offender's or delinquent child's duty to comply with those sections shall continue in accordance with, and for the duration specified in, the determinations of the attorney general that are specified in the registered letter the offender or delinquent child received from the attorney general, unless the court's decision terminates the offender's or delinquent child's duty to comply with those sections or provides a different duration for which the offender or delinquent child has a duty to comply with them.

(2) If the offender or delinquent child is in a category described in division (A)(1) of section 2950.031 [2950.03.1] of the Revised Code, receives a registered letter from the attorney general pursuant to division (A)(2) of that section, and does not timely request a hearing in accordance with division (E) of that section to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, or the tier classification of the offender or delinquent child specified by the attorney general, the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code shall continue in accordance with, and for the duration specified in, the determinations of the attorney general that are specified in the registered letter the offender or delinquent child received from the attorney general.

(3) If the offender or delinquent child is in a category described in division (A)(1)(a) or (b) of section 2950.032 [2950.03.2] of the Revised Code, receives a notice from the department of rehabilitation and correction or department of youth services pursuant to division (A)(2) of that section, and timely requests a hearing in accordance with division (E) of that section to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, or the tier classification of the delinquent child specified by the attorney general the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code shall continue in the same manner and for the same duration as is described in division (A)(1) of this section regarding offenders and delinquent children in a category described in division (A)(1) of section 2950.031 [2950.03.1] of the Revised Code, who receive a registered letter from the attorney general pursuant to division (A)(2) of that section, and who timely request a hearing in accordance with division (E) of that section.

(4) If the offender or delinquent child is in a category described in division (A)(1)(a) or (b) of section 2950.032 [2950.03.2] of the Revised Code, receives a notice from the department of rehabilitation and correction or department of youth services pursuant to division (A)(2) of that section, and does not timely request a hearing in accordance with division (E) of that section to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, or the tier classification of the delinquent child specified by the attorney general the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code shall continue in the same manner and for the same duration as is described in division (A)(2) of this section regarding offenders and delinquent children in a category described in division (A)(1) of section 2950.031 [2950.03.1] of the Revised Code, who receive a registered letter from the attorney general pursuant to division (A)(2) of that section, and who do not timely request a hearing in accordance with division (E) of that section.

(5) If the offender or delinquent child is in a category described in division (A)(1) of section 2950.031 [2950.03.1] of the Revised Code but does not receive a registered letter from the attorney general pursuant to division (A)(2) of that section, or if the offender or delinquent child is in a category described in division (A)(1)(a) or (b) of section 2950.032 [2950.03.2] of the Revised Code but does not receive a notice from the department of rehabilitation and correction or department of youth services pursuant to division (A)(2) of that section, notwithstanding the failure of the offender or delinquent child to receive the registered letter or the notice, the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code shall continue in accordance with, and for the duration specified in, the provisions of Chapter 2950. of the Revised Code as they will exist under the changes to the provisions that will be implemented on January 1, 2008.

(B) An offender or a delinquent child in a category specified in division (C) of this section who, on or before July 1, 2007, has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code based on 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 and whose duty to comply with those sections is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to January 1, 2008, is presumed to have knowledge of the law, the content of division (A) of this section and its application to the offender or delinquent child, and the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. Any failure of any such offender or delinquent child to receive a registered letter from the attorney general pursuant to division (A)(2) of section 2950.031 [2950.03.1] of the Revised Code or to receive a written notice from the department of rehabilitation and correction or department of youth services pursuant to division (A)(2) of section 2950.032 [2950.03.2] of the Revised Code does not negate, limit, or modify the presumption specified in this division.

(C) Divisions (A) and (B) of this section apply to a person who is adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense only if the person is so adjudicated prior to January 1, 2008, and, under the version of section 2950.01 of the Revised Code that is to take effect on January 1, 2008, will be a public registry-qualified juvenile offender registrant relative to that offense.

HISTORY:

152 v S 10, § 1, eff. 7-1-07.

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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. 2950.04 (2006)

§ 2950.04. Duty to register

(A) (1) Each of the following types of offender who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense that is not a registration-exempt sexually oriented offense shall register personally with the sheriff of the county within five days of the offender's coming into a county in which the offender resides or temporarily is domiciled for more than five days, shall register personally with the sheriff of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state, shall register personally with the sheriff of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than fourteen days or for an aggregate period of thirty or more days in that calendar year, shall register personally with the sheriff of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state more than fourteen days or for an aggregate period of thirty or more days in that calendar year, and shall register with the sheriff or other appropriate person of the other state immediately upon entering into any state other than this state in which the offender attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than this state for more than fourteen days or for an aggregate period of thirty or more days in that calendar year regardless of whether the offender resides or has a temporary domicile in this state, the other state, or a different state:

(a) Regardless of when the sexually oriented offense was committed, an offender who is sentenced for the sexually oriented offense to a prison term, a term of imprisonment, or any other type of confinement and, on or after July 1, 1997, is released in any manner from the prison term, term of imprisonment, or confinement;

(b) Regardless of when the sexually oriented offense was committed, an offender who is sentenced for a sexually oriented offense on or after July 1, 1997, and to whom division (A)(1)(a) of this section does not apply;

(c) If the sexually oriented offense was committed prior to July 1, 1997, and neither division (A)(1)(a) nor division (A)(1)(b) of this section applies, an offender who, immediately prior to July 1, 1997, was a habitual sex offender who was required to register under Chapter 2950. of the Revised Code.

(2) Each child who is adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense and who is classified a juvenile offender registrant based on that adjudication shall register personally with the sheriff of the county within five days of the delinquent child's coming into a county in which the delinquent child resides or temporarily is domiciled for more than five days. If the delinquent child is com-

mitted for the sexually oriented offense that is not a registration-exempt sexually oriented offense to the department of youth services or to a secure facility that is not operated by the department, this duty begins when the delinquent child is discharged or released in any manner from custody in a department of youth services secure facility or from the secure facility that is not operated by the department, if pursuant to the discharge or release the delinquent child is not committed to any other secure facility of the department or any other secure facility. The delinquent child does not have a duty to register under this division while the child is in a department of youth services secure facility or in a secure facility that is not operated by the department.

(3) If divisions (A)(1) and (2) of this section do not apply, each following type of offender and each following type of delinquent child shall register personally with the sheriff of the county within five days of the offender's or delinquent child's coming into a county in which the offender or delinquent child resides or temporarily is domiciled for more than five days, and each following type of offender shall register personally with the sheriff of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state, shall register personally with the sheriff of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than fourteen days or for an aggregate period of thirty days or more in that calendar year, and shall register personally with the sheriff of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state for more than fourteen days or for an aggregate period of thirty or more days in that calendar year:

(a) Regardless of when the sexually oriented offense was committed, a person who 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 in any nation other than the United States for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, if, on or after July 1, 1997, for offenders, or January 1, 2002, for delinquent children, the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than five days, the offender enters this state to attend any school or institution of higher education on a full-time or part-time basis, or the offender is employed in this state for more than fourteen days or for an aggregate period of thirty or more days in any calendar year, and if, at the time the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than five days, the offender enters this state to attend the school or institution of higher education, or the offender is employed in this state for more than the specified period of time, the offender or delinquent child has a duty to register as a sex offender or child-victim offender under the law of that other jurisdiction as a result of the conviction, guilty plea, or adjudication.

(b) Regardless of when the sexually oriented offense was committed, a person who is convicted of, pleads guilty to, or is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, if, on or after July 1, 1997, for offenders, or January 1, 2002, for delinquent children, the offender or delinquent child is released from imprisonment, confinement, or detention imposed for that offense, and if, on or after July 1, 1997, for offenders, or January 1, 2002, for delinquent children, the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than five days, the offender enters this state to attend any school or institution of higher education on a full-time or part-time basis, or the offender is employed in this state for more than fourteen days or for an aggregate period of thirty or more days in any calendar year. The duty to register as described in this division applies to an offender regardless of whether the offender, at the time of moving to and residing in this state or temporarily being domiciled in this state for more than five days, at the time of entering into this state to attend the school or institution of higher education, or at the time of being employed in this state for the specified period of time, has a duty to register as a sex offender or child-victim offender under the law of the jurisdiction in which the conviction or guilty plea occurred. The duty to register as described in this division applies to a delinquent child only if the delinquent child, at the time of moving to and residing in this state or temporarily being domiciled in this state for more than five days, has a duty to register as a sex offender or child-victim offender under the law of the jurisdiction in which the delinquent child adjudication occurred or if, had the delinquent child adjudication occurred in this state, the adjudicating juvenile court judge would have been required to issue an order classifying the delinquent child as a juvenile offender registrant pursuant to section 2152.82 or division (A) of *section 2152.83 of the Revised Code*.

(4) If neither division (A)(1), (2), nor (3) of this section applies and if the offender is adjudicated a sexual predator under division (C) of *section 2950.09 of the Revised Code*, the offender shall register within five days of the adjudication.

cation with the sheriff of the county in which the offender resides or temporarily is domiciled for more than five days, shall register with the sheriff of any county in which the offender subsequently resides or temporarily is domiciled for more than five days within five days of coming into that county, shall register within five days of the adjudication with the sheriff of the county in which the offender attends any school or institution of higher education on a full-time or part-time basis or in which the offender is employed if the offender has been employed in that county for more than fourteen days or for an aggregate period of thirty or more days in that calendar year regardless of whether the offender resides or has temporary domicile in this state or another state, and shall register within five days of the adjudication with the sheriff or other appropriate person of any state other than this state in which the offender attends a school or institution of higher education on a full-time or part-time basis or in which the offender then is employed if the offender has been employed in that state for more than fourteen days or for an aggregate period of thirty or more days in any calendar year regardless of whether the offender resides or has temporary domicile in this state, the other state, or a different state.

(5) A person who is adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense is not required to register under division (A)(2) of this section unless the delinquent child committed the offense on or after January 1, 2002, is classified a juvenile offender registrant by a juvenile court judge pursuant to an order issued under *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code* based on that adjudication, and has a duty to register pursuant to division (A)(2) of this section.

(6) A person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense that is a registration-exempt sexually oriented offense, and a person who is or has been adjudicated a delinquent child for committing a sexually oriented offense that is a registration-exempt sexually oriented offense, does not have any duty to register under this section based on that conviction, guilty plea, or adjudication. The exemption of an offender or delinquent child from registration under this division for a conviction of, plea of guilty to, or delinquent child adjudication for a registration-exempt sexually oriented offense does not limit, affect, or supersede any duties imposed upon the offender or delinquent child under this chapter or *sections 2152.82 to 2152.85 of the Revised Code* for a conviction of, plea of guilty to, or delinquent child adjudication for any other sexually oriented offense or any child-victim oriented offense.

(B) An offender or delinquent child who is required by division (A) of this section to register in this state personally shall obtain from the sheriff or from a designee of the sheriff a registration form that conforms to division (C) of this section, shall complete and sign the form, and shall return the completed form together with the offender's or delinquent child's photograph to the sheriff or the designee. The sheriff or designee shall sign the form and indicate on the form the date on which it is so returned. The registration required under this division is complete when the offender or delinquent child returns the form, containing the requisite information, photograph, signatures, and date, to the sheriff or designee.

(C) The registration form to be used under divisions (A) and (B) of this section shall include the photograph of the offender or delinquent child who is registering and shall contain all of the following:

(1) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(1), (2), (3), or (4) of this section as a result of the offender or delinquent child residing in this state or temporarily being domiciled in this state for more than five days, the current residence address of the offender or delinquent child who is registering, 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 registration or if the offender or delinquent child knows at the time of registration that the offender or delinquent child will be commencing employment with that employer subsequent to registration, the name and address of the offender's school or institution of higher education if the offender attends one at the time of registration or if the offender knows at the time of registration that the offender will be commencing attendance at that school or institution subsequent to registration, and any other information required by the bureau of criminal identification and investigation.

(2) Regarding an offender who is registering under a duty imposed under division (A)(1), (3), or (4) of this section as a result of the offender attending a school or institution of higher education in this state on a full-time or part-time basis or being employed in this state or in a particular county in this state, whichever is applicable, for more than fourteen days or for an aggregate of thirty or more days in any calendar year, the current address of the school, institution of higher education, or place of employment of the offender who is registering and any other information required by the bureau of criminal identification and investigation.

(3) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(1), (2), (3), or (4) of this section for any reason, if the offender has been adjudicated a sexual predator relative to the sexually

oriented offense in question, if the delinquent child has been adjudicated a sexual predator relative to the sexually oriented offense in question and the court has not subsequently determined pursuant to *section 2152.84* or *2152.85 of the Revised Code* that the delinquent child no longer is a sexual predator, if the judge determined pursuant to division (C) of *section 2950.09* or pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code* that the offender or delinquent child is a habitual sex offender and the determination has not been removed pursuant to *section 2152.84* or *2152.85 of the Revised Code*, or if the offender has the duty to register as a result of the conviction of or plea of guilty to an aggravated sexually oriented offense, the offender or delinquent child also shall include on the signed, written registration form all of the following information:

(a) A specific declaration that the person has been adjudicated a sexual predator, has been determined to be a habitual sex offender, or was convicted of or pleaded guilty to an aggravated sexually oriented offense, whichever is applicable;

(b) If the offender or delinquent child has been adjudicated a sexual predator, the identification license plate number of each motor vehicle the offender or delinquent child owns and of each motor vehicle registered in the offender's or delinquent child's name.

(D) After an offender or delinquent child registers with a sheriff pursuant to this section, the sheriff shall forward the signed, written registration form and photograph to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to *section 2950.13 of the Revised Code*. If an offender registers a school, institution of higher education, or place of employment address, or provides a school or institution of higher education address under division (C)(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 name and that the offender has registered that address as a place at which the offender attends school or an institution of higher education or at which the offender is employed. The bureau shall include the information and materials 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*.

(E) No person who is required to register pursuant to divisions (A) and (B) of this section, and no person who is required to send a notice of intent to reside pursuant to division (G) of this section, shall fail to register or send the notice of intent as required in accordance with those divisions or that division.

(F) An offender or delinquent child who is required to register pursuant to divisions (A) and (B) of this section shall register pursuant to this section for the period of time specified in *section 2950.07 of the Revised Code*.

(G) If an offender or delinquent child who is required by division (A) of this section to register is adjudicated a sexual predator or a habitual sexual offender subject to community notification under division (C)(2) or (E) of *section 2950.09 of the Revised Code*, or if an offender who is required by division (A) of this section to register has that duty as a result of a conviction of or plea of guilty to an aggravated sexually oriented offense, the offender or delinquent child also shall send the sheriff of the county in which the offender or delinquent child intends to reside written notice of the offender's or delinquent child's intent to reside in the county. The offender or delinquent child shall send the notice of intent to reside at least twenty days prior to the date the offender or delinquent child begins to reside in the county. The notice of intent to reside shall contain the following information:

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

(2) The address or addresses at which the offender or delinquent child intends to reside;

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

(4) A statement that the offender has been adjudicated a sexual predator, 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, 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 has not been removed pursuant to *section 2152.84* or *2152.85 of the Revised Code*, or a statement that the offender was convicted of or pleaded guilty to an aggravated sexually oriented offense.

(H) If, immediately prior to July 31, 2003, an offender or delinquent child who was convicted of, pleaded guilty to, or adjudicated a delinquent child for committing a sexually oriented offense was required by division (A) of this section

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to register and if, on or after July 31, 2003, that offense no longer is a sexually oriented offense but instead is designated a child-victim oriented offense, division (A)(1)(c) or (2)(b) of *section 2950.041 [2950.04.1] of the Revised Code* applies regarding the offender or delinquent child and the duty to register that is imposed pursuant to that division shall be considered, for purposes of *section 2950.07 of the Revised Code* and for all other purposes, to be a continuation of the duty imposed upon the offender prior to July 31, 2003, under this section.

HISTORY:

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

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
 WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
 *** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
 *** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

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

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ORC Ann. 2950.04 (2010)

§ 2950.04. Duty to register and comply with registration requirements

(A) (1) (a) Immediately after a sentencing hearing is held on or after January 1, 2008, for an offender who is convicted of or pleads guilty to a sexually oriented offense and is sentenced to a prison term, a term of imprisonment, or any other type of confinement and before the offender is transferred to the custody of the department of rehabilitation and correction or to the official in charge of the jail, workhouse, state correctional institution, or other institution where the offender will be confined, the offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender was convicted of or pleaded guilty to the sexually oriented offense.

(b) Immediately after a dispositional hearing is held on or after January 1, 2008, for a child who is adjudicated a delinquent child for committing a sexually oriented offense, is classified a juvenile offender registrant based on that adjudication, and is committed to the custody of the department of youth services or to a secure facility that is not operated by the department and before the child is transferred to the custody of the department of youth services or the secure facility to which the delinquent child is committed, the delinquent child shall register personally with the sheriff, or the sheriff's designee, of the county in which the delinquent child was classified a juvenile offender registrant based on that sexually oriented offense.

(c) A law enforcement officer shall be present at the sentencing hearing or dispositional hearing described in division (A)(1)(a) or (b) of this section to immediately transport the offender or delinquent child who is the subject of the hearing to the sheriff, or the sheriff's designee, of the county in which the offender or delinquent child is convicted, pleads guilty, or is adjudicated a delinquent child.

(d) After an offender who has registered pursuant to division (A)(1)(a) of this section is released from a prison term, a term of imprisonment, or any other type of confinement, the offender shall register as provided in division (A)(2) of this section. After a delinquent child who has registered pursuant to division (A)(1)(b) of this section is released from the custody of the department of youth services or from a secure facility that is not operated by the department, the delinquent child shall register as provided in division (A)(3) of this section.

(2) Regardless of when the sexually oriented offense was committed, each offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense shall comply with the following registration requirements described in divisions (A)(2)(a), (b), (c), (d), and (e) of this section:

(a) The offender shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the offender's coming into a county in which the offender resides or temporarily is domiciled for more than three days.

(b) The offender shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state.

(c) The offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(d) The offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state more than three days or for an aggregate period of fourteen or more days in that calendar year.

(e) The offender shall register with the sheriff, or the sheriff's designee, or other appropriate person of the other state immediately upon entering into any state other than this state in which the offender attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than this state for more than three days or for an aggregate period of fourteen or more days in that calendar year regardless of whether the offender resides or has a temporary domicile in this state, the other state, or a different state

(3) (a) Each child who is adjudicated a delinquent child for committing a sexually oriented offense and who is classified a juvenile offender registrant based on that adjudication shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the delinquent child's coming into a county in which the delinquent child resides or temporarily is domiciled for more than three days.

(b) In addition to the registration duty imposed under division (A)(3)(a) of this section, each public registry-qualified juvenile offender registrant shall comply with the following additional registration requirements:

(i) The public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the registrant attends a school or institution of higher education on a full-time or part-time basis regardless of whether the registrant resides or has a temporary domicile in this state or another state.

(ii) The public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county in which the registrant is employed if the registrant resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(iii) The public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county in which the registrant then is employed if the registrant does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state more than three days or for an aggregate period of fourteen or more days in that calendar year.

(iv) The public registry-qualified juvenile offender registrant shall register with the sheriff, or the sheriff's designee, or other appropriate person of the other state immediately upon entering into any state other than this state in which the registrant attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than this state for more than three days or for an aggregate period of fourteen or more days in that calendar year regardless of whether the registrant resides or has a temporary domicile in this state, the other state, or a different state.

(c) If the delinquent child is committed for the sexually oriented offense to the department of youth services or to a secure facility that is not operated by the department, this duty begins when the delinquent child is discharged or released in any manner from custody in a department of youth services secure facility or from the secure facility that is not operated by the department if pursuant to the discharge or release the delinquent child is not committed to any other secure facility of the department or any other secure facility.

(4) Regardless of when the sexually oriented offense was committed, each person who is convicted, pleads guilty, or is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a sexually oriented offense shall comply with the following registration requirements if, at the time the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than three days, the offender or public registry-qualified juvenile offender

registrant enters this state to attend a school or institution of higher education, or the offender or public registry-qualified juvenile offender registrant is employed in this state for more than the specified period of time, the offender or delinquent child has a duty to register as a sex offender or child-victim offender under the law of that other jurisdiction as a result of the conviction, guilty plea, or adjudication:

(a) Each offender and delinquent child shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the offender's or delinquent child's coming into the county in which the offender or delinquent child resides or temporarily is domiciled for more than three days.

(b) Each offender or public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the offender or public registry-qualified juvenile offender registrant attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender or public registry-qualified juvenile offender registrant resides or has a temporary domicile in this state or another state.

(c) Each offender or public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender or public registry-qualified juvenile offender registrant is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen days or more in that calendar year.

(d) Each offender or public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender or public registry-qualified juvenile offender registrant then is employed if the offender or public registry-qualified juvenile offender registrant does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(5) An offender or a delinquent child who is a public registry-qualified juvenile offender registrant is not required to register under division (A)(2), (3), or (4) of this section if a court issues an order terminating the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code pursuant to section 2950.15 of the Revised Code. A delinquent child who is a juvenile offender registrant but is not a public registry-qualified juvenile offender registrant is not required to register under any of those divisions if a juvenile court issues an order declassifying the delinquent child as a juvenile offender registrant pursuant to section 2152.84 or 2152.85 of the Revised Code.

(B) An offender or delinquent child who is required by division (A) of this section to register in this state personally shall obtain from the sheriff or from a designee of the sheriff a registration form that conforms to division (C) of this section, shall complete and sign the form, and shall return the completed form together with the offender's or delinquent child's photograph, copies of travel and immigration documents, and any other required material to the sheriff or the designee. The sheriff or designee shall sign the form and indicate on the form the date on which it is so returned. The registration required under this division is complete when the offender or delinquent child returns the form, containing the requisite information, photograph, other required material, signatures, and date, to the sheriff or designee.

(C) The registration form to be used under divisions (A) and (B) of this section shall include or contain all of the following for the offender or delinquent child who is registering:

- (1) The offender's or delinquent child's name and any aliases used by the offender or delinquent child;
- (2) The offender's or delinquent child's social security number and date of birth, including any alternate social security numbers or dates of birth that the offender or delinquent child has used or uses;
- (3) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(1) of this section, a statement that the offender is serving a prison term, term of imprisonment, or any other type of confinement or a statement that the delinquent child is in the custody of the department of youth services or is confined in a secure facility that is not operated by the department;
- (4) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(2), (3), or (4) of this section as a result of the offender or delinquent child residing in this state or temporarily being domiciled in this state for more than three days, the current residence address of the offender or delinquent child who is registering, 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 registration or if the offender or delinquent child knows at the time of registration that the offender

or delinquent child will be commencing employment with that employer subsequent to registration, any other employment information, such as the general area where the offender or delinquent child is employed, if the offender or delinquent child is employed in many locations, and 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 registration or if the offender or public registry-qualified juvenile offender registrant knows at the time of registration that the offender or public registry-qualified juvenile offender registrant will be commencing attendance at that school or institution subsequent to registration;

(5) Regarding an offender or public registry-qualified juvenile offender registrant who is registering under a duty imposed under division (A)(2), (3), or (4) of this section as a result of the offender or public registry-qualified juvenile offender registrant attending a school or institution of higher education in this state on a full-time or part-time basis or being employed in this state or in a particular county in this state, whichever is applicable, for more than three days or for an aggregate of fourteen or more days in any calendar year, 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 who is registering, including any other employment information, such as the general area where the offender or public registry-qualified juvenile offender registrant is employed, if the offender or public registry-qualified juvenile offender registrant is employed in many locations;

(6) The identification license plate number of each vehicle the offender or delinquent child owns, of each vehicle registered in the offender's or delinquent child's name, of each vehicle the offender or delinquent child operates as a part of employment, and of each other vehicle that is regularly available to be operated by the offender or delinquent child; a description of where each vehicle is habitually parked, stored, docked, or otherwise kept; and, if required by the bureau of criminal identification and investigation, a photograph of each of those vehicles;

(7) If the offender or delinquent child has a driver's or commercial driver's license or permit issued by this state or any other state or a state identification card issued under section 4507.50 or 4507.51 of the Revised Code or a comparable identification card issued by another state, the driver's license number, commercial driver's license number, or state identification card number;

(8) If the offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the sexually oriented offense resulting in the registration duty in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States, a DNA specimen, as defined in section 109.573 [109.57.3] of the Revised Code, from the offender or delinquent child, a citation for, and the name of, the sexually oriented offense resulting in the registration duty, and a certified copy of a document that describes the text of that sexually oriented offense;

(9) A description of each professional and occupational license, permit, or registration, including those licenses, permits, and registrations issued under Title XLVII of the Revised Code, held by the offender or delinquent child;

(10) Any email addresses, internet identifiers, or telephone numbers registered to or used by the offender or delinquent child;

(11) Any other information required by the bureau of criminal identification and investigation.

(D) After an offender or delinquent child registers with a sheriff, or the sheriff's designee, pursuant to this section, the sheriff, or the sheriff's designee, shall forward the signed, written registration form, photograph, and other material to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to section 2950.13 of the Revised Code. If an offender registers a school, institution of higher education, or place of employment address, or provides a school or institution of higher education address under division (C)(4) 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 name and that the offender has registered that address as a place at which the offender attends school or an institution of higher education or at which the offender is employed. The bureau shall include the information and materials 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.

(E) No person who is required to register pursuant to divisions (A) and (B) of this section, and no person who is required to send a notice of intent to reside pursuant to division (G) of this section, shall fail to register or send the notice of intent as required in accordance with those divisions or that division.

(F) An offender or delinquent child who is required to register pursuant to divisions (A) and (B) of this section shall register pursuant to this section for the period of time specified in section 2950.07 of the Revised Code, with the duty commencing on the date specified in division (A) of that section.

(G) If an offender or delinquent child who is required by division (A) of this section to register is a tier III sex offender/child-victim offender, the offender or delinquent child also shall send the sheriff, or the sheriff's designee, of the county in which the offender or delinquent child intends to reside written notice of the offender's or delinquent child's intent to reside in the county. The offender or delinquent child shall send the notice of intent to reside at least twenty days prior to the date the offender or delinquent child begins to reside in the county. The notice of intent to reside shall contain the following information:

- (1) The offender's or delinquent child's name;
- (2) The address or addresses at which the offender or delinquent child intends to reside;
- (3) The sexually oriented offense of which the offender was convicted, to which the offender pleaded guilty, or for which the child was adjudicated a delinquent child

(H) If, immediately prior to January 1, 2008, an offender or delinquent child who was convicted of, pleaded guilty to, or was adjudicated 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, was required by division (A) of this section or section 2950.041 [2950.04.1] of the Revised Code to register and if, on or after January 1, 2008, that offense is a sexually oriented offense as that term is defined in section 2950.01 of the Revised Code on and after January 1, 2008, the duty to register that is imposed pursuant to this section on and after January 1, 2008, shall be considered, for purposes of section 2950.07 of the Revised Code and for all other purposes, to be a continuation of the duty imposed upon the offender or delinquent child prior to January 1, 2008, under this section or section 2950.041 [2950.04.1] of the Revised Code.

HISTORY:

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

LEXSTAT ORC ANN. 2950.041

PAGE'S OHIO REVISED CODE ANNOTATED
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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

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

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ORC Ann. 2950.041 (2010)

§ 2950.041. Duty to register resulting from child-victim oriented offense; notice of intent to reside

(A) (1) (a) Immediately after a sentencing hearing is held on or after January 1, 2008, for an offender who is convicted of or pleads guilty to a child-victim oriented offense and is sentenced to a prison term, a term of imprisonment, or any other type of confinement and before the offender is transferred to the custody of the department of rehabilitation and correction or to the official in charge of the jail, workhouse, state correctional institution, or other institution where the offender will be confined, the offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender was convicted of or pleaded guilty to the child-victim offense.

(b) Immediately after a dispositional hearing is held on or after January 1, 2008, for a child who is adjudicated a delinquent child for committing a child-victim oriented offense, is classified a juvenile offender registrant based on that adjudication, and is committed to the custody of the department of youth services or to a secure facility that is not operated by the department and before the child is transferred to the custody of the department of youth services or the secure facility to which the delinquent child is committed, the delinquent child shall register personally with the sheriff, or the sheriff's designee, of the county in which the delinquent child was classified a juvenile offender registrant based on that child-victim oriented offense.

(c) A law enforcement officer shall be present at the sentencing hearing or dispositional hearing described in division (A)(1)(a) or (b) of this section to immediately transport the offender or delinquent child who is the subject of the hearing to the sheriff, or the sheriff's designee, of the county in which the offender or delinquent child is convicted, pleads guilty, or is adjudicated a delinquent child.

(d) After an offender who has registered pursuant to division (A)(1)(a) of this section is released from a prison term, a term of imprisonment, or any other type of confinement, the offender shall register as provided in division (A)(2) of this section. After a delinquent child who has registered pursuant to division (A)(1)(b) of this section is released from the custody of the department of youth services or from a secure facility that is not operated by the department, the delinquent child shall register as provided in division (A)(3) of this section.

(2) Regardless of when the child-victim oriented offense was committed, each offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a child-victim oriented offense shall comply with all of the following registration requirements:

(a) The offender shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the offender's coming into a county in which the offender resides or temporarily is domiciled for more than three days.

(b) The offender shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state.

(c) The offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(d) The offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(e) The offender shall register personally with the sheriff, or the sheriff's designee, or other appropriate person of the other state immediately upon entering into any state other than this state in which the offender attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than this state for more than three days or for an aggregate period of fourteen or more days in that calendar year regardless of whether the offender resides or has a temporary domicile in this state, the other state, or a different state.

(3) Regardless of when the child-victim oriented offense was committed, each child who on or after July 31, 2003, is adjudicated a delinquent child for committing a child-victim oriented offense and who is classified a juvenile offender registrant based on that adjudication shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the delinquent child's coming into a county in which the delinquent child resides or temporarily is domiciled for more than three days. If the delinquent child is committed for the child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department, this duty begins when the delinquent child is discharged or released in any manner from custody in a department of youth services secure facility or from the secure facility that is not operated by the department if pursuant to the discharge or release the delinquent child is not committed to any other secure facility of the department or any other secure facility.

(4) Regardless of when the child-victim oriented offense was committed, each person who is convicted, pleads guilty, or is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a child-victim oriented offense shall comply with all of the following registration requirements if, at the time the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than three days, the offender enters this state to attend the school or institution of higher education, or the offender is employed in this state for more than the specified period of time, the offender or delinquent child has a duty to register as a child-victim offender or sex offender under the law of that other jurisdiction as a result of the conviction, guilty plea, or adjudication:

(a) Each offender and delinquent child shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the offender's or delinquent child's coming into the county in which the offender or delinquent child resides or temporarily is domiciled for more than three days.

(b) Each offender shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state.

(c) Each offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen days or more in that calendar year.

(d) Each offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has not been employed at any location or locations in this state for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(5) An offender is not required to register under division (A)(2), (3), or (4) of this section if a court issues an order terminating the offender's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code pursuant to section 2950.15 of the Revised Code. A delinquent child who is a juvenile offender registrant but is not a public registry-qualified juvenile offender registrant is not required to register under any of those divisions if

a juvenile court issues an order declassifying the delinquent child as a juvenile offender registrant pursuant to section 2152.84 or 2152.85 of the Revised Code.

(B) An offender or delinquent child who is required by division (A) of this section to register in this state personally shall do so in the manner described in division (B) of section 2950.04 of the Revised Code, and the registration is complete as described in that division.

(C) The registration form to be used under divisions (A) and (B) of this section shall include or contain all of the following for the offender or delinquent child who is registering:

(1) The offender's or delinquent child's name, any aliases used by the offender or delinquent child, and a photograph of the offender or delinquent child;

(2) The offender's or delinquent child's social security number and date of birth, including any alternate social security numbers or dates of birth that the offender or delinquent child has used or uses;

(3) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(1) of this section, a statement that the offender is serving a prison term, term of imprisonment, or any other type of confinement or a statement that the delinquent child is in the custody of the department of youth services or is confined in a secure facility that is not operated by the department;

(4) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(2), (3), or (4) of this section as a result of the offender or delinquent child residing in this state or temporarily being domiciled in this state for more than three days, all of the information described in division (C)(4) of section 2950.04 of the Revised Code;

(5) Regarding an offender who is registering under a duty imposed under division (A)(2) or (4) of this section as a result of the offender attending a school or institution of higher education on a full-time or part-time basis or being employed in this state or in a particular county in this state, whichever is applicable, for more than three days or for an aggregate of fourteen or more days in any calendar year, all of the information described in division (C)(5) of section 2950.04 of the Revised Code;

(6) The identification license plate number issued by this state or any other state of each vehicle the offender or delinquent child owns, of each vehicle registered in the offender's or delinquent child's name, of each vehicle the offender or delinquent child operates as a part of employment, and of each other vehicle that is regularly available to be operated by the offender or delinquent child; a description of where each vehicle is habitually parked, stored, docked, or otherwise kept; and, if required by the bureau of criminal identification and investigation, a photograph of each of those vehicles;

(7) If the offender or delinquent child has a driver's or commercial driver's license or permit issued by this state or any other state or a state identification card issued under section 4507.50 or 4507.51 of the Revised Code or a comparable identification card issued by another state, the driver's license number, commercial driver's license number, or state identification card number;

(8) If the offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the child-victim oriented offense resulting in the registration duty in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States, a DNA specimen, as defined in section 109.573 [109.57.3] of the Revised Code, from the offender or delinquent child, a citation for, and the name of, the child-victim oriented offense resulting in the registration duty, and a certified copy of a document that describes the text of that child-victim oriented offense;

(9) Copies of travel and immigration documents;

(10) A description of each professional and occupational license, permit, or registration, including those licenses, permits, and registrations issued under Title XLVII of the Revised Code, held by the offender or delinquent child;

(11) Any email addresses, internet identifiers, or telephone numbers registered to or used by the offender or delinquent child;

(12) Any other information required by the bureau of criminal identification and investigation.

(D) Division (D) of section 2950.04 of the Revised Code applies when an offender or delinquent child registers with a sheriff pursuant to this section.

(E) No person who is required to register pursuant to divisions (A) and (B) of this section, and no person who is required to send a notice of intent to reside pursuant to division (G) of this section, shall fail to register or send the notice as required in accordance with those divisions or that division.

(F) An offender or delinquent child who is required to register pursuant to divisions (A) and (B) of this section shall register pursuant to this section for the period of time specified in section 2950.07 of the Revised Code, with the duty commencing on the date specified in division (A) of that section.

(G) If an offender or delinquent child who is required by division (A) of this section to register is a tier III sex offender/child-victim offender, the offender or delinquent child also shall send the sheriff, or the sheriff's designee, of the county in which the offender or delinquent child intends to reside written notice of the offender's or delinquent child's intent to reside in the county. The offender or delinquent child shall send the notice of intent to reside at least twenty days prior to the date the offender or delinquent child begins to reside in the county. The notice of intent to reside shall contain all of the following information:

(1) The information specified in divisions (G)(1) and (2) of section 2950.04 of the Revised Code;

(2) The 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

(H) If, immediately prior to January 1, 2008, an offender or delinquent child who was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing a child-victim oriented offense or a sexually oriented offense as those terms were defined in section 2950.01 of the Revised Code prior to January 1, 2008, was required by division (A) of this section or section 2950.04 of the Revised Code to register and if, on or after January 1, 2008, that offense is a child-victim oriented offense as that term is defined in section 2950.01 of the Revised Code on and after January 1, 2008, the duty to register that is imposed pursuant to this section on and after January 1, 2008, shall be considered, for purposes of section 2950.07 of the Revised Code and for all other purposes, to be a continuation of the duty imposed upon the offender or delinquent child prior to January 1, 2008, under this section or section 2950.04 of the Revised Code.

HISTORY:

150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 152 v S 10, § 1, eff. 1-1-08.

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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. 2950.05 (2006)

§ 2950.05. Notice of change of address; registration of new address

(A) If an offender or delinquent child is required to register pursuant to *section 2950.04* or *2950.041 [2950.04.1]* of the Revised Code, the offender or delinquent child, at least twenty days prior to changing the offender's or delinquent child's residence address, or the offender, at least twenty days prior to changing the address of the offender's school or institution of higher education and not later than five days after changing the address of the offender's place of employment, during the period during which the offender or delinquent child is required to register, shall provide written notice of the residence, school, institution of higher education, or place of employment address change, as applicable, to the sheriff with whom the offender or delinquent child most recently registered the address under *section 2950.04* or *2950.041 [2950.04.1]* of the Revised Code or under division (B) of this section. If a residence address change is not to a fixed address, the offender or delinquent child shall include in that notice a detailed description of the place or places at which the offender or delinquent child intends to stay and, not later than the end of the first business day immediately following the day on which the person obtains a fixed residence address, shall provide that sheriff written notice of that fixed residence address. If a person whose residence address change is not to a fixed address describes in a notice under this division the place or places at which the person intends to stay, for purposes of divisions (C) to (H) of this section, *sections 2950.06* to *2950.13* of the Revised Code, and *sections 311.171 [311.17.1]* and *2919.24* of the Revised Code, the place or places so described in the notice shall be considered the person's residence address and registered residence address, until the person provides the written notice of a fixed residence address as described in this division.

(B) If an offender is required to provide notice of a residence, school, institution of higher education, or place of employment address change under division (A) of this section, or a delinquent child is required to provide notice of a residence address change under that division, the offender or delinquent child, at least twenty days prior to changing the residence, school, or institution of higher education address and not later than five days after changing the place of employment address, as applicable, also shall register the new address in the manner described in divisions (B) and (C) of *section 2950.04* or *2950.041 [2950.04.1]* of the Revised Code, whichever is applicable, with the sheriff of the county in which the offender's or delinquent child's new address is located, subject to division (C) of this section. If a residence address change is not to a fixed address, the offender or delinquent child shall include in the registration a detailed description of the place or places at which the offender or delinquent child intends to stay and, not later than the end of the first business day immediately following the day on which the person obtains a fixed residence address, shall register with that sheriff that fixed residence address. If a person whose residence address change is not to a fixed address describes in a registration under this division the place or places at which the person intends to stay, for purposes of divisions (C) to (H) of this section, *sections 2950.06* to *2950.13* of the Revised Code, and *sections 311.171 [311.17.1]* and *2919.24* of the Revised Code, the place or places so described in the registration shall be considered the person's resi-

dence address and registered residence address, until the person registers a fixed residence address as described in this division.

(C) Divisions (A) and (B) of this section apply to a person who is required to register pursuant to *section 2950.04* or *2950.041 [2950.04.1] of the Revised Code* regardless of whether the new residence, school, institution of higher education, or place of employment address is in this state or in another state. If the new address is in another state, the person shall register with the appropriate law enforcement officials in that state in the manner required under the law of that state and within the earlier of the period of time required under the law of that state or at least seven days prior to changing the address.

(D) (1) Upon receiving from an offender or delinquent child pursuant to division (A) of this section notice of a change of the offender's residence, school, institution of higher education, or place of employment address or the delinquent child's residence address, a sheriff promptly shall forward the new address to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to *section 2950.13 of the Revised Code* if the new address is in another state or, if the new address is located in another county in this state, to the sheriff of that county. 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* and shall forward notice of the offender's or delinquent child's new residence, school, institution of higher education, or place of employment address, as applicable, to the appropriate officials in the other state.

(2) When an offender registers a new residence, school, institution of higher education, or place of employment address or a delinquent child registers a new residence address pursuant to division (B) of this section, the sheriff with whom the offender or delinquent child registers and the bureau of criminal identification and investigation shall comply with division (D) of *section 2950.04* or *2950.041 [2950.04.1] of the Revised Code*, whichever is applicable.

(E) (1) No person who is required to notify a sheriff of a change of address pursuant to division (A) of this section shall fail to notify the appropriate sheriff in accordance with that division.

(2) No person who is required to register a new residence, school, institution of higher education, or place of employment address with a sheriff or with an official of another state pursuant to divisions (B) and (C) of this section shall fail to register with the appropriate sheriff or official of the other state in accordance with those divisions.

(F) (1) It is an affirmative defense to a charge of a violation of division (E)(1) of this section that it was impossible for the person to provide the written notice to the sheriff as required under division (A) of this section because of a lack of knowledge, on the date specified for the provision of the written notice, of a residence, school, institution of higher education, or place of employment address change, and that the person provided notice of the residence, school, institution of higher education, or place of employment address change to the sheriff specified in division (A) of this section as soon as possible, but not later than the end of the first business day, after learning of the address change by doing either of the following:

(a) The person provided notice of the address change to the sheriff specified in division (A) of this section by telephone immediately upon learning of the address change or, if the person did not have reasonable access to a telephone at that time, as soon as possible, but not later than the end of the first business day, after learning of the address change and having reasonable access to a telephone, and the person, as soon as possible, but not later than the end of the first business day, after providing notice of the address change to the sheriff by telephone, provided written notice of the address change to that sheriff.

(b) The person, as soon as possible, but not later than the end of the first business day, after learning of the address change, provided written notice of the address change to the sheriff specified in division (A) of this section.

(2) It is an affirmative defense to a charge of a violation of division (E)(2) of this section that it was impossible for the person to register the new address with the sheriff or the official of the other state as required under division (B) or (C) of this section because of a lack of knowledge, on the date specified for the registration of the new address, of a residence, school, institution of higher education, or place of employment address change, and that the person registered the new residence, school, institution of higher education, or place of employment address with the sheriff or the official of the other state specified in division (B) or (C) of this section as soon as possible, but not later than the end of the first business day, after learning of the address change by doing either of the following:

(a) The person provided notice of the new address to the sheriff or official specified in division (B) or (C) of this section by telephone immediately upon learning of the new address or, if the person did not have reasonable access

to a telephone at that time, as soon as possible, but not later than the end of the first business day, after learning of the new address and having reasonable access to a telephone, and the person, as soon as possible, but not later than the end of the first business day, after providing notice of the new address to the sheriff or official by telephone, registered the new address with that sheriff or official in accordance with division (B) or (C) of this section.

(b) The person, as soon as possible, but not later than the end of the first business day, after learning of the new address, registered the new address with the sheriff or official specified in division (B) or (C) of this section, in accordance with that division.

(G) An offender or delinquent child who is required to comply with divisions (A), (B), and (C) of this section shall do so for the period of time specified in *section 2950.07 of the Revised Code*.

(H) As used in this section, and in all other sections of the Revised Code that refer to the duties imposed on an offender or delinquent child under this section relative to a change in the offender's or delinquent child's residence, school, institution of higher education, or place of employment address, "change in address" includes any circumstance in which the old address for the person in question no longer is accurate, regardless of whether the person in question has a new address.

HISTORY:

146 v H 180 (Eff 7-1-97); 149 v S 3 (Eff 1-1-2002); 149 v S 175. Eff 5-7-2002; 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05.

LEXSTAT ORC ANN.2950.05

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
 WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
 *** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
 *** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

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

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ORC Ann. 2950.05 (2010)

§ 2950.05. Notice of change of address; registration of new address; notice of change in vehicle information, email addresses, internet identifiers, or telephone numbers

(A) If an offender or delinquent child is required to register pursuant to division (A)(2), (3), or (4) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, the delinquent child if not a public registry-qualified juvenile offender registrant shall provide written notice of any change of residence address, and the offender and public registry-qualified juvenile offender registrant shall provide notice of any change of residence, school, institution of higher education, or place of employment address, to the sheriff with whom the offender or delinquent child most recently registered the address under division (A)(2), (3), or (4) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code or under division (B) of this section. A written notice of a change of school, institution of higher education, or place of employment address also shall include the name of the new school, institution of higher education, or place of employment. The delinquent child if not a public registry-qualified juvenile offender registrant shall provide the written notice at least twenty days prior to changing the residence address, and the offender and public registry-qualified juvenile offender registrant shall provide the written notice at least twenty days prior to changing the address of the residence, school, or institution of higher education and not later than three days after changing the address of the place of employment. They shall provide the written notices during the period they are required to register. If a residence address change is not to a fixed address, the offender or delinquent child shall include in that notice a detailed description of the place or places at which the offender or delinquent child intends to stay and, not later than the end of the first business day immediately following the day on which the person obtains a fixed residence address, shall provide that sheriff written notice of that fixed residence address. If a person whose residence address change is not to a fixed address describes in a notice under this division the place or places at which the person intends to stay, for purposes of divisions (C) to (I) of this section, sections 2950.06 to 2950.13 of the Revised Code, and sections 311.171 [311.17.1] and 2919.24 of the Revised Code, the place or places so described in the notice shall be considered the person's residence address and registered residence address until the person provides the written notice of a fixed residence address as described in this division.

(B) If an offender or public registry-qualified juvenile offender registrant is required to provide notice of a residence, school, institution of higher education, or place of employment address change under division (A) of this section, or a delinquent child who is not a public registry-qualified juvenile offender registrant is required to provide notice of a residence address change under that division, the offender or delinquent child, at least twenty days prior to changing the residence, school, or institution of higher education address and not later than three days after changing the place of employment address, as applicable, also shall register the new address in the manner, and using the form, described in divisions (B) and (C) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, whichever is applicable, with the sheriff of the county in which the offender's or delinquent child's new address is located, subject to division (C) of this section. If a residence address change is not to a fixed address, the offender or delinquent child shall include in the reg-

istration a detailed description of the place or places at which the offender or delinquent child intends to stay and, not later than the end of the first business day immediately following the day on which the person obtains a fixed residence address, shall register with that sheriff that fixed residence address. If a person whose residence address change is not to a fixed address describes in a registration under this division the place or places at which the person intends to stay, for purposes of divisions (C) to (I) of this section, sections 2950.06 to 2950.13 of the Revised Code, and sections 311.171 [311.17.1] and 2919.24 of the Revised Code, the place or places so described in the registration shall be considered the person's residence address and registered residence address, until the person registers a fixed residence address as described in this division.

(C) Divisions (A) and (B) of this section apply to a person who is required to register pursuant to division (A)(2), (3), or (4) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code regardless of whether the new residence, school, institution of higher education, or place of employment address is in this state or in another state. If the new address is in another state, the person shall register with the appropriate law enforcement officials in that state in the manner required under the law of that state and within the earlier of the period of time required under the law of that state or at least seven days prior to changing the address.

(D) If an offender or delinquent child who is a public registry-qualified juvenile offender registrant is required to register pursuant to division (A)(2), (3), or (4) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, the offender or public registry-qualified juvenile offender registrant shall provide written notice, within three days of the change, of any change in vehicle information, email addresses, internet identifiers, or telephone numbers registered to or used by the offender or registrant to the sheriff with whom the offender or registrant has most recently registered under division (A)(2), (3), or (4) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code.

(E) (1) Upon receiving from an offender or delinquent child pursuant to division (A) of this section notice of a change of the offender's or public registry-qualified juvenile offender registrant's residence, school, institution of higher education, or place of employment address or the residence address of a delinquent child who is not a public registry-qualified juvenile offender registrant, a sheriff promptly shall forward the new address to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to section 2950.13 of the Revised Code if the new address is in another state or, if the new address is located in another county in this state, to the sheriff of that county. Upon receiving from an offender or public registry-qualified juvenile offender registrant notice of vehicle and identifier changes pursuant to division (D) of this section, a sheriff promptly shall forward the new information to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to section 2950.13 of the Revised Code. 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 and shall forward notice of the offender's or delinquent child's new residence, school, institution of higher education, or place of employment address, as applicable, to the appropriate officials in the other state.

(2) When an offender or public registry-qualified juvenile offender registrant registers a new residence, school, institution of higher education, or place of employment address or a delinquent child who is not a public registry-qualified juvenile offender registrant registers a new residence address pursuant to division (B) of this section, the sheriff with whom the offender or delinquent child registers and the bureau of criminal identification and investigation shall comply with division (D) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, whichever is applicable.

(F) (1) No person who is required to notify a sheriff of a change of address pursuant to division (A) of this section or a change in vehicle information or identifiers pursuant to division (D) of this section shall fail to notify the appropriate sheriff in accordance with that division.

(2) No person who is required to register a new residence, school, institution of higher education, or place of employment address with a sheriff or with an official of another state pursuant to divisions (B) and (C) of this section shall fail to register with the appropriate sheriff or official of the other state in accordance with those divisions.

(G) (1) It is an affirmative defense to a charge of a violation of division (F)(1) of this section that it was impossible for the person to provide the written notice to the sheriff as required under division (A) of this section because of a lack of knowledge, on the date specified for the provision of the written notice, of a residence, school, institution of higher education, or place of employment address change, and that the person provided notice of the residence, school, institution of higher education, or place of employment address change to the sheriff specified in division (A) of this section as soon as possible, but not later than the end of the first business day, after learning of the address change by doing either of the following:

(a) The person provided notice of the address change to the sheriff specified in division (A) of this section by telephone immediately upon learning of the address change or, if the person did not have reasonable access to a telephone at that time, as soon as possible, but not later than the end of the first business day, after learning of the address change and having reasonable access to a telephone, and the person, as soon as possible, but not later than the end of the first business day, after providing notice of the address change to the sheriff by telephone, provided written notice of the address change to that sheriff.

(b) The person, as soon as possible, but not later than the end of the first business day, after learning of the address change, provided written notice of the address change to the sheriff specified in division (A) of this section.

(2) It is an affirmative defense to a charge of a violation of division (F)(2) of this section that it was impossible for the person to register the new address with the sheriff or the official of the other state as required under division (B) or (C) of this section because of a lack of knowledge, on the date specified for the registration of the new address, of a residence, school, institution of higher education, or place of employment address change, and that the person registered the new residence, school, institution of higher education, or place of employment address with the sheriff or the official of the other state specified in division (B) or (C) of this section as soon as possible, but not later than the end of the first business day, after learning of the address change by doing either of the following:

(a) The person provided notice of the new address to the sheriff or official specified in division (B) or (C) of this section by telephone immediately upon learning of the new address or, if the person did not have reasonable access to a telephone at that time, as soon as possible, but not later than the end of the first business day, after learning of the new address and having reasonable access to a telephone, and the person, as soon as possible, but not later than the end of the first business day, after providing notice of the new address to the sheriff or official by telephone, registered the new address with that sheriff or official in accordance with division (B) or (C) of this section.

(b) The person, as soon as possible, but not later than the end of the first business day, after learning of the new address, registered the new address with the sheriff or official specified in division (B) or (C) of this section, in accordance with that division.

(H) An offender or delinquent child who is required to comply with divisions (A), (B), and (C) of this section shall do so for the period of time specified in section 2950.07 of the Revised Code.

(I) As used in this section, and in all other sections of the Revised Code that refer to the duties imposed on an offender or delinquent child under this section relative to a change in the offender's or delinquent child's residence, school, institution of higher education, or place of employment address, "change in address" includes any circumstance in which the old address for the person in question no longer is accurate, regardless of whether the person in question has a new address.

HISTORY:

146 v H 180 (Eff 7-1-97); 149 v S 3 (Eff 1-1-2002); 149 v S 175. Eff 5-7-2002; 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 152 v S 10, § 1, eff. 1-1-08.

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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. 2950.06 (2006)

§ 2950.06. Periodic verification of current address

(A) An offender or delinquent child who is required to register a residence address pursuant to *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* shall periodically verify the offender's or delinquent child's current residence address, and an offender who is required to register a school, institution of higher education, or place of employment address pursuant to either of those sections shall periodically verify the address of the offender'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, 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 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 if any of the following applies:

(a) The offender or delinquent child is required to register based on a sexually oriented offense, and either the offender has been adjudicated a sexual predator relative to the sexually oriented offense, the delinquent child has been adjudicated a sexual predator relative to the sexually oriented offense and the court has not subsequently entered a determination pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is a sexual predator, or the offender is required to register as a result of an aggravated sexually oriented offense.

(b) The offender or delinquent child is required to register based on a child-victim oriented offense, and either the offender has been adjudicated a child-victim predator relative to the child-victim oriented offense or the delinquent child has been adjudicated a child-victim predator relative to the child-victim oriented offense and the court has not subsequently entered a determination pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is a child-victim predator.

(2) In all circumstances not described in division (B)(1) of this section, 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.

If, prior to the effective date of this amendment, an offender or delinquent child registered with a sheriff under a duty imposed under *section 2950.04 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 and if, on or after the effective date of this amendment, that offense no longer is a sexually oriented offense but instead is a child-victim oriented offense, the duty to register that is imposed on the offender or delinquent child pursuant to *section 2950.041 [2950.04.1] of the Revised Code* is a continuation of the duty imposed upon the offender prior to the effective date of this amendment under *section 2950.04 of the Revised Code* and, for purposes of divisions (B)(1) and (2) 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 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 school or institution of higher education if the offender attends one at the time of verification or if the offender 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 who is verifying a current school, institution of higher education, or place of employment address, the current address of the school, institution of higher education, or place of employment of the offender 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 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 name and that the offender has verified or provided that address as a place at which the offender attends school or an institution of higher education or at which the

offender 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 current residence, school, institution of higher education, or place of employment address or the delinquent child's current residence address 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 verifies the current residence, school, institution of higher education, or place of employment address or the delinquent child 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 does not verify the current residence, school, institution of higher education, or place of employment address or the delinquent child verifies 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, 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 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 who is required to verify the offender'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 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*.

HISTORY:

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

LEXSTAT ORC ANN. 2950.06

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

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

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ORC Ann. 2950.06 (2010)

§ 2950.06. Periodic verification of current 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 [2950.04.1] 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 [2950.04.1] 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 [2950.04.1] 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 [2950.04.1] 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 [2950.04.1] 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 par-

ent, 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.

HISTORY:

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



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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. 2950.07 (2006)

§ 2950.07. Commencement of duty to register; duration

(A) The duty of an offender who 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 and the duty of a delinquent child who 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 who is an out-of-state juvenile offender registrant to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* commences on whichever of the following dates is applicable:

(1) If the offender's duty to register is imposed pursuant to division (A)(1)(a) of section 2950.04 or division (A)(1)(a) of *section 2950.041 [2950.04.1] of the Revised Code*, the offender's duty to comply with those sections commences regarding residence addresses on the date of the offender's release from a prison term, a term of imprisonment, or any other type of confinement or on July 1, 1997, for a duty under section 2950.04 or the effective date of this amendment for a duty under *section 2950.041 [2950.04.1] of the Revised Code*, whichever is later, and commences regarding addresses of schools, institutions of higher education, and places of employment on the date of the offender's release from a prison term, term of imprisonment, or any other type of confinement or on the effective date of this amendment, whichever is later.

(2) If the offender's duty to register is imposed pursuant to division (A)(1)(b) of section 2950.04 or division (A)(1)(b) of *section 2950.041 [2950.04.1] of the Revised Code*, the offender's duty to comply with those sections commences regarding residence addresses on the date of entry of the judgment of conviction of the sexually oriented offense or child-victim oriented offense or on July 1, 1997, for a duty under section 2950.04 or the effective date of this amendment for a duty under *section 2950.041 [2950.04.1] of the Revised Code*, whichever is later, and commences regarding addresses of schools, institutions of higher education, and places of employment on the date of entry of the judgment of conviction of the sexually oriented offense or child-victim oriented offense or on the effective date of this amendment, whichever is later.

(3) If the offender's duty to register is imposed pursuant to division (A)(1)(c) of *section 2950.04 of the Revised Code*, the offender's duty to comply with those sections commences regarding residence addresses fourteen days after

July 1, 1997, and commences regarding addresses of schools, institutions of higher education, and places of employment fourteen days after the effective date of this amendment.

(4) If the offender's or delinquent child's duty to register is imposed pursuant to division (A)(3)(a) or (b) of section 2950.04 or division (A)(3)(a) or (b) of *section 2950.041 [2950.04.1] of the Revised Code*, the offender's duty to comply with those sections commences regarding residence addresses on the date that the offender begins to reside or becomes temporarily domiciled in this state or on March 30, 1999, for a duty under *section 2950.04 of the Revised Code* or the effective date of this amendment for a duty under *section 2950.041 of the Revised Code*, whichever is later, the offender's duty regarding addresses of schools, institutions of higher education, and places of employment commences on the effective date of this amendment or on the date the offender begins attending any school or institution of higher education in this state on a full-time or part-time basis or becomes employed in this state, whichever is later, and the delinquent child's duty commences on the date the delinquent child begins to reside or becomes temporarily domiciled in this state or on January 1, 2002, for a duty under *section 2950.04 of the Revised Code* or the effective date of this amendment for a duty under *section 2950.041 [2950.04.1] of the Revised Code*, whichever is later.

(5) If the delinquent child's duty to register is imposed pursuant to division (A)(2) of section 2950.04 or division (A)(2)(a) of *section 2950.041 [2950.04.1] of the Revised Code*, if the delinquent child's classification as a juvenile offender registrant is made at the time of the child's disposition for that sexually oriented offense or child-victim oriented offense, whichever is applicable, and if the delinquent child is committed for the sexually oriented offense or child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department, the delinquent child's duty to comply with those sections commences on the date of the delinquent child's discharge or release from custody in the department of youth services secure facility or from the secure facility not operated by the department as described in that division.

(6) If the delinquent child's duty to register is imposed pursuant to division (A)(2) of section 2950.04 or division (A)(2)(a) of *section 2950.041 [2950.04.1] of the Revised Code* and if either the delinquent child's classification as a juvenile offender registrant is made at the time of the child's disposition for that sexually oriented offense or child-victim oriented offense, whichever is applicable, and the delinquent child is not committed for the sexually oriented offense or child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department or the child's classification as a juvenile offender registrant is made pursuant to *sections 2152.83 of the Revised Code*, the delinquent child's duty to comply with those sections commences on the date of entry of the court's order that classifies the delinquent child a juvenile offender registrant.

(7) If the offender's duty to register is imposed pursuant to division (A)(1)(c) of *section 2950.041 [2950.04.1] of the Revised Code*, the offender's duty to comply with those sections regarding residence addresses is a continuation of the offender's former duty to register regarding residence addresses imposed prior to the effective date of this amendment under *section 2950.04 of the Revised Code* and shall be considered for all purposes as having commenced on the date that the offender's former duty under that section commenced. The offender's duty to comply with those sections commences regarding addresses of schools, institutions of higher education, and places of employment on the effective date of this amendment.

(8) If the delinquent child's duty to register is imposed pursuant to division (A)(2)(b) of *section 2950.041 [2950.04.1] of the Revised Code*, the delinquent child's duty to comply with those sections is a continuation of the delinquent child's former duty to register imposed prior to the effective date of this amendment under *section 2950.04 of the Revised Code* and shall be considered for all purposes as having commenced on the date that the delinquent child's former duty under that section commenced or commences.

(B) The duty of an offender who 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 and the duty of a delinquent child who 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 who is an out-of-state juvenile offender registrant to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* continues, after the date of commencement, for whichever of the following periods is applicable:

(1) Except as otherwise provided in this division, if the offense is a sexually oriented offense that is not a registration-exempt sexually oriented offense and the offender or delinquent child has been adjudicated a sexual predator relative to the sexually oriented offense, if the offense is a sexually oriented offense and the offender has the duty to register as a result of an aggravated sexually oriented offense, or if the offense is a child-victim oriented offense and the of-

fender or delinquent child has been adjudicated a child-victim predator relative to the child-victim oriented offense, the offender's or delinquent child's duty to comply with those sections continues until the offender's or delinquent child's death. Regarding a delinquent child who has been adjudicated a sexual predator relative to the sexually oriented offense or who has been adjudicated a child-victim predator relative to the child-victim oriented offense, if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is a sexual predator or child-victim predator, the delinquent child's duty to comply with those sections continues for the period of time that otherwise would have been applicable to the delinquent child under division (B)(2) or (3) of this section. In no case shall the lifetime duty to comply that is imposed under this division on an offender who is adjudicated a sexual predator or is adjudicated a child-victim predator or is imposed under this division for an aggravated sexually oriented offense, or the adjudication, classification, or conviction that subjects the offender to this division, be removed or terminated.

(2) If the judge who sentenced the offender or made the disposition for the delinquent child for committing the sexually oriented offense that is not a registration-exempt sexually oriented offense or the child-victim oriented offense, or the successor in office of the juvenile court judge who made the delinquent child disposition, determined pursuant to division (E) of *section 2950.09 or 2950.091 [2950.09.1]* or pursuant to division (B) of *section 2152.83, section 2152.84, or section 2152.85 of the Revised Code* that the offender or delinquent child is a habitual sex offender or a habitual child-victim offender, or if the offender or delinquent child is automatically classified a habitual child-victim offender pursuant to division (E) of *section 2950.091 [2950.09.1] of the Revised Code*, the offender's duty to comply with those sections continues either until the offender's death or for twenty years, determined as provided in this division, and the delinquent child's duty to comply with those sections continues for twenty years. If a delinquent child is so determined or classified to be a habitual sex offender or a habitual child-victim offender and if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is a habitual sex offender or habitual child-victim offender but remains a juvenile offender registrant, the delinquent child's duty to comply with those sections continues for the period of time that otherwise would have been applicable to the delinquent child under division (B)(3) of this section. Except as otherwise provided in this division, the offender's duty to comply with those sections continues until the offender's death. If a lifetime duty to comply is imposed under this division on an offender, in no case shall that lifetime duty, or the determination that subjects the offender to this division, be removed or terminated. The offender's duty to comply with those sections continues for twenty years if the offender is a habitual sex offender and both of the following apply:

(a) At least one of the sexually oriented offenses of which the offender has been convicted or to which the offender has pleaded guilty and that are included in the habitual sex offender determination is a violation of division (A)(1) or (5) of *section 2907.06 of the Revised Code* involving a victim who is eighteen years of age or older, a violation of division (A), (B), or (E) of *section 2907.08 of the Revised Code* involving a victim who is eighteen years of age or older, or a violation of *section 2903.211 [2903.21.1] of the Revised Code* that is a misdemeanor;

(b) The total of all the sexually oriented offenses of which the offender has been convicted or to which the offender has pleaded guilty and that are included in the habitual sex offender determination does not include at least two sexually oriented offenses that are not described in division (B)(2)(a) of this section.

(3) If neither division (B)(1) nor (B)(2) of this section applies, the offender's or delinquent child's duty to comply with those sections continues for ten years. If a delinquent child is classified pursuant to *section 2152.82 or 2152.83 of the Revised Code* a juvenile offender registrant and if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is to be classified a juvenile offender registrant, the delinquent child's duty to comply with those sections terminates upon the court's entry of the determination.

(C) (1) If an offender has been convicted of or pleaded guilty to a sexually oriented offense that is not a registration-exempt sexually oriented offense and the offender subsequently is convicted of or pleads guilty to another sexually oriented offense or a child-victim oriented offense, if an offender has been convicted of or pleaded guilty to a child-victim oriented offense and the offender subsequently is convicted of or pleads guilty to another child-victim oriented offense or a sexually oriented offense, if a delinquent child has been adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant and the child subsequently is adjudicated a delinquent child for committing another sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant relative to that offense or subsequently is convicted of or pleads guilty to another sexually oriented offense or

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

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

(2) If a delinquent child has been adjudicated a delinquent child for committing on or after January 1, 2002, 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 relative to the offense, if the order containing the classification also contains a determination by the juvenile judge that the child is a sexual predator or a habitual sex offender or that the child is a child-victim predator or a habitual child-victim offender, and if the juvenile judge or the judge's successor in office subsequently determines pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is a sexual predator or habitual sex offender or no longer is a child-victim predator or habitual child-victim offender, whichever is applicable, the judge's subsequent determination does not affect the date of commencement of the delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* as determined under division (A) of this section.

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

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

HISTORY:

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

NOTES:

Section Notes

LEXSTAT ORC ANN. 2950.07

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
 WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
 *** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
 *** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

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

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ORC Ann. 2950.07 (2010)

§ 2950.07. Commencement of duty to register; duration

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

- (1) If the offender's duty to register is imposed pursuant to division (A)(1)(a) of section 2950.04 or division (A)(1)(a) of section 2950.041 [2950.04.1] of the Revised Code, the offender's duty to comply with those sections commences immediately after the entry of the judgment of conviction.
- (2) If the delinquent child's duty to register is imposed pursuant to division (A)(1)(b) of section 2950.04 or division (A)(1)(b) of section 2950.041 [2950.04.1] of the Revised Code, the delinquent child's duty to comply with those sections commences immediately after the order of disposition.
- (3) If the offender's duty to register is imposed pursuant to division (A)(2) of section 2950.04 or division (A)(2) of section 2950.041 [2950.04.1] of the Revised Code, subject to division (A)(7) of this section, the offender's duty to comply with those sections commences on the date of the offender's release from a prison term, a term of imprisonment, or any other type of confinement, or if the offender is not sentenced to a prison term, a term of imprisonment, or any other type of confinement, on the date of the entry of the judgment of conviction of the sexually oriented offense or child-victim oriented offense.
- (4) If the offender's or delinquent child's duty to register is imposed pursuant to division (A)(4) of section 2950.04 or division (A)(4) of section 2950.041 [2950.04.1] of the Revised Code, the offender's duty to comply with those sections commences regarding residence addresses on the date that the offender begins to reside or becomes temporarily domiciled in this state, the offender's duty regarding addresses of schools, institutions of higher education, and places of employment commences on the date the offender begins attending any school or institution of higher education in this state on a full-time or part-time basis or becomes employed in this state, and the delinquent child's duty commences on the date the delinquent child begins to reside or becomes temporarily domiciled in this state.
- (5) If the delinquent child's duty to register is imposed pursuant to division (A)(3) of section 2950.04 or division (A)(3) of section 2950.041 [2950.04.1] of the Revised Code, if the delinquent child's classification as a juvenile offender registrant is made at the time of the child's disposition for that sexually oriented offense or child-victim oriented offense, whichever is applicable, and if the delinquent child is committed for the sexually oriented offense or child-

victim oriented offense to the department of youth services or to a secure facility that is not operated by the department, the delinquent child's duty to comply with those sections commences on the date of the delinquent child's discharge or release from custody in the department of youth services secure facility or from the secure facility not operated by the department as described in that division.

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

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

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

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

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

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

(1) Except as otherwise provided in this division, if the person is an offender who is a tier III sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, if the person is a delinquent child who is a tier III sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, or if the person is a delinquent child who is a public registry-qualified juvenile offender registrant relative to the sexually oriented offense, the offender's or delinquent child's duty to comply with those sections continues until the offender's or delinquent child's death. Regarding a delinquent child who is a tier III sex offender/child-victim offender relative to the offense but is not a public registry-qualified juvenile offender registrant relative to the offense, if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to section 2152.84 or 2152.85 of the Revised Code that the delinquent child no longer is a tier III sex

offender/child-victim offender, the delinquent child's duty to comply with those sections continues for the period of time that is applicable to the delinquent child under division (B)(2) or (3) of this section, based on the reclassification of the child pursuant to section 2152.84 or 21562.85 of the Revised Code as a tier I sex offender/child-victim offender or a tier II sex offender/child-victim offender. In no case shall the lifetime duty to comply that is imposed under this division on an offender who is a tier III sex offender/child-victim offender be removed or terminated. A delinquent child who is a public registry-qualified juvenile offender registrant may have the lifetime duty to register terminated only pursuant to section 2950.15 of the Revised Code.

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

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

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

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

classification as a juvenile offender registrant or as an out-of-state juvenile offender registrant, and the delinquent child shall comply with both those duties and the duties imposed under this chapter relative to the subsequent conviction or guilty plea.

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

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

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

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

HISTORY:

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

LEXSTAT ORC ANN. 2950.081

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

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

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ORC Ann. 2950.081 (2010)

§ 2950.081. Disclosure of sex offender registration information in possession of sheriff; internet database provisions

(A) Any statements, information, photographs, fingerprints, or materials that are required to be provided, and that are provided, by an offender or delinquent child pursuant to section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code and that are in the possession of a county sheriff are public records open to public inspection under section 149.43 of the Revised Code and shall be included in the internet sex offender and child-victim offender database established and maintained under section 2950.13 of the Revised Code to the extent provided in that section.

(B) Except when the child is classified a public registry-qualified juvenile offender registrant, the sheriff shall not cause to be publicly disseminated by means of the internet any statements, information, photographs, fingerprints, or materials that are provided by a delinquent child who sends a notice of intent to reside, registers, provides notice of a change of residence address and registers the new residence address, or provides verification of a current residence address pursuant to this chapter and that are in the possession of a county sheriff.

(C) If a sheriff establishes on the internet a sex offender and child-victim offender database for the public dissemination of some or all of the materials that are described in division (A) of this section, that are not prohibited from inclusion by division (B) of this section, and that pertain to offenders or delinquent children who register in the sheriff's county, in addition to all of the other information and materials included, the sheriff shall include in the database a chart describing which sexually oriented offenses and child-victim oriented offenses are included in the definitions of tier I sex offender/child-victim offender, tier II sex offender/child-victim offender, and tier III sex offender/child-victim offender and for each offender or delinquent child in relation to whom information and materials are provided a statement as to whether the offender or delinquent child is a tier I sex offender/child-victim offenders, a tier II sex offender/child-victim offenders, or a tier III sex offender/child-victim offenders.

HISTORY:

149 v S 3. Eff 1-1-2002; 150 v S 5, § 1, Eff 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

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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. 2950.09 (2006)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

hearing and the factors specified in divisions (B)(2) and (3) of this section, the court shall determine by clear and convincing evidence whether the offender is a sexual predator. If the court determines at the sexual predator hearing that the offender is not a sexual predator, it also shall determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the hearing is being conducted.

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

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

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

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

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

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

(D) (1) Division (D)(1) of this section does not apply to any person who has been convicted of or pleaded guilty to a sexually oriented offense. Division (D) of this section applies only to delinquent children as provided in Chapter 2152. of the Revised Code. A person who has been adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense and who has been classified by a juvenile court judge a juvenile offender registrant or, if applicable, additionally has been determined by a juvenile court judge to be a sexual predator or habitual sex offender, may petition the adjudicating court for a reclassification or declassification pursuant to *section 2152.85 of the Revised Code*.

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

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

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

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

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

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

If, under division (E)(1) of this section, the judge determines that the offender or delinquent child previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing, a sexually oriented offense or a child-victim oriented offense and that the offender satisfies all other criteria for being a habitual sex offender, the offender or delinquent child is a habitual sex offender or habitual child-victim offender and the court shall determine whether to impose a requirement that the offender or delinquent child be subject to the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code*. In making the determination regarding the possible imposition of the community notification requirement, if at least two of the sexually oriented offenses or child-victim oriented offenses that are the basis of the habitual sex offender or habitual child-victim offender determination

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

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

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

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

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

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

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

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

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

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

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

HISTORY:

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

LEXSTAT ORC 2950.11

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
 WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
 *** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
 *** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

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

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ORC Ann. 2950.11 (2010)

§ 2950.11. Community notification provisions

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

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

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

(c) The building manager, or the person the building owner or condominium unit owners association authorizes to exercise management and control, of each multi-unit building that is located within one thousand feet of the offender's or delinquent child's residential premises, including a multi-unit building in which the offender or delinquent child resides, and that is located within the county served by the sheriff. In addition to notifying the building manager or the person authorized to exercise management and control in the multi-unit building under this division, the sheriff shall post a copy of the notice prominently in each common entryway in the building and any other location in the building the sheriff determines appropriate. The manager or person exercising management and control of the building shall

permit the sheriff to post copies of the notice under this division as the sheriff determines appropriate. In lieu of posting copies of the notice as described in this division, a sheriff may provide notice to all occupants of the multi-unit building by mail or personal contact; if the sheriff so notifies all the occupants, the sheriff is not required to post copies of the notice in the common entryways to the building. Division (D)(3) of this section applies regarding notices required under this division.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(G) (1) The department of job and family services shall compile, maintain, and update in January and July of each year, a list of all agencies, centers, or homes of a type described in division (A)(2) or (6) of this section that contains the name of each agency, center, or home of that type, the county in which it is located, its address and telephone number, and the name of an administrative officer or employee of the agency, center, or home.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The offender's age;

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

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

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

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

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

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

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

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

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

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

HISTORY:

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

LEXSTAT ORC ANN. 2950.99

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
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*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

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

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ORC Ann. 2950.99 (2010)

§ 2950.99. Penalties

(A) (1) (a) Except as otherwise provided in division (A)(1)(b) of this section, whoever violates a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code shall be punished as follows:

(i) If the most serious sexually oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is aggravated murder or murder if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the first degree.

(ii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the first, second, third, or fourth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition, or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition is a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as that offense committed in the other jurisdiction would constitute if committed in this state.

(iii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the fifth degree or a misdemeanor if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the fourth degree.

(b) If the offender previously has been convicted of or pleaded guilty to, or previously has been adjudicated a delinquent child for committing, a violation of a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code, whoever violates a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code shall be punished as follows:

(i) If the most serious sexually oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is aggravated murder or murder if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the first degree.

(ii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the first, second, or third degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition, or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition is a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as that offense committed in the other jurisdiction would constitute if committed in this state.

(iii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the fourth or fifth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the third degree.

(iv) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a misdemeanor if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the fourth degree.

(2) (a) In addition to any penalty or sanction imposed under division (A)(1) of this section or any other provision of law for a violation of a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code, if the offender or delinquent child is subject to a community control sanction, is on parole, is subject to one or more post-release control sanctions, or is subject to any other type of supervised release at the time of the violation, the violation shall constitute a violation of the terms and conditions of the community control sanction, parole, post-release control sanction, or other type of supervised release.

(b) In addition to any penalty or sanction imposed under division (A)(1)(b)(i), (ii), or (iii) of this section or any other provision of law for a violation of a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code, if the offender previously has been convicted of or pleaded guilty to, or previously has been adjudicated a delinquent child for committing, a violation of a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code when the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated under the prohibition is a felony if committed by an adult or a comparable category of offense committed in another jurisdiction, the court imposing a sentence upon the offender shall impose a definite prison term of no less than three years. The definite prison term imposed under this section is not restricted by division (B) of section 2929.14 of the Revised Code and shall not be reduced to less than three years pursuant to Chapter 2967. or any other provision of the Revised Code.

(3) As used in division (A)(1) of this section, "comparable category of offense committed in another jurisdiction" means a sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated, that is a violation of an existing or former law of another state or the United States, an existing or former law applicable in a military court or in an Indian tribal court, or an existing or former law of any nation other than the United States, and that, if it had been committed in this state, would constitute or would have constituted aggravated murder or murder for purposes of division (A)(1)(a)(i) of this section, a felony of the first, second, third, or fourth degree for purposes of division (A)(1)(a)(ii) of this section, a felony of the fifth degree or a misdemeanor for purposes of division (A)(1)(a)(iii) of this section, aggravated murder or murder for purposes of division (A)(1)(b)(i) of this section, a felony of the first, second, or third degree for purposes of division (A)(1)(b)(ii) of this section, a felony of the fourth or fifth degree for purposes of division (A)(1)(b)(iii) of this section, or a misdemeanor for purposes of division (A)(1)(b)(iv) of this section.

(B) If a person violates a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code that applies to the person as a result of the person being adjudicated a delinquent child and being classified a juvenile offender registrant or an out-of-state juvenile offender registrant, both of the following apply:

(1) If the violation occurs while the person is under eighteen years of age, the person is subject to proceedings under Chapter 2152. of the Revised Code based on the violation.

(2) If the violation occurs while the person is eighteen years of age or older, the person is subject to criminal prosecution based on the violation.

(C) Whoever violates division (C) of section 2950.13 of the Revised Code is guilty of a misdemeanor of the first degree.

HISTORY:

130 v 671 (Eff 10-4-63); 134 v H 511 (Eff 1-1-74); 146 v S 2 (Eff 7-1-96); 146 v H 180 (Eff 7-1-97); 149 v S 3. Eff 1-1-2002; 149 v H 490, § 1, eff. 1-1-04; 150 v S 5, § 1, Eff 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v H 473, § 1, eff. 4-29-05; 152 v S 97, § 1, eff. 1-1-08.

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*** 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 2953. APPEALS; OTHER POSTCONVICTION REMEDIES
 POSTCONVICTION DNA TESTING FOR ELIGIBLE INMATES

ORC Ann. 2953.82 (2006)

§ 2953.82. Request by inmate who pleaded guilty or no contest to felony

(A) An inmate who pleaded guilty or no contest to a felony offense may request DNA testing under this section regarding that offense if all of the following apply:

(1) The inmate was sentenced to a prison term or sentence of death for that felony and is in prison serving that prison term or under that sentence of death.

(2) On the date on which the inmate files the application requesting the testing with the court as described in division (B) of this section, the inmate has at least one year remaining on the prison term described in division (A)(1) of this section, or the inmate is in prison under a sentence of death as described in that division.

(B) An inmate who pleaded guilty or no contest to a felony offense, who satisfies the criteria set forth in division (A) of this section, and who wishes to request DNA testing under this section shall submit, in accordance with this division, an application for the testing to the court of common pleas. Upon submitting the application to the court, the inmate shall serve a copy on the prosecuting attorney. The inmate shall specify on the application the offense or offenses for which the inmate is requesting the DNA testing under this section. Along with the application, the inmate shall submit an acknowledgment that is signed by the inmate. The application and acknowledgment required under this division shall be the same application and acknowledgment as are used by eligible inmates who request DNA testing under sections 2953.71 to 2953.81 of the Revised Code.

(C) Within forty-five days after the filing of an application for DNA testing under division (B) of this section, the prosecuting attorney shall file a statement with the court that indicates whether the prosecuting attorney agrees or disagrees that the inmate should be permitted to obtain DNA testing under this section. If the prosecuting attorney agrees that the inmate should be permitted to obtain DNA testing under this section, all of the following apply:

(1) The application and the written statement shall be considered for all purposes as if they were an application for DNA testing filed under section 2953.73 of the Revised Code that the court accepted, and the court, the prosecuting attorney, the attorney general, the inmate, law enforcement personnel, and all other involved persons shall proceed regarding DNA testing for the inmate pursuant to sections 2953.77 to 2953.81 of the Revised Code, in the same manner as if the inmate was an eligible inmate for whom an application for DNA testing had been accepted.

(2) Upon completion of the DNA testing, section 2953.81 of the Revised Code applies.

(D) If the prosecuting attorney disagrees that the inmate should be permitted to obtain DNA testing under this section, the prosecuting attorney's disagreement is final and is not appealable by any person to any court, and no court shall

have authority, without agreement of the prosecuting attorney, to order DNA testing regarding that inmate and the offense or offenses for which the inmate requested DNA testing in the application.

(E) If the prosecuting attorney fails to file a statement of agreement or disagreement within the time provided in division (C) of this section, the court may order the prosecuting attorney to file a statement of that nature within fifteen days of the date of the order.

HISTORY:

150 v S 11, § 1, Eff 10-29-03; 150 v H 525, § 1, eff. 5-18-05; 151 v S 262, § 1, eff. 7-11-06.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2953. APPEALS; OTHER POSTCONVICTION REMEDIES
POSTCONVICTION DNA TESTING FOR ELIGIBLE OFFENDERS

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ORC Ann. 2953.82 (2010)

§ 2953.82. Repealed

Repealed, 153 v S 77, § 2 [150 v S 11, § 1, Eff 10-29-03; 150 v H 525, § 1, eff. 5-18-05; 151 v S 262, § 1, eff. 7-11-06]. Eff 7-6-10.

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TITLE 45. MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT
 CHAPTER 4511. TRAFFIC LAWS -- OPERATION OF MOTOR VEHICLES
 DRIVING WHILE INTOXICATED

ORC Ann. 4511.191 (2006)

§ 4511.191. Implied consent

(A) (1) "Physical control" has the same meaning as in *section 4511.194 [4511.19.4] of the Revised Code*.

(2) Any person who operates a vehicle, streetcar, or trackless trolley upon a highway or any public or private property used by the public for vehicular travel or parking within this state or who is in physical control of a vehicle, streetcar, or trackless trolley shall be deemed to have given consent to a chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine to determine the alcohol, drug of abuse, controlled substance, metabolite of a controlled substance, or combination content of the person's whole blood, blood serum or plasma, breath, or urine if arrested for a violation of division (A) or (B) of section 4511.19 of the *Revised Code*, *section 4511.194 [4511.19.4] of the Revised Code* or a substantially equivalent municipal ordinance, or a municipal OVI ordinance.

(3) The chemical test or tests under division (A)(2) of this section shall be administered at the request of a law enforcement officer having reasonable grounds to believe the person was operating or in physical control of a vehicle, streetcar, or trackless trolley in violation of a division, section, or ordinance identified in division (A)(2) of this section. The law enforcement agency by which the officer is employed shall designate which of the tests shall be administered.

(4) Any person who is dead or unconscious, or who otherwise is in a condition rendering the person incapable of refusal, shall be deemed to have consented as provided in division (A)(2) of this section, and the test or tests may be administered, subject to *sections 313.12 to 313.16 of the Revised Code*.

(B) (1) Upon receipt of the sworn report of a law enforcement officer who arrested a person for a violation of division (A) or (B) of section 4511.19 of the *Revised Code*, *section 4511.194 [4511.19.4] of the Revised Code* or a substantially equivalent municipal ordinance, or a municipal OVI ordinance that was completed and sent to the registrar and a court pursuant to *section 4511.192 [4511.19.2] of the Revised Code* in regard to a person who refused to take the designated chemical test, the registrar shall enter into the registrar's records the fact that the person's driver's or commercial driver's license or permit or nonresident operating privilege was suspended by the arresting officer under this division and that section and the period of the suspension, as determined under this section. The suspension shall be subject to appeal as provided in *section 4511.197 [4511.19.7] of the Revised Code*. The suspension shall be for whichever of the following periods applies:

(a) Except when division (B)(1)(b), (c), or (d) of this section applies and specifies a different class or length of suspension, the suspension shall be a class C suspension for the period of time specified in division (B)(3) of *section 4510.02 of the Revised Code*.

(b) If the arrested person, within six years of the date on which the person refused the request to consent to the chemical test, had refused one previous request to consent to a chemical test, the suspension shall be a class B suspension imposed for the period of time specified in division (B)(2) of *section 4510.02 of the Revised Code*.

(c) If the arrested person, within six years of the date on which the person refused the request to consent to the chemical test, had refused two previous requests to consent to a chemical test, the suspension shall be a class A suspension imposed for the period of time specified in division (B)(1) of *section 4510.02 of the Revised Code*.

(d) If the arrested person, within six years of the date on which the person refused the request to consent to the chemical test, had refused three or more previous requests to consent to a chemical test, the suspension shall be for five years.

(2) The registrar shall terminate a suspension of the driver's or commercial driver's license or permit of a resident or of the operating privilege of a nonresident, or a denial of a driver's or commercial driver's license or permit, imposed pursuant to division (B)(1) of this section upon receipt of notice that the person has entered a plea of guilty to, or that the person has been convicted after entering a plea of no contest to, operating a vehicle in violation of *section 4511.19 of the Revised Code* or in violation of a municipal OVI ordinance, if the offense for which the conviction is had or the plea is entered arose from the same incident that led to the suspension or denial.

The registrar shall credit against any judicial suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege imposed pursuant to *section 4511.19 of the Revised Code*, or pursuant to *section 4510.07 of the Revised Code* for a violation of a municipal OVI ordinance, any time during which the person serves a related suspension imposed pursuant to division (B)(1) of this section.

(C) (1) Upon receipt of the sworn report of the law enforcement officer who arrested a person for a violation of division (A) or (B) of *section 4511.19 of the Revised Code* or a municipal OVI ordinance that was completed and sent to the registrar and a court pursuant to *section 4511.192 [4511.19.2] of the Revised Code* in regard to a person whose test results indicate that the person's whole blood, blood serum or plasma, breath, or urine contained at least the concentration of alcohol specified in division (A)(1)(b), (c), (d), or (e) of *section 4511.19 of the Revised Code* or at least the concentration of a listed controlled substance or a listed metabolite of a controlled substance specified in division (A)(1)(j) of *section 4511.19 of the Revised Code*, the registrar shall enter into the registrar's records the fact that the person's driver's or commercial driver's license or permit or nonresident operating privilege was suspended by the arresting officer under this division and *section 4511.192 [4511.19.2] of the Revised Code* and the period of the suspension, as determined under divisions (F)(1) to (4) of this section. The suspension shall be subject to appeal as provided in *section 4511.197 [4511.19.7] of the Revised Code*. The suspension described in this division does not apply to, and shall not be imposed upon, a person arrested for a violation of *section 4511.194 [4511.19.4] of the Revised Code* or a substantially equivalent municipal ordinance who submits to a designated chemical test. The suspension shall be for whichever of the following periods applies:

(a) Except when division (C)(1)(b), (c), or (d) of this section applies and specifies a different period, the suspension shall be a class E suspension imposed for the period of time specified in division (B)(5) of *section 4510.02 of the Revised Code*.

(b) The suspension shall be a class C suspension for the period of time specified in division (B)(3) of *section 4510.02 of the Revised Code* if the person has been convicted of or pleaded guilty to, within six years of the date the test was conducted, one violation of division (A) or (B) of *section 4511.19 of the Revised Code* or one other equivalent offense.

(c) If, within six years of the date the test was conducted, the person has been convicted of or pleaded guilty to two violations of a statute or ordinance described in division (C)(1)(b) of this section, the suspension shall be a class B suspension imposed for the period of time specified in division (B)(2) of *section 4510.02 of the Revised Code*.

(d) If, within six years of the date the test was conducted, the person has been convicted of or pleaded guilty to more than two violations of a statute or ordinance described in division (C)(1)(b) of this section, the suspension shall be a class A suspension imposed for the period of time specified in Division (B)(1) of *section 4510.02 of the Revised Code*.

(2) The registrar shall terminate a suspension of the driver's or commercial driver's license or permit of a resident or of the operating privilege of a nonresident, or a denial of a driver's or commercial driver's license or permit, imposed pursuant to division (C)(1) of this section upon receipt of notice that the person has entered a plea of guilty to, or that the person has been convicted after entering a plea of no contest to, operating a vehicle in violation of *section 4511.19*

of the Revised Code or in violation of a municipal OVI ordinance, if the offense for which the conviction is had or the plea is entered arose from the same incident that led to the suspension or denial.

The registrar shall credit against any judicial suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege imposed pursuant to *section 4511.19 of the Revised Code*, or pursuant to *section 4510.07 of the Revised Code* for a violation of a municipal OVI ordinance, any time during which the person serves a related suspension imposed pursuant to division (C)(1) of this section.

(D) (1) A suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege under this section for the time described in division (B) or (C) of this section is effective immediately from the time at which the arresting officer serves the notice of suspension upon the arrested person. Any subsequent finding that the person is not guilty of the charge that resulted in the person being requested to take the chemical test or tests under division (A) of this section does not affect the suspension.

(2) If a person is arrested for operating a vehicle, streetcar, or trackless trolley in violation of division (A) or (B) of *section 4511.19 of the Revised Code* or a municipal OVI ordinance, or for being in physical control of a vehicle, streetcar, or trackless trolley in violation of *section 4511.194 [4511.19.7] of the Revised Code* or a substantially equivalent municipal ordinance, regardless of whether the person's driver's or commercial driver's license or permit or nonresident operating privilege is or is not suspended under division (B) or (C) of this section or Chapter 4510. of the Revised Code, the person's initial appearance on the charge resulting from the arrest shall be held within five days of the person's arrest or the issuance of the citation to the person, subject to any continuance granted by the court pursuant to *section 4511.197 [4511.19.7] of the Revised Code* regarding the issues specified in that division.

(E) When it finally has been determined under the procedures of this section and *sections 4511.192 [4511.19.2] to 4511.197 [4511.19.7] of the Revised Code* that a nonresident's privilege to operate a vehicle within this state has been suspended, the registrar shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(F) At the end of a suspension period under this section, under *section 4511.194 [4511.19.4]*, *section 4511.196 [4511.19.6]*, or division (G) of *section 4511.19 of the Revised Code*, or under *section 4510.07 of the Revised Code* for a violation of a municipal OVI ordinance and upon the request of the person whose driver's or commercial driver's license or permit was suspended and who is not otherwise subject to suspension, cancellation, or disqualification, the registrar shall return the driver's or commercial driver's license or permit to the person upon the occurrence of all of the conditions specified in divisions (F)(1) and (2) of this section:

(1) A showing that the person has proof of financial responsibility, a policy of liability insurance in effect that meets the minimum standards set forth in *section 4509.51 of the Revised Code*, or proof, to the satisfaction of the registrar, that the person is able to respond in damages in an amount at least equal to the minimum amounts specified in *section 4509.51 of the Revised Code*.

(2) Subject to the limitation contained in division (F)(3) of this section, payment by the person to the bureau of motor vehicles of a license reinstatement fee of four hundred twenty-five dollars, which fee shall be deposited in the state treasury and credited as follows:

(a) One hundred twelve dollars and fifty cents shall be credited to the statewide treatment and prevention fund created by *section 4301.30 of the Revised Code*. The fund shall be used to pay the costs of driver treatment and intervention programs operated pursuant to *sections 3793.02 and 3793.10 of the Revised Code*. The director of alcohol and drug addiction services shall determine the share of the fund that is to be allocated to alcohol and drug addiction programs authorized by *section 3793.02 of the Revised Code*, and the share of the fund that is to be allocated to drivers' intervention programs authorized by *section 3793.10 of the Revised Code*.

(b) Seventy-five dollars shall be credited to the reparations fund created by *section 2743.191 [2743.19.1] of the Revised Code*.

(c) Thirty-seven dollars and fifty cents shall be credited to the indigent drivers alcohol treatment fund, which is hereby established. Except as otherwise provided in division (F)(2)(c) of this section, moneys in the fund shall be distributed by the department of alcohol and drug addiction services to the county indigent drivers alcohol treatment funds, the county juvenile indigent drivers alcohol treatment funds, and the municipal indigent drivers alcohol treatment funds that are required to be established by counties and municipal corporations pursuant to this section, and shall be used only to pay the cost of an alcohol and drug addiction treatment program attended by an offender or juvenile traffic of-

fender who is ordered to attend an alcohol and drug addiction treatment program by a county, juvenile, or municipal court judge and who is determined by the county, juvenile, or municipal court judge not to have the means to pay for the person's attendance at the program or to pay the costs specified in division (H)(4) of this section in accordance with that division. In addition, a county, juvenile, or municipal court judge may use moneys in the county indigent drivers alcohol treatment fund, county juvenile indigent drivers alcohol treatment fund, or municipal indigent drivers alcohol treatment fund to pay for the cost of the continued use of an electronic continuous alcohol monitoring device as described in divisions (H)(3) and (4) of this section. Moneys in the fund that are not distributed to a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund under division (H) of this section because the director of alcohol and drug addiction services does not have the information necessary to identify the county or municipal corporation where the offender or juvenile offender was arrested may be transferred by the director of budget and management to the statewide treatment and prevention fund created by *section 4301.30 of the Revised Code*, upon certification of the amount by the director of alcohol and drug addiction services.

(d) Seventy-five dollars shall be credited to the Ohio rehabilitation services commission established by *section 3304.12 of the Revised Code*, to the services for rehabilitation fund, which is hereby established. The fund shall be used to match available federal matching funds where appropriate, and for any other purpose or program of the commission to rehabilitate people with disabilities to help them become employed and independent.

(e) Seventy-five dollars shall be deposited into the state treasury and credited to the drug abuse resistance education programs fund, which is hereby established, to be used by the attorney general for the purposes specified in division (F)(4) of this section.

(f) Thirty dollars shall be credited to the state bureau of motor vehicles fund created by *section 4501.25 of the Revised Code*.

(g) Twenty dollars shall be credited to the trauma and emergency medical services grants fund created by *section 4513.263 [4513.26.3] of the Revised Code*.

(3) If a person's driver's or commercial driver's license or permit is suspended under this section, under *section 4511.196 [4511.19.6]* or division (G) of *section 4511.19 of the Revised Code*, under *section 4510.07 of the Revised Code* for a violation of a municipal OVI ordinance or under any combination of the suspensions described in division (F)(3) of this section, and if the suspensions arise from a single incident or a single set of facts and circumstances, the person is liable for payment of, and shall be required to pay to the bureau, only one reinstatement fee of four hundred twenty-five dollars. The reinstatement fee shall be distributed by the bureau in accordance with division (F)(2) of this section.

(4) The attorney general shall use amounts in the drug abuse resistance education programs fund to award grants to law enforcement agencies to establish and implement drug abuse resistance education programs in public schools. Grants awarded to a law enforcement agency under this section shall be used by the agency to pay for not more than fifty per cent of the amount of the salaries of law enforcement officers who conduct drug abuse resistance education programs in public schools. The attorney general shall not use more than six per cent of the amounts the attorney general's office receives under division (F)(2)(e) of this section to pay the costs it incurs in administering the grant program established by division (F)(2)(e) of this section and in providing training and materials relating to drug abuse resistance education programs.

The attorney general shall report to the governor and the general assembly each fiscal year on the progress made in establishing and implementing drug abuse resistance education programs. These reports shall include an evaluation of the effectiveness of these programs.

(G) Suspension of a commercial driver's license under division (B) or (C) of this section shall be concurrent with any period of disqualification under *section 3123.611 [3123.61.1]* or *4506.16 of the Revised Code* or any period of suspension under *section 3123.58 of the Revised Code*. No person who is disqualified for life from holding a commercial driver's license under *section 4506.16 of the Revised Code* shall be issued a driver's license under Chapter 4507. of the Revised Code during the period for which the commercial driver's license was suspended under division (B) or (C) of this section. No person whose commercial driver's license is suspended under division (B) or (C) of this section shall be issued a driver's license under chapter 4507. of the Revised Code during the period of the suspension.

(H) (1) Each county shall establish an indigent drivers alcohol treatment fund, each county shall establish a juvenile indigent drivers alcohol treatment fund, and each municipal corporation in which there is a municipal court shall estab-

lish an indigent drivers alcohol treatment fund. All revenue that the general assembly appropriates to the indigent drivers alcohol treatment fund for transfer to a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund, all portions of fees that are paid under division (F) of this section and that are credited under that division to the indigent drivers alcohol treatment fund in the state treasury for a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund, and all portions of fines that are specified for deposit into a county or municipal indigent drivers alcohol treatment fund by *section 4511.193 [4511.19.3] of the Revised Code* shall be deposited into that county indigent drivers alcohol treatment fund, county juvenile indigent drivers alcohol treatment fund, or municipal indigent drivers alcohol treatment fund in accordance with division (H)(2) of this section. Additionally, all portions of fines that are paid for a violation of *section 4511.19 of the Revised Code* or of any prohibition contained in chapter 4510. of the Revised Code, and that are required under section 4511.19 or any provisions of chapter 4510. of the Revised Code to be deposited into a county indigent drivers alcohol treatment fund or municipal indigent drivers alcohol treatment fund shall be deposited into the appropriate fund in accordance with the applicable division.

(2) That portion of the license reinstatement fee that is paid under division (F) of this section and that is credited under that division to the indigent drivers alcohol treatment fund shall be deposited into a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund as follows:

(a) If the suspension in question was imposed under this section, that portion of the fee shall be deposited as follows:

(i) If the fee is paid by a person who was charged in a county court with the violation that resulted in the suspension, the portion shall be deposited into the county indigent drivers alcohol treatment fund under the control of that court;

(ii) If the fee is paid by a person who was charged in a juvenile court with the violation that resulted in the suspension, the portion shall be deposited into the county juvenile indigent drivers alcohol treatment fund established in the county served by the court;

(iii) If the fee is paid by a person who was charged in a municipal court with the violation that resulted in the suspension, the portion shall be deposited into the municipal indigent drivers alcohol treatment fund under the control of that court.

(b) If the suspension in question was imposed under *section 4511.19 of the Revised Code* or under *section 4510.07 of the Revised Code* for a violation of a municipal OVI ordinance, that portion of the fee shall be deposited as follows:

(i) If the fee is paid by a person whose license or permit was suspended by a county court, the portion shall be deposited into the county indigent drivers alcohol treatment fund under the control of that court;

(ii) If the fee is paid by a person whose license or permit was suspended by a municipal court, the portion shall be deposited into the municipal indigent drivers alcohol treatment fund under the control of that court.

(3) Expenditures from a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund shall be made only upon the order of a county, juvenile, or municipal court judge and only for payment of the cost of the attendance at an alcohol and drug addiction treatment program of a person who is convicted of, or found to be a juvenile traffic offender by reason of, a violation of division (A) of *section 4511.19 of the Revised Code* or a substantially similar municipal ordinance, who is ordered by the court to attend the alcohol and drug addiction treatment program, and who is determined by the court to be unable to pay the cost of attendance at the treatment program or for payment of the costs specified in division (H)(4) of this section in accordance with that division. The alcohol and drug addiction services board or the board of alcohol, drug addiction, and mental health services established pursuant to *section 340.02 or 340.021 [340.02.1] of the Revised Code* and serving the alcohol, drug addiction, and mental health service district in which the court is located shall administer the indigent drivers alcohol treatment program of the court. When a court orders an offender or juvenile traffic offender to attend an alcohol and drug addiction treatment program, the board shall determine which program is suitable to meet the needs of the offender or juvenile traffic offender, and when a suitable program is located and space is available at the program, the offender or juvenile traffic offender shall attend the program designated by the board. A reasonable amount not to exceed five per cent of the amounts credited to and deposited into the county indigent drivers alcohol

treatment fund, the county juvenile indigent drivers alcohol treatment fund, or the municipal indigent drivers alcohol treatment fund serving every court whose program is administered by that board shall be paid to the board to cover the costs it incurs in administering those indigent drivers alcohol treatment programs.

In addition, a county, juvenile, or municipal court judge may use moneys in the county indigent drivers alcohol treatment fund, county juvenile indigent drivers alcohol treatment fund, or municipal indigent drivers alcohol treatment fund to pay for the continued use of an electronic continuous alcohol monitoring device by an offender or juvenile traffic offender, in conjunction with a treatment program approved by the department of alcohol and drug addiction services, when such use is determined clinically necessary by the treatment program and when the court determines that the offender or juvenile traffic offender is unable to pay all or part of the daily monitoring of the device.

(4) If a county, juvenile, or municipal court determines, in consultation with the alcohol and drug addiction services board or the board of alcohol, drug addiction, and mental health services established pursuant to *section 340.02 or 340.021 [340.02.1] of the Revised Code* and serving the alcohol, drug addiction, and mental health district in which the court is located, that the funds in the county indigent drivers alcohol treatment fund, the county juvenile indigent drivers alcohol treatment fund, or the municipal indigent drivers alcohol treatment fund under the control of the court are more than sufficient to satisfy the purpose for which the fund was established, as specified in divisions (H)(1) to (3) of this section, the court may declare a surplus in the fund. If the court declares a surplus in the fund, the court may expend the amount of the surplus in the fund for:

(a) Alcohol and drug abuse assessment and treatment of persons who are charged in the court with committing a criminal offense or with being a delinquent child or juvenile traffic offender and in relation to whom both of the following apply:

(i) The court determines that substance abuse was a contributing factor leading to the criminal or delinquent activity or the juvenile traffic offense with which the person is charged.

(ii) The court determines that the person is unable to pay the cost of the alcohol and drug abuse assessment and treatment for which the surplus money will be used.

(b) All or part of the cost of purchasing electronic continuous alcohol monitoring devices to be used in conjunction with division (H)(3) of this section.

HISTORY:

132 v H 380 (Eff 1-1-68); 132 v S 512 (Eff 3-10-68); 133 v H 1 (Eff 3-18-69); 134 v H 792 (Eff 2-3-72); 136 v H 1 (Eff 6-13-75); 136 v H 451 (Eff 1-3-77); 137 v H 219 (Eff 11-1-77); 137 v H 469 (Eff 10-25-78); 139 v S 432 (Eff 3-16-83); 141 v H 201 (Eff 7-1-85); 141 v S 262 (Eff 3-20-87); 142 v H 303 (Eff 10-20-87); 142 v S 308 (Eff 3-14-89); 142 v H 643 (Eff 3-17-89); 143 v H 329 (Eff 6-30-89); 143 v H 381 (Eff 7-1-89); 143 v H 317 (Eff 10-10-89); 143 v S 131 (Eff 7-25-90); 143 v H 837 (Eff 7-25-90); 144 v S 275 (Eff 9-1-93); 145 v H 152 (Eff 7-1-93); 145 v S 62, §§ 1, 4 (Eff 9-1-93); 145 v S 82 (Eff 5-4-94); 145 v H 236 (Eff 9-29-94); 145 v H 687 (Eff 10-12-94); 146 v H 117 (Eff 6-30-95); 146 v S 2 (Eff 7-1-96); 146 v H 353, § 1 (Eff 9-17-96); 146 v S 166, § 1 (Eff 10-17-96); 146 v H 167 (Eff 5-15-97); 146 v H 353, § 4 (Eff 5-15-97); 146 v S 166, § 6 (Eff 5-15-97); 147 v S 85 (Eff 5-15-97); 147 v H 210 (Eff 6-30-97); 147 v S 60 (Eff 10-21-97); 147 v S 80 (Eff 9-16-98); 148 v H 283 (Eff 6-30-99); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 138 (Eff 11-3-2000); 148 v S 180 (Eff 3-22-2001); 149 v S 123, § 1, eff. 1-1-04; 150 v H 87, § 1, eff. 6-30-03; 150 v H 163, § 1, eff. 9-23-04; 151 v H 66, § 101.01, eff. 9-29-05; 151 v S 8, § 1, eff. 8-17-06.

LEXSTAT OH. APP. R. 4

OHIO RULES OF COURT SERVICE
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*** RULES CURRENT THROUGH AUGUST 5, 2010 ***
 *** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***

Ohio Rules Of Appellate Procedure
 Title II Appeals From Judgments And Orders Of Court Of Record

Ohio App. Rule 4 (2010)

Review Court Orders which may amend this Rule.

Rule 4. Appeal as of right--when taken**(A) Time for appeal.**

A party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed or, in a civil case, service of the notice of judgment and its entry if service is not made on the party within the three day period in Rule 58(B) of the Ohio Rules of Civil Procedure.

(B) Exceptions.

The following are exceptions to the appeal time period in division (A) of this rule:

(1) Multiple or cross appeals. If a notice of appeal is timely filed by a party, another party may file a notice of appeal within the appeal time period otherwise prescribed by this rule or within ten days of the filing of the first notice of appeal.

(2) Civil or juvenile post-judgment motion

In a civil case or juvenile proceeding, if a party files a timely motion for judgment under Civ. R. 50(B), a new trial under Civ. R. 59(B), vacating or modifying a judgment by an objection to a magistrate's decision under Civ. R. 53(D)(4)(e)(i) or (ii) or Rule 40(D)(4)(e)(i) or (ii) of the Ohio Rules of Juvenile Procedure, or findings of fact and conclusions of law under Civ. R. 52, the time for filing a notice of appeal begins to run as to all parties when the order disposing of the motion is entered.

(3) Criminal post-judgment motion. In a criminal case, if a party timely files a motion for arrest of judgment or a new trial for a reason other than newly discovered evidence, the time for filing a notice of appeal begins to run when the order denying the motion is entered. A motion for a new trial on the ground of newly discovered evidence made within the time for filing a motion for a new trial on other grounds extends the time for filing a notice of appeal from a judgment of conviction in the same manner as a motion on other grounds. If made after the expiration of the time for filing a motion on other grounds, the motion on the ground of newly discovered evidence does not extend the time for filing a notice of appeal.

(4) Appeal by prosecution. In an appeal by the prosecution under Crim.R. 12(K) or Juv.R. 22(F), the prosecution shall file a notice of appeal within seven days of entry of the judgment or order appealed.

(5) Partial final judgment or order. If an appeal is permitted from a judgment or order entered in a case in which the trial court has not disposed of all claims as to all parties, other than a judgment or order entered under Civ.R. 54(B), a party may file a notice of appeal within thirty days of entry of the judgment or order appealed or the judgment or order that disposes of the remaining claims. Division (A) of this rule applies to a judgment or order entered under Civ.R. 54(B).

(C) Premature notice of appeal.

A notice of appeal filed after the announcement of a decision, order, or sentence but before entry of the judgment or order that begins the running of the appeal time period is treated as filed immediately after the entry.

(D) Definition of "entry" or "entered".

As used in this rule, "entry" or "entered" means when a judgment or order is entered under Civ.R. 58(A) or Crim.R. 32(C).

HISTORY: Amended, eff 7-1-72; 7-1-85; 7-1-89; 7-1-92; 7-1-96; 7-1-02; 7-1-09.