

IN THE SUPREME COURT OF OHIO

State of Ohio, :
 :
 Plaintiff-Appellee, : Case No. 2011-212
 :
 :
 v. : On Appeal from the Holmes County
 : Court of Appeals, Fifth Appellate
 Wesley Lloyd, : District, Case No. 09CA12
 :
 :
 Defendant-Appellant. :

Merit Brief of Appellant Wesley Lloyd

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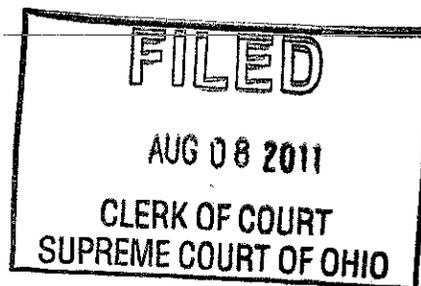


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Summary of Argument

Wesley Lloyd's Texas conviction created no duty to register as a sex offender in Ohio. Even if it did, Ohio law does not make the failure to register a crime because the facts of this case fall within a gap in the statute.

Mr. Lloyd notified law enforcement the day he moved from Auglaize County to Holmes County. An Auglaize County sheriff's deputy incorrectly told Mr. Lloyd that he could not register in Holmes County until he drove back to Auglaize County to give personal notice of his departure. The Auglaize County Sheriff's called the Holmes County Sheriff. The Holmes County Sheriff found Mr. Lloyd because Mr. Lloyd was living exactly where he said he would be.

Statement of the Case and the Facts

I. A 1995 Texas Conviction, a move to Ohio, an SB10 Reclassification Letter.

As a result of a 1995 Texas conviction for the aggravated sexual assault of his then wife, Mr. Lloyd brought paperwork to the Auglaize County Sheriff's Office to explain his Texas conviction when he moved to Ohio in 2005. T.p. 105.¹ He registered there as a sexually oriented offender. Id.

The State did not establish that Mr. Lloyd has a duty to register as a sex offender in Texas. The Court of Appeals misinterpreted Mr. Lloyd's statement that before he left Texas, he got a Texas form to bring to Ohio to "establish [his] duty to register." T.p. 104-5. Mr. Lloyd was only stating that he brought paperwork to Ohio to accurately explain his status. *State v. Lloyd*, Holmes

¹ Unless otherwise noted, all references to "T.p." are to the trial transcript.

App. No. 09 CA 12, 2010-Ohio-6562, ¶86. He was not admitting that he had a duty to register in Texas. The State concedes that it does not know how the State determined that Mr. Lloyd had any registration duty in Ohio as a sexually oriented offender. State's Supplemental Brief (Sept. 8, 2010), Holmes App. No. 09 CA 12, p. 3 ("The record is unclear whether Lloyd was initially classified as a sexually oriented offender by the Ohio Attorney General or by law enforcement").

In late 2007, the Ohio Attorney General sent him an SB10 letter telling him that he was no longer a "sexually oriented offender." T.p. 105-6. Instead, Mr. Lloyd was, the Attorney General said that Mr. Lloyd had been reclassified as a Tier III Offender with far more extensive and intrusive registration requirements. *Id.* After this case came to this Court, the Attorney General reclassified Mr. Lloyd as a sexual predator. Email from Assistant Attorney General Stephen Brown to Wesley Lloyd, Aug. 2, 2011.

II. Mr. Lloyd provides actual notice of his move to law enforcement the day of his move, but he cannot meet the deadlines in R.C. 2950.05 because he does not know he will move until less than twenty days in advance.

Mr. Lloyd did not decide to move from Auglaize County to Holmes County until about two weeks before the move in 2008. T.p. 109. Twelve days before he moved, Mr. Lloyd sent a letter to the Auglaize County Sheriff to inform him of the move. The Auglaize County Sheriff denies receiving the letter. T.p. 110. The trial court found that the parties disputed whether the letter was sent, but the trial court did not resolve the dispute. T.p. (sentencing) 5-6.

It is undisputed that he called the Auglaize County Sheriff the day that he completed the move. T.p. (sentencing) 4. As a result of Mr. Lloyd's call to the Auglaize County Sheriff, that sheriff called the Holmes County Sheriff. An Auglaize County Sheriff's official conceded that he told Mr. Lloyd that he could not register in Holmes County until Mr. Lloyd personally returned to Auglaize County to complete paperwork, but no such requirement exists in Ohio law:

- Q. And I want to make it clear, you told him that he could not register in Holmes County until he c[a]me in to see you?
A. Yes, sir. He has to register with us before he can register in another county.

T.p. 44. The officer repeated that he told Mr. Lloyd that Mr. Lloyd had to personally appear in Auglaize County before registering in Holmes County.

T.p. 51 ("I told him he has to come in and change it."). The officer also admitted that he did not understand how the twenty-day deadline worked for defendants who did not know of a move that far in advance:

- Q How is he going to supply the address 20 days in advance if he doesn't know what that address is?
A I don't know how that part of it works, sir. All I know he is supposed to give us an address 20 days before moving.

T.p. 51.

The Holmes County Sheriff arrested Mr. Lloyd ten days after his arrival in Holmes County for failing to register within three days and for failing to provide twenty days advance notice of the move. T.p. 66.

III. Two missed deadlines lead to first-degree felony convictions despite actual notice to law enforcement.

The trial court convicted Mr. Lloyd of: 1) failing to register in Holmes County within three days of moving to that county, R.C. 2950.04(E); 2) failing

to provide written notice of his intent to move to Holmes County to the Holmes County Sheriff at least twenty days in advance, R.C. 2950.04(E); and 3) failing to give Auglaize County notice at least twenty days in advance of his intent to move to Holmes County, R.C. 2950.05(F)(1). Verdict, July 9, 2009, Docket No. 68.

IV. Sentence: Despite actual notice to law enforcement, Mr. Lloyd is sentenced to three years in prison.

The trial court sentenced him to three years for each offense, to be run concurrently, but stayed the sentence pending appeal. Judgment Entry, Sept. 3, 2009, Docket No. 72.

The court of appeals affirmed the first and third convictions, but vacated the second because it was based on Mr. Lloyd's erroneous reclassification to Tier III under the Adam Walsh Act. *State v. Lloyd*, Holmes App. No. 09 CA 12, 2010-Ohio-6562, ¶88.

V. Mr. Lloyd has abided by the terms of his bond.

The State has never alleged that Mr. Lloyd has violated any term of his trial or appellate bonds. He works as a newspaper carrier and supports his fiancée and family.

Argument

Proposition of Law No. I:²

A court should conduct a “substantially equivalent” elemental test to determine whether a person with an out-of-state sex offense has a duty to register under R.C. 2950.01(A).

Proposition of Law No. II:

A court should determine which Ohio category of offense is comparable to the category of the out-of-state offense when determining whether to apply R.C. 2950.99(A)(1)(a)(ii) or (iii) to the case.

Proposition of Law No. III:

A court should conduct a strict elemental comparison of an out-of-state offense when determining the level of offense for failing to properly register or give proper notice of an address change in Ohio under R.C. 2950.99.

I. Introduction

Mr. Lloyd had no duty to register in Ohio because the Texas offense of aggravated sexual assault is not “substantially equivalent” to any Ohio sex offense that requires notification under R.C. 2950.01(A) (2007). Even if he did have a duty to register, this case falls through a gap the General Assembly created in the sex offender registration and notification statute. R.C. 2950.01 and 2950.99. Under R.C. 2950.99(A)(1)(ii), no offense is committed when the category of the out-of-state offense is comparable to an Ohio first-degree felony, but the actual offense committed would only be a misdemeanor in Ohio. As a

² For ease of discussion, Appellant breaks down the compound proposition of law that this Court accepted into three distinct propositions of law.

result, Mr. Lloyd is not guilty of any crime. This Court should reverse the decision of the court of appeals and vacate his conviction.

II. Discussion

A. **Summary: The General Assembly has created a three-step process for determining whether persons convicted of out-of-state sex offenses have a duty to register in Ohio and, if so, determining the penalty for registration offenses for sex offenders with out-of-state convictions.**

When a new resident comes to Ohio with an out-of-state sex offense, the first step is to determine whether he or she has a duty to register under Ohio's sex offender registration and notification ("SORN") laws. The new resident has such a duty if the out-of-state offense is "substantially equivalent" to a specific list of Ohio offenses. R.C. 2950.01(A).

If the new resident is accused of failing to abide by his registration duties, the second step is to ask what Ohio "category" of offense is "comparable" to the "category" of the out-of-state offense. R.C. 2950.99(A)(1)(ii) and (iii). If the comparable category in Ohio is a first, second, third or fourth degree felony, the court looks to paragraph (ii) to determine the level of offense. If the comparable category is a fifth degree felony or a misdemeanor, the trial court looks to paragraph (iii).

The third step determines the actual level of offense for the registration violation. If the comparable Ohio category of the offense is a fifth degree felony or a misdemeanor, the defendant is guilty of fourth degree felony. R.C. 2950.99(A)(1)(iii). But if the comparable category of offense is a first, second, third or fourth degree felony, the defendant "is guilty of a felony of the same

degree as that offense committed in the other jurisdiction would constitute if committed in this state.” R.C. 2950.99(A)(1)(ii). The statute does not include any level of offense when the “comparable category” of offense is a first, second, third, or fourth degree felony, but the actual offense if committed in Ohio would only be a misdemeanor offense if committed in Ohio.

Notably, each step has its own distinct standard:

- Step one: “substantially similar”;
- Step two: “comparable category”;
- Step three: “the same degree as that offense committed in the other jurisdiction would constitute if committed in this state.”

B. Different words have different meanings.

This Court should interpret R.C. 2950.01 and 2950.99 to give meaning to every word. *Ceccarelli v. Levin* (2010), 127 Ohio St.3d 231, 234 (“we ‘should construe statutes to give effect to all the enacted language.’ *Church of God in N. Ohio v. Levin*, 124 Ohio St.3d 36, 2009-Ohio-5939, ¶30, citing *State ex rel. Bohan v. Indus. Comm.* (1946), 147 Ohio St. 249, 251 (courts should ‘accord meaning to each word of a legislative [sic] enactment if it is reasonably possible to do so’)”). In order to give every word meaning, this Court should interpret different words differently. “[W]hen the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended.” *Sosa v. Humberto Alvarez-Machain* (2004), 542 U.S. 692, 712, n.9, quoting 2A N. Singer, *Statutes and Statutory Construction* (6th rev. ed. 2000), § 46:06, p. 194.

The court of appeals failed to give meaning to each standard when it held that the out-of-state conviction was equivalent to rape in Ohio merely because the Texas element of “use of physical force and violence” overlapped with the force element of Ohio’s statute. *State v. Lloyd*, Holmes App. No. 09 CA 12, 2010-Ohio-6562, ¶42. The court of appeals did not explain how the “knowing” mens rea of the Texas offense proved the “purpose” mens rea required in Ohio.

C. Applying the three-step test to this case leads to Mr. Lloyd’s acquittal.

1. Step One: Texas aggravated sexual assault is not “substantially equivalent” to any Ohio sex offense.

Mr. Lloyd’s Texas offense was not “substantially equivalent” to any Ohio sex offense, so he did not have a duty to register. R.C. 2950.01(A). Courts look only at the elements of the offenses, but differently worded offenses can be substantially equivalent if they describe the same conduct and mental state. *Rodimel v. Cook County Sheriff’s Office* (Ill. App. Ct. 2004), 354 Ill. App. 3d 744, 822 N.E. 2d 7. That court held that “force or threat of force” was substantially equivalent to “assault” as those terms were defined in their respective jurisdictions. *Id.*, 354 Ill. App. at 748.

Likewise, the Pennsylvania Supreme Court held that a Maryland drunk driving statute was equivalent to a Pennsylvania drunk driving statute even though the Maryland statute did not include as an element that the driver was “unfit” to drive. *Commonwealth v. Robertson* (Pa. 1999), 555 Pa. 72, 79-80, 722 A.2d 1047, 1051. The Pennsylvania court ruled that being drunk and being unfit to drive were synonymous, and therefore “equivalent.” *Id.*, 555 Pa. at 80

(we fail to comprehend, how a person could be intoxicated and yet be capable of safe operation of a motor vehicle”). See also, *In re R.B.* (App. Div. 2005), 376 N.J. Super. 451, 870 A.2d 732 (the federal crime of interstate travel with intent to engage in sexual acts with a minor, 18 U.S.C. § 2423(b), would constitute child abuse under New Jersey statute, N.J.S.A. 9:6-1 and 3) (partially overruled on separate grounds by *In re T.T.* (2006), 188 N.J. 321, 907 A.2d 416).

Mr. Lloyd’s aggravated sexual assault conviction does not create a duty to register in Ohio because the offense is not substantially equivalent to any of the triggering statutes listed in R.C. 2950.01. The Texas offense omits an essential element of each Ohio sex offense. The Texas trial court that convicted Mr. Lloyd defined the offense of aggravated sexual assault as follows:

[A] person commits the offense of aggravated sexual assault if the person intentionally or knowingly causes the penetration of the mouth or female sexual organ of another person by the sexual organ of the actor without that persons consent, and by acts or words such person places the victim in fear that serious bodily injury or death will be imminently inflicted on any person.

Such assault is without the other person's consent if the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat. * * * .

State v. Lloyd, Holmes App. No. 09 CA 12, 2010-Ohio-6562, ¶¶30-4, referring to Texas Penal Code §22.021.

~~The Texas offense is not substantially equivalent to forcible rape in Ohio~~ because Texas requires only proof of *knowing* action, while Ohio requires proof of *purposeful* conduct. Compare Texas Penal Code §22.021(a)(1)(A) with R.C. 2907.02(B). The offense is also not any other form of rape because the Ohio

statute requires proof that the victim was not the defendant's spouse, as well as that the victim's ability to resist was impaired or that the victim was under 13. R.C. 2907.02(A). Similarly, the Texas offense is not substantially equivalent to gross sexual imposition, sexual imposition or sexual battery, because those offenses require the State to prove that the victim was not the defendant's spouse. R.C. 2907.03(A), 2907.05(A), 2907.06(A). Finally, the Texas offense is not substantially equivalent to felonious assault because the Texas statute only requires that force be threatened, not that it actually be inflicted (or attempted to be inflicted). R.C. 2903.03(A).

Some courts in other states have examined the underlying facts of out-of-state offenses,³ but this Court should reject those decisions as inapplicable to Ohio. First, as described above, the text of Ohio's law does not support a factual test. But equally important, looking at the facts of the case would force Ohio juries to retry out-of-state convictions, sometimes decades old, because the facts of the old convictions would become necessary to prove the element of failing to register or notify. Old transcripts may have disappeared, and the State could have difficulty finding old witnesses and bringing them to Ohio, and could face Confrontation Clause problems in introducing hearsay.

Crawford v. Washington (2004), 541 U.S. 36. In short, the State could very

³ See, e.g., *In re Millan* (N.Y. Sup. 2001), 189 Misc. 2d 419, 427, 730 N.Y.S.2d 392, 397, but see contra, *In re Nadel* (N.Y. App. Div. 2001), 724 N.Y.S.2d 262, 269-70, 724 N.Y.S.2d 262, 436-7); *In re S.D.* (D.C. App. 2004), 855 A.2d 1104-5 (interpreting statute that required registration when the out-of-state conviction involved "conduct which is substantially similar to that described in [local law]").

much regret “winning” the argument that Ohio courts should look behind the elements of the old offense, because it is often impossible for Ohio courts to do that.

Because Mr. Lloyd’s Texas offense included a threat of violence, the offense would be menacing in Ohio. R.C. 2903.22(A) (“No person shall knowingly cause another to believe that the offender will cause physical harm to the person or property of the other person, the other person’s unborn, or a member of the other person’s immediate family.”). Menacing is a misdemeanor. R.C. 2903.22(B).

And unlike the offenses discussed in the Illinois and Pennsylvania cases, the missing elements are not the result of two statutes saying the same thing different ways. Drunk driving is unfit driving. Assault includes coercion. But knowing is not purposeful, and the victim cannot be both a spouse and not a spouse.

2. Step Two: The comparable category of Mr. Lloyd’s Texas offense is an Ohio first degree felony.⁴

If Mr. Lloyd had a duty to register and violated it, the trier of fact must next determine which “comparable category” the Texas offense would be in Ohio. R.C. 2950.99(a)(ii) and (iii). The word “category” can refer only to the class and degree of the offense—first, second, third, fourth, or fifth degree felony. Therefore, the trier of fact must determine the out-of-state category of

⁴ Counsel’s research has uncovered no other jurisdiction that uses the term “comparable category” in this context.

the out-of-state conviction, and then determine which Ohio category it is most “comparable.”

Here, Texas categorizes aggravated sexual assault as a “first degree felony.” Texas Penal Code §22.021(e). Further, Texas has five types of felonies: Capital, first degree, second degree, third degree and fourth degree. Texas Penal Code §12.04. Given that a Texas “first degree felony” is the highest non-capital felony, the most “comparable” Ohio category is likewise, a first degree felony. R.C. 2929.13.

Because the “comparable category” Mr. Lloyd’s offense is a first-degree felony, courts must look to R.C. 2950.99(a)(ii) to determine the punishment for failing to register: “if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration . . . that was violated under the prohibition is a felony of the first, second, third, or fourth degree if committed by an adult or comparable category of offense committed in another jurisdiction. . . .”

3. Step Three: Because Mr. Lloyd’s Texas offense would constitute a misdemeanor in Ohio, he did not commit any offense by “failing” to register.

Under R.C. 2950.99(a)(ii), a defendant who fails to register is “guilty of a felony of the same degree as that offense committed in the other jurisdiction would constitute if committed in this state.” Because, as explained above, p. ___, the elements of Mr. Lloyd’s Texas offense would only constitute misdemeanor menacing if committed in Ohio, he is not guilty of any offense.

The language of R.C. 2950.99(a)(ii) requires the application of a strict elemental test: the question is what the out-of-state-offense “would constitute if committed in this state.” The question is not what Ohio offense is most similar to the out-of-state offense. Arizona came to the same conclusion when analyzing nearly identical language. Arizona’s registration statute has similar language to R.C. 2950.99(a)(ii), and that State’s Court of Appeals has held that the language only requires out-of-state offenders to register if they have “been convicted of an offense committed in another jurisdiction that if committed in this state would be a violation or attempted violation of one of the listed offenses. . . .” *State v. Kuntz* (Ariz. Ct. App. 2004), 100 P.3d 26, 27, quoting A.R.S. § 13-3821(A). As a result, the Arizona Court of Appeals held that a person need register “only if proof of the elements of [the out-of-state offense] necessarily proved . . . (the Arizona offense).” *Id.* at 29 (parentheses omitted).

D. This Court has left it to the General Assembly to “close” any “gap” in a statute. *State v. Taylor*, 100 Ohio St. 3d 172, 2003-Ohio-5452, ¶ 17 (O’Connor, Lundberg Stratton, and Petree, JJ. concurring).

This is not the first time that the General Assembly has left a gap in a statute, and this Court should apply here the same approach it did in those situations. This Court made it clear that only the General Assembly can close a statutory gap that the General Assembly created. For example, this Court held that the plain language of the statute meant that defendants convicted of sex offenses but released from prison before 1997 had no duty to register under the sex offender law that became effective in that year. *State v. Taylor*, 100 Ohio St. 3d 172, 2003-Ohio-5452, ¶ 17 (O’Connor, Lundberg Stratton, and

Petree, JJ. concurring) (“Clearly a gap exists; however, it is solely within the General Assembly's purview to close it.”). This Court also held that a defendant could not be adjudicated a sexual predator if the State failed to hold the hearing at least ten days before his release from prison. *State v. Brewer* (1999), 86 Ohio St. 3d 160.

Outside of the SORN context, this Court has enforced statutes as written, even where the results may have been unintended. For example, in *State v. Thompson*, 102 Ohio St.3d 287, 2004-Ohio-2946, ¶5-9, held that the General Assembly had, for a period of time, intentionally excluded parolees from the definition of “detention” in the escape statute. This Court also held that the State could not seek the death penalty after a sentencing reversal because the General Assembly did not expressly make R.C. 2929.06(B) retroactive, the section permitting the State to seek the death penalty after an appellate reversal did not apply to offenses committed before the effective date of the statute. *State v. Williams*, 103 Ohio St.3d 112, 2004-Ohio-4747.

While this result may seem odd, it is no more odd than imposing a three to ten year prison term on a man who notified the Auglaize County Sheriff on the day he moved to Holmes County instead of 20 days in advance, and who did not notify the Holmes County Sheriff only because an Auglaize County Sheriff's Deputy incorrectly told Mr. Lloyd that he could not register Holmes County until he drove back and gave personal notice that he had left. Finding that Mr. Lloyd has no criminal liability is also no more odd than imposing a three to ten year prison term for failing to notify law enforcement of a change of

address when law enforcement found him living exactly where he told them he was living.

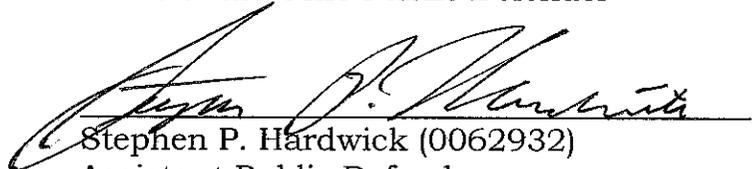
Under the law as written by the General Assembly, Mr. Lloyd has no duty to register as a sex offender. But even if the Court concludes that he did have a duty to register, the General Assembly has not made failing in his registration duties a crime.

Conclusion

Wesley Lloyd registered as a sex offender even though he had no duty to do so. And no statute makes his failure to register a crime. This Court should reverse the decision if the court of appeals and discharge Mr. Lloyd.

Respectfully submitted,

Office of the Ohio Public Defender



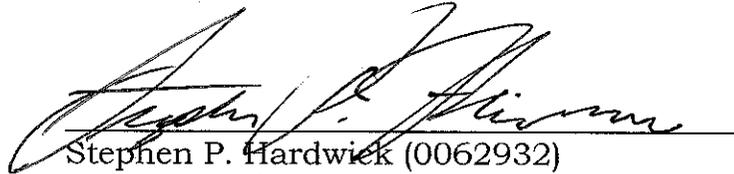
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Counsel for Wesley Lloyd

Certificate of Service

I certify that on, a copy of the foregoing was sent via e-mail to Sean Mathew Warner, Assistant Prosecuting Attorney, Holmes County Prosecutor's Office, 164 East Jackson Street, Millersburg, OH 44654 at swarner@exchange.co.holmes.oh.us. this 8th day of August, 2011.



Stephen P. Hardwick (0062932)
Assistant Public Defender

Counsel for Wesley Lloyd

#342831

IN THE SUPREME COURT OF OHIO

State of Ohio,	:
	: Case No. 2011-212
Plaintiff-Appellee,	:
	:
v.	: On Appeal from the Holmes County
	: Court of Appeals, Fifth Appellate
Wesley Lloyd,	: District, Case No. 09CA12
	:
Defendant-Appellant.	:

Appendix to

Merit Brief of Appellant Wesley Lloyd

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio,	:	Case No. 11-0212
	:	
Plaintiff-Appellee,	:	On Appeal from the Holmes County
	:	Court of Appeals, Fifth Appellate
v.	:	District, Case No. 09CA12
	:	
Wesley Lloyd,	:	Expedited Review Requested
	:	Hearing on Bond Revocation:
Defendant-Appellant.	:	Feb. 8, 2011

Amended Notice of Appeal of Appellant Wesley Lloyd

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FILED
FEB 07 2011
CLERK OF COURT SUPREME COURT OF OHIO

Amended Notice of Appeal of Appellant Wesley Lloyd

Appellant Wesley Lloyd hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Holmes County Court of Appeals, Fifth Appellate District, entered in Court of Appeals Case No. 09CA12, on December 30, 2010.

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

Respectfully submitted,

Office of the Ohio Public Defender

 per Jan 0069876

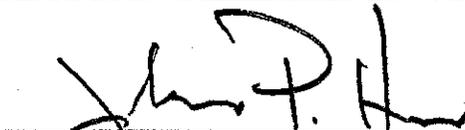
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Certificate of Service

I certify that on February 7, 2011, a copy of the foregoing was sent via telefax to the office of Sean Mathew Warner, Assistant Prosecuting Attorney, Holmes County Prosecutor's Office, 164 East Jackson Street, Millersburg, OH 44654, 330-674-0183.

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COURT OF APPEALS
HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FILED
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CLERK OF COURT
HOLMES COUNTY
DONALD L. MILLES, CLERK

STATE OF OHIO

Plaintiff-Appellee

-vs-

WESLEY LLOYD

Defendant-Appellant

JUDGES:

Hon. Julie A. Edwards, P. J.

Hon. W. Scott Gwin, J.

Hon. John W. Wise, J.

Case No. 09 CA 12

OPINION

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 09 CR 1

JUDGMENT:

Affirmed in Part; Reversed in Part and
Vacated

DATE OF JUDGMENT ENTRY:

APPEARANCES:

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SCANNED
41

Wise, J.

{¶1} Appellant Wesley Lloyd appeals from his conviction, in the Holmes County Court of Common Pleas, on three counts of sexual offender registration violations. The appellee is the State of Ohio. The relevant facts leading to this appeal are as follows.

{¶2} In 1995, appellant was convicted, in the State of Texas, of one count of aggravated sexual battery, pursuant to the Texas Penal Code. He was sentenced in that case to seven years in prison. Appellant appealed, but on March 5, 1998, the Court of Appeals of Texas, Eastland, affirmed the conviction.

{¶3} After appellant was released from prison in Texas in 2005, he moved to Auglaize County, Ohio. Appellant thereupon registered as a sexually-oriented offender in Auglaize County, and continued to register as required in 2006 and 2007. In November 2007, appellant received a letter from the Ohio Attorney general indicating that he was being reclassified as a Tier III offender, requiring increased periodic registration. Appellant continued to register, pursuant to his Adam Walsh Act reclassification, in February 2008 and May 2008.

{¶4} On May 21, 2008, appellant purportedly sent a letter to the Auglaize County Sheriff, advising him of his intention to move to Holmes County. On or about June 2, 2008, appellant completed his move to Holmes County.

{¶5} On June 12, 2008, appellant was arrested in Holmes County on charges of failing to register as a sex offender. What we will label as Count I was based on appellant's failure to register with the Holmes County Sheriff within three days of moving into Holmes County. See R.C. 2950.04(E). Count II was based on appellant's failure to provide written notice to the Holmes County Sheriff of his intent to reside in Holmes

County at least twenty days prior to moving. See R.C. 2950.04(E). Furthermore, on June 17, 2008, appellant was indicted in Auglaize County for failure to give a twenty-day advance notice of an address change prior to moving. We will label this as "Count III." See R.C. 2950.05(F)(1).

{16} The charges were consolidated for trial in Holmes County. On April 7, 2009, the case was heard via a bench trial. On July 9, 2009, the court found appellant guilty on all three counts. On September 3, 2009, the court sentenced appellant to three years in prison on each count, to be served concurrently.

{17} On September 14, 2009, appellant filed a notice of appeal. He herein raises the following nine Assignments of Error:

{18} "I. THE DEFENDANT-APPELLANT WAS DENIED DUE PROCESS WHEN HE WAS TRIED AND CONVICTED OF FELONIES FOR FAILURE TO NOTIFY OF CHANGE OF ADDRESS WHEN UNDER OHIO LAW HE WAS NOT REQUIRED TO REGISTER AS A SEX OFFENDER.

{19} "II. THE DEFENDANT-APPELLANT WESLEY LLOYD WAS DENIED DUE PROCESS WHEN HE WAS TRIED AND CONVICTED OF FELONIES OF THE FIRST DEGREE WHEN UNDER OHIO LAW HE SHOULD HAVE BEEN CHARGED WITH FELONIES OF THE THIRD DEGREE.

{110} "III. THE DEFENDANT-APPELLANT WAS DENIED DUE PROCESS WHEN HE WAS CONVICTED OF A VIOLATION OF R.C. 2950.04(A)(2)(a) [SIC] AFTER BEING TOLD BY LAW ENFORCEMENT THAT HE COULD NOT REGISTER IN HOLMES COUNTY.

{¶11} "IV. THE DEFENDANT-APPELLANT WESLEY LLOYD WAS DENIED DUE PROCESS WHEN HE WAS CONVICTED OF VIOLATING R.C. 2950.04(E) AND R.C. 2950.04(G) WHEN R.C. 2950.04 ONLY APPLIES TO THE INITIAL REGISTRATION OF A SEX OFFENDER UPON RELEASE FROM PRISON OR UPON ENTERING INTO THE STATE.

{¶12} "V. THE DEFENDANT-APPELLANT WESLEY LLOYD WAS DENIED DUE PROCESS OF LAW WHEN HE WAS CONVICTED OF FAILING TO REGISTER IN HOLMES COUNTY WHEN THE EVIDENCE SHOWED THAT REGISTRATION BY LLOYD IN HOLMES COUNTY WAS IMPOSSIBLE.

{¶13} "VI. THE DEFENDANT-APPELLANT WESLEY LLOYD WAS DENIED DUE PROCESS WHEN HE WAS CONVICTED OF A STRICT LIABILITY OFFENSE WITHOUT RECEIVING NOTICE OF THE NEW REGISTRATION REQUIREMENTS.

{¶14} "VII. THE DEFENDANT-APPELLANT WAS DENIED DUE PROCESS OF LAW WHEN HE WAS CONVICTED OF COUNT I OF THE INDICTMENT UPON INSUFFICIENT EVIDENCE.

{¶15} "VIII. THE DEFENDANT-APPELLANT WAS DENIED DUE PROCESS WHEN HE WAS CONVICTED OF VIOLATING R.C. 2950.04(E) UPON INSUFFICIENT EVIDENCE.

{¶16} "IX. THE DEFENDANT'S PROSECUTION UNDER TITLE 2950 OF THE R.C. VIOLATES DUE PROCESS BECAUSE R.C. 2950.031 AND R.C. 2950.032 ARE UNCONSTITUTIONAL PURSUANT TO THE OHIO SUPREME COURT'S DECISION IN *STATE V. BODYKE*."

IX.

{¶17} We will address appellant's Ninth Assignment of Error first.

{¶18} In *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, the Ohio Supreme Court severed R.C. 2950.031 and 2950.032, the reclassification provisions of the Adam Walsh Act, and held that after severance, those provisions could not be enforced. The Court further held that R.C. 2950.031 and 2950.032 may not be applied to offenders previously adjudicated by judges under "Megan's Law." See also *Chojnacki v. Cordray*, 126 Ohio St.3d 321, 933 N.E.2d 800, 2010-Ohio-3212, ¶5.

{¶19} The only Count potentially affected by *Bodyke* in this instance is Count II. In other words, the registration/notice requirements in Counts I and III were not impacted by the Adam Walsh Act. The State responds, however, that even Count II is not altered by *Bodyke*, because his Tier III classification did not disturb a ruling by the judicial branch. However, recently, in *State v. Clager*, Licking App.No.10-CA-49, 2010-Ohio-6074, this Court found that even out-of-state offenders are not subject to an Ohio Attorney General reclassification based on the doctrine of separation of powers.

{¶20} Appellant's Ninth Assignment of Error is therefore sustained in regard to appellant's Tier III – based offense in Count II.

I.

{¶21} In his First Assignment of Error, appellant contends his convictions for failure to register and notify of an address change violated due process, because he was not required to register as a sexually-oriented offender in Ohio. We disagree.

{¶22} R.C. 2950.04(A)(4) states as follows:

{¶23} "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 **** 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:

{¶24} "(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.

{¶25} "(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.

{¶26} "(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.

{¶27} "(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."

{¶28} In order to define "sexually oriented offense" for purposes of the first paragraph of R.C. 2950.04(A)(4), supra, we turn to the definition found in R.C. 2950.01(A)(11): "A violation of *** any existing or former municipal ordinance or law of another state or 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." (Emphasis added).

{¶29} Among the Ohio offenses listed in division (A)(1) of R.C. 2950.01 are rape and sexual battery. The pertinent rape section, R.C. 2907.02(A)(2), states: "No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force." The pertinent sexual battery section,

R.C. 2907.03(A)(1), states: No person shall engage in sexual conduct with another, not the spouse of the offender, when *** [t]he offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution."

{¶30} In appellant's 1995 Texas conviction for aggravated sexual assault, the jury was instructed as follows pursuant to Texas Penal Code Title 5, Chapter 22, Sec. 22.201:

{¶31} "Our law provides that a person commits the offense of aggravated sexual assault if the person intentionally or knowingly causes the penetration of the mouth or female sexual organ of another person by the sexual organ of the actor without that persons consent, and by acts or words such person places the victim in fear that serious bodily injury or death will be imminently inflicted on any person.

{¶32} "Such assault is without the other person's consent if the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat. * * *

{¶33} "A person acts intentionally, or with intent, with respect to the nature of his conduct when it is his conscious objective or desire to engage in the conduct.

{¶34} "A person acts knowingly or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result."

Appellant's Appendix at A-1, A-2.

{¶35} In essence, appellant contends that since rape under Ohio law (R.C. 2907.02(A)(2)) has a "purpose" element, while sexual battery (R.C. 2907.03(A)(1)) has

a "knowing" element, no single Ohio statute is "substantially equivalent" to aggravated sexual assault under the aforementioned Texas statute, which includes either purpose (intention) or knowledge. However, upon review, we find appellant's argument lacks merit, and we are further unpersuaded by appellant's reliance on the decision of the First District Court of Appeals in *Doe v. Leis*, Hamilton App.No. C-050591, 2006-Ohio-4507, as that case focused on variances between Ohio and Florida law as to the element of "force" in a criminal sexual assault context.

{¶36} Appellant's First Assignment of Error is therefore overruled.

II.

{¶37} In his Second Assignment of Error, appellant contends his first-degree felony convictions, as opposed to third-degree felonies, violated due process. We disagree.

{¶38} R.C. 2950.99(A)(1)(a) states as follows:

{¶39} "Except as otherwise provided in division (A)(1)(b) of this section, whoever violates a prohibition in section 2950.04, 2950.041, 2950.05, or 2950.06 of the Revised Code shall be punished as follows:

{¶40} ****

{¶41} "(ii) *** [I]f 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."

{¶42} Appellant maintains that because of the “intentionally or knowingly” language of the Texas aggravated sexual assault statute, it is impossible to know if the Texas jury’s determination was equivalent to rape or to sexual battery under Ohio law; hence, due process requires that the lesser degree of culpability apply, which in this instance would be sexual battery, a third-degree felony. However, the Texas indictment at issue includes “use of physical force and violence” allegations on the aggravated sexual assault count, and we therefore find no error or violation of due process in appellant’s first-degree felony convictions for failure to register at the same degree as the offense of rape.

{¶43} Appellant’s Second Assignment of Error is overruled.

III.

{¶44} In his Third Assignment of Error, appellant contends his conviction under Count I (failure to register in Holmes County within three days of relocating) violated due process. We disagree.

{¶45} Appellant first argues the forms utilized under the electronic sexual offender system (“eSORN”) are insufficient under Ohio law. He directs us to R.C. 2950.04(B) and (C), which state as follows:

{¶46} “(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.

{¶47} "(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:

{¶48} "(1) The offender's or delinquent child's name and any aliases used by the offender or delinquent child;

{¶49} "(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;

{¶50} "(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;

{¶51} "(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;

{¶52} "(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;

{¶153} "(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;

{¶154} "(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;

{¶155} "(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 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;

{¶156} "(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;

{¶157} "(10) Any email addresses, internet identifiers, or telephone numbers registered to or used by the offender or delinquent child;

{¶158} "(11) Any other information required by the bureau of criminal identification and investigation."

{¶159} Upon review of the record in this case, we are unconvinced that any purported noncompliance by Auglaize and Holmes law enforcement officials with the data-collection requirements of R.C. 2950.04(B) and (C) would result in a due process violation regarding appellant or in any way excuse his failure to adhere to statutory relocation registration requirements.

{¶160} Appellant secondly contends that he was denied due process based on police entrapment and outrageous police conduct.

{¶161} In *State v. Doran* (1983), 5 Ohio St.3d 187, the Ohio Supreme Court held: "The defense of entrapment is established where the criminal design originates with the officials of the government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order to prosecute." In *Yeager v. Local Union 20* (1983), 6 Ohio St.3d 369, 375, 6 OBR 421, 453 N.E.2d 666, the Ohio Supreme Court described outrageous conduct as follows: "[S]o outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!' " *Id.*

{¶62} The State's witnesses in this matter consistently recounted the basis for appellant's Count I violation: His failure to register in Holmes County based on his failure or refusal to first clear his name from the registration system in Auglaize County by properly and timely notifying officials there of his intent to move. Upon review, we find appellant's claims of police entrapment and outrageous police conduct unpersuasive.

{¶63} Appellant's Third Assignment of Error is overruled.

IV.

{¶64} In his Fourth Assignment of Error, appellant contends his convictions for failure to register or notify of an address change violated due process, because he was not required to register as a sexually-oriented offender in Ohio.

{¶65} We find this assigned error relates to Counts I and II only. Those Counts were based on R.C. 2950.04((E), which states: "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."

Count I (3-Day Requirement in Holmes Co.)

{¶66} We first consider, by cross-reference within R.C. 2950.04((E), the requirement of R.C. 2950.04(A)(4)(a) that "[r]egardless of when the sexually oriented offense was committed, each person who is convicted *** in a court in another state *** for committing a sexually oriented offense shall comply with the following registration requirements if, at the time the offender *** 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 a school or institution of higher education, or the offender *** is employed in this state for more than the specified period of time, the offender *** 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:

{¶67} "(a) Each offender *** 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."

{¶68} Appellant essentially argues that R.C. 2950.04(A)(4)(a) applies only to out-of-state-offenders who are *initially* moving into Ohio. However, our reading of the above subsection indicates that the "moves to and resides in this state" language is instead merely tied to the question of whether an offender has a duty to register under another jurisdiction's law at the time he or she moves to Ohio.

{¶69} We therefore find no error on this basis as to Count I under R.C. 2950.04(A)(4)(a).

Count II (20-Day Intent to Reside Requirement for Holmes Co.)

{¶70} R.C. 2950.04(G) states as follows:

{¶71} "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.

{¶72} Based on our redress of appellant's Ninth Assignment of Error, appellant's Tier III-based conviction in Count II is erroneous as a matter of law and will be ordered to be reversed.

{¶73} Appellant's Fourth Assignment of Error is therefore overruled in part and sustained in part.

V.

{¶74} In his Fifth Assignment of Error, appellant contends his conviction for failure to register in Holmes County violated due process, because the evidence purportedly shows it was impossible for him to do so.¹

{¶75} Appellant maintains that the computerized registration system prevented him from registering in Holmes County, because he had not been recognized in the system at that time as having been transferred out of Auglaize County. However, appellant was required to give a twenty-day advance notice to Auglaize County prior to leaving for Holmes County; this he failed to do. Thus, the trial court properly concluded that appellant could not rely on an impossibility defense when the alleged impossibility was created by his original violation of the law in Auglaize County.

{¶76} Appellant's Fifth Assignment of Error is therefore overruled.

¹ At this juncture, we have found appellant's Count II conviction to be reversible error. Furthermore, Count III concerns his Auglaize County notification. We will thus only consider Count I in this assigned error.

VI.

{¶177} In his Sixth Assignment of Error, appellant contends his conviction for failure to notify of an address change violated due process, because he was not notified of his "Tier III" requirements under R.C. 2950.04(G).

{¶178} Appellant's arguments in this assigned error are directed solely at Count II, which is his Tier III – based conviction. Based on our redress of his Ninth Assignment of Error, supra, we find further analysis of the present issue to be moot.

{¶179} Appellant's Sixth Assignment of Error is therefore found moot.

VII.

{¶180} In his Seventh Assignment of Error, appellant contends his conviction for failure to register under what we have labeled as Count III was not supported by sufficient evidence. We disagree.

{¶181} In reviewing a claim of insufficient evidence, "[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶182} Count III was based on R.C. 2950.05(F)(1), which reads as follows: "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." However, the indictment language for Count III references both division (A) and (B) of R.C. 2950.05, and charges that appellant failed to notify the appropriate

Sheriff "in accordance with these divisions ***." Appellant argues that the State was thus required to prove both R.C. 2950.05(A) and (B), which it failed to do.

{¶83} We find no merit in appellant's argument. The pertinent statute in Count III is R.C. 2950.05(F)(1), to which R.C. 2950.05(B) is wholly inapplicable, and the reference to R.C. 2950.05(B) set forth in the charge was superfluous. The State therefore sufficiently proved the elements of R.C. 2950.05(F)(1).

{¶84} Appellant's Seventh Assignment of Error is overruled.

VIII.

{¶85} In his Eighth Assignment of Error, appellant contends his conviction for failure to notify of an address change violated due process, because he was not required to register as a sexually-oriented offender in Ohio.

{¶86} R.C. 2950.04(A)(4), *supra*, imposes registration requirements if "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." Appellant essentially contends the State failed to prove he had a duty under Texas law to register as a sex offender. However, the record reveals that appellant himself testified that he was required to register in Texas following his 2005 conviction. See Tr. at 104-105. Moreover, a review of appellant's multiple-ground oral motion for acquittal at the close of the State's case does not reveal that appellant asserted the present "duty under Texas law" argument to the trial court. See Tr. at 93-100. Under the invited error doctrine, a party will not be permitted to take advantage of an error which he himself invited or induced. See *He v. Zeng*, Licking App.No.

2003CA00056, 2004-Ohio-2434, ¶ 13, citing *State v. Bey* (1999), 85 Ohio St.3d 487, 493, 709 N.E.2d 484.

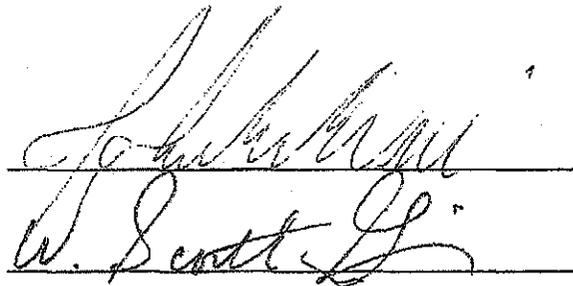
{¶187} Accordingly, appellant's Eighth Assignment of Error is overruled.

{¶188} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Holmes County, Ohio, is hereby affirmed in part and reversed in part. Appellant's conviction and sentence under Count II are hereby vacated.

By: Wise, J.

Gwin, J., concurs.

Edwards, P. J., concurs separately.



The image shows two handwritten signatures in black ink, each written over a horizontal line. The top signature is cursive and appears to be 'John W. Wise'. The bottom signature is also cursive and appears to be 'W. Scott Gwin'. Below these two lines, there is a third, empty horizontal line.

JUDGES

JWW/d 1118

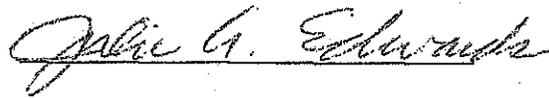
EDWARDS, P.J., CONCURRING OPINION

{¶89} I concur in the judgment of the majority. However, in the eighth assignment of error I would not find that appellant was required to move for acquittal on the basis that the State failed to prove he had a duty to register under Texas law in order to raise a sufficiency of the evidence claim on appeal.

{¶90} The Ohio Supreme Court has stated that a failure to timely file a Crim. R. 29(A) motion during jury trial does not waive an argument on appeal concerning the sufficiency of the evidence. *State v. Jones* (2001), 91 Ohio St.3d 335, 346, 744 N.E.2d 1163; *State v. Carter* (1992), 64 Ohio St.3d 218, 223, 594 N.E.2d 595. Because a conviction based on legally insufficient evidence constitutes a denial of due process, a conviction based upon insufficient evidence would almost always amount to plain error. *State v. Coe*, 153 Ohio App.3d 44, 790 N.E.2d 1222, 2003-Ohio-2732, ¶19. The rationale for requiring a criminal defendant to timely file a Crim. R. 29(A) motion at trial is to call the trial court's attention to the alleged insufficiency of the evidence and allow the trial court to correct the error. *Id.* at fn. 6.

{¶91} In the instant case, appellant's failure to raise the issue of the State's failure to prove he had a duty to register in Texas denied the trial court the opportunity to correct the error by directing a verdict at the close of the State's case, and prior to appellant taking the stand in his own case-in-chief.

Appellant then corrected the deficiency in the evidence himself by admitting that he had a duty to register in Texas following his 2005 conviction. Tr. 104-105. I therefore would find that appellant's conviction was not based on legally insufficient evidence.

A handwritten signature in cursive script that reads "Julie A. Edwards". The signature is written in black ink and is positioned above a horizontal line.

Judge Julie A. Edwards

JAE/rad/rmn

FILED

IN THE COURT OF COMMON PLEAS 2009 SEP -3 AM 10: 20
HOLMES COUNTY, OHIO

DORCAS L MILLER, CLERK
COMMON PLEAS COURT
HOLMES COUNTY, OHIO

STATE OF OHIO,
Plaintiff,

vs.

WESLEY LLOYD
DOB: 11/29, 1969.

Defendant.

CASE NO. 09CR001

JUDGMENT ENTRY

Docket: 09/03/09 - Sentencing Hearing held
Defendant having been convicted by conviction
after Bench Trial of one count of Failure to
Register with the Holmes County Sheriff Within
Three Days of Moving to Holmes County, a felony
of the first degree, in violation of Revised Code
2950.04(E); one Count of Failing to Provide the
Holmes County Sheriff with Written Notice of His
Intent to Reside in Holmes County 20 Days Prior to
Moving to Holmes County, a felony of the first
degree, in violation of Revised Code 2950.04(E);
and one Count of Failing to Provide the Sheriff of
Auglaize County Written Notice of His Intent to
Move to Holmes County 20 Days Prior to Moving to
Holmes County, a felony of the first degree, in
violation of Revised Code 2950.05(F)(1). Payment
of financial sanctions waived. Defendant sentenced
to three years in prison on each count. Sentences to
be run concurrently. Credit for 2 days time served
against his prison sentence as of and including the
date of sentencing. Defendant's bond is released
and Defendant is remanded to the custody of the
Sheriff of Holmes County for execution of sentence.
Defendant shall submit DNA sample to Sheriff
within 72 hours. Defendant was advised of his/her
appeal rights per Crim. R. 32. This is a final order.

Journalized: Journal 206, Page(s) 751 - 756

(Sections of the following Judgment Entry with , only apply if the is checked.)

- Change of Plea and Immediately Sentenced. See separate Order for Change of
Plea.

- Sexual Offender Hearing and Designation. See separate Order.

- Forfeiture of Property Hearing. See separate Order.

SCANNED

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The Defendant, Wesley Lloyd, age 39, of Glenmont, Ohio stands before this Court having been convicted by conviction after Bench Trial of one count of Failure to Register with the Holmes County Sheriff Within Three Days of Moving to Holmes County, a felony of the first degree, in violation of Revised Code 2950.04(E); one Count of Failing to Provide the Holmes County Sheriff with Written Notice of His Intent to Reside in Holmes County 20 Days Prior to Moving to Holmes County, a felony of the first degree, in violation of Revised Code 2950.04(E); and one Count of Failing to Provide the Sheriff of Auglaize County Written Notice of His Intent to Move to Holmes County 20 Days Prior to Moving to Holmes County, a felony of the first degree, in violation of Revised Code 2950.05(F)(1).

Sentencing was had on September 3, 2009, with Defendant appearing in open court represented by counsel. The Office of the Prosecuting Attorney appeared on behalf of the State of Ohio.

Sentencing was had pursuant to CrimR 32. The Court considered all matters of record, including statements and testimony given at sentencing, any pre-sentence investigation report and any victim impact statement.

Prior to passing sentence, the Court has considered all relevant constitutional, statutory and procedural factors affecting the Defendant's sentence.

A court that imposes a sentence 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 these 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 and the public for the offense. Ohio Revised Code Section 2929.11(A).

A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact on the victim and consistent with

sentences imposed for similar crimes committed by similar offenders. Ohio Revised Code Section 2929.11(B)

In imposing this sentence, the Court has not considered the offender's race, ethnic background, gender or religion.

The Court's analysis of the factors affecting the seriousness of the offense and likelihood of recidivism is:

Seriousness of Offense(s):

More Serious Factors (RC 2929.12(B)):

- The injury to the victim was worsened because of the physical or mental condition or age of the victim.
- The victim suffered serious physical, psychological or economic harm.
- The offender held a public office or position of trust and the offense was related to that office or trust.
- The offender's office or occupation required the offender to prevent or prosecute those committing the offense.
- Professional reputation, occupation or office facilitated the offense.
- Offense facilitated by offender's relationship with victim.
- Offense committed for hire as part of organized criminal activity.
- Offense motivated by prejudice based on race, ethnicity, gender, sexual orientation or religion.
- Any other factor:

Less Serious Factors (RC 2929.12(C)):

- The victim induced or facilitated this offense.
- The offender was strongly provoked.
- No physical harm to persons or property was expected or caused.
- There are substantial grounds for mitigation.
- Any other factor:

Weighing the seriousness factors, the Court finds that this/these offense(s) are - more serious/ - less serious.

Recidivism of Offender Factors.

Recidivism Likely (RC 2929.12(D)):

- Offender was out on bail before trial or sentencing, or under court sanction or under post-release control or parole when the offense was committed.
- Offender has prior adjudication of delinquency or history of criminal convictions.
- Offender has failed to respond favorably in the past to probation or parole.
- Offender has failed to acknowledge a pattern of drug or alcohol abuse that is related to this/these offense(s).
- Offender shows no genuine remorse.
- Any other factor:

Recidivism Not Likely (RC 2929.12(E)):

- Offender has not been adjudicated delinquent.
- Offender has no prior criminal convictions.
- Offender has been a law-abiding citizen for a number of years.
- The offense occurred under circumstances not likely to recur.
- The offender is genuinely remorseful.
- Any other factor:

Weighing the recidivism factors, the Court finds that recidivism is - more likely/ - less likely.

- (Felony of the first-degree or Felony of the second-degree) Pursuant to R.C. 2929.13(D), there is a presumption in favor of prison. The presumption - has - has not been overcome.

- Regarding financial sanctions the Court finds that the defendant is unable to pay financial sanctions.

It is therefore the Sentence of this Court that the Defendant shall:

- Payment of financial sanctions (fines, costs and/or restitution) is waived.

- Serve a stated prison term of 3 months years in the Lorain Correctional Institute at Grafton, Ohio or such other place as the Department of Rehabilitation and Corrections shall direct upon each count.

- Said sentences to be served - concurrently; - consecutively for a total prison sentence of 3 YEARS.

Defendant is further notified that post-release control on a prison sentence is - optional/ -mandatory for -three/-five years, as well as the consequences for violating conditions of post-release control imposed by the parole board.

If Defendant violates post-release control, he is warned that he may be required to serve an additional prison term of up to nine months for each violation up to a maximum of 1/2 of the sentence imposed by this Court.

If Defendant commits a new felony while on post release control, he may be required to serve a prison term of the time remaining on post-release control or 12 months, whichever is greater plus a consecutive sentence for the new felony. Defendant is ordered to serve as part of this sentence any term of post-release control imposed by the parole board, and any prison term for violation of that post-release control.

Defendant shall receive credit against any prison sentence for 2 days time served as of and including the date of sentencing.

- Defendant's bond is released and Defendant is remanded to the custody of the Sheriff of Holmes County for execution of sentence. Defendant shall submit DNA sample to Sheriff within 72 hours.

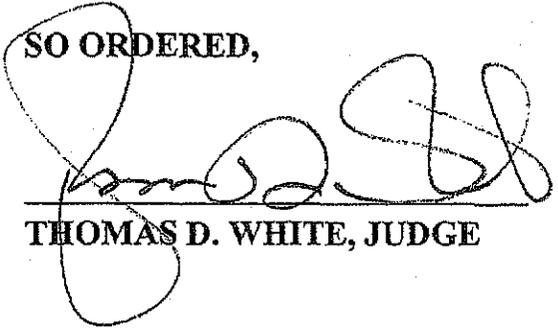
- Defendant was advised of his/her appeal rights per Crim. R. 32.

- This is a final order.

Clerk's Distribution List: Prosecuting Attorney, Defense Counsel, Defendant, Sheriff, Victim Advocate, Holmes County Adult Probation Department, - CSEA - Stark Regional

Community Corrections Center, - Bureau of Motor Vehicles, - Dept. of Rehabilitation and Corrections, Bureau of Sentence Computation and Board of Elections.

SO ORDERED,



Date: September 3, 2009

THOMAS D. WHITE, JUDGE

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DORCASE FILED CLERK
IN THE COURT OF COMMON PLEAS
HOLMES COUNTY, OHIO

STATE OF OHIO,
Plaintiff,
vs.
WESLEY LLOYD,
Defendant.

CASE NO. 09CR001

JOURNAL ENTRY - DECISION
AND VERDICT

Journalized: Journal 205, Page(s) 732-733

This case came on for decision and verdict on July 9, 2009, with defendant appearing in open court represented by Attorney Kellogg. The Prosecuting Attorney appeared on behalf of the State of Ohio.

The Court read into the record in the presence of the defendant and counsel its findings of fact and conclusions of law before it rendered its verdict.

For the reasons stated on the record, the Court found the defendant guilty of the following offenses:

1. Count 1: Failure to Register with the Holmes County Sheriff Within Three Days of Moving to Holmes County, a felony of the first degree, in violation of Revised Code 2950.04(E).
2. Count 2: Failing to Provide the Holmes County Sheriff with Written Notice of His Intent to Reside in Holmes County 20 days prior to moving to Holmes County, a felony of the first degree, in violation of Revised Code; 2950.04(E); and

Case No. 09CR001
State v Wesley Lloyd
Decision & Verdict
Page 1

SCANNED

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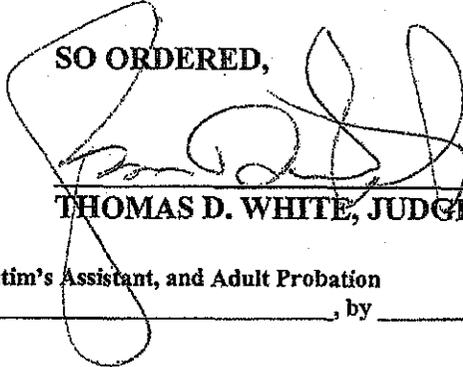
3. **Count 3: Failing to Provide the Sheriff of Anglaize Written Notice of His Intent to Move to Holmes County 20 Days Prior to Moving to Holmes County, a felony of the first degree, in violation of Revised Code 2950.05(F)(1).**

Having found defendant guilty, the Court orders a presentence investigation be conducted by the Adult Probation Department. The defendant shall cooperate with the Adult Probation Department as a term and condition of his bond.

Sentencing is scheduled for September 3, 2009, at 9:00 a.m. Defendant shall appear thereat as a term and condition of his bond.

Defendant's bond is continued.

SO ORDERED,



THOMAS D. WHITE, JUDGE

DATED: July 9, 2009

Cc: Pros. Atty. Defendnat. Atty. Kellogg, Victim's Assistant, and Adult Probation
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proved
at the November 2011 general election. *

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2903. HOMICIDE AND ASSAULT
HOMICIDE

Go to the Ohio Code Archive Directory

ORC Ann. 2903.03 (2011)

§ 2903.03. Voluntary manslaughter

(A) No person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly cause the death of another or the unlawful termination of another's pregnancy.

(B) Whoever violates this section is guilty of voluntary manslaughter, a felony of the first degree.

HISTORY:

134 v H 511 (Eff 1-1-74); 139 v H 103 (Eff 5-19-82); 139 v S 199 (Eff 1-5-83); 146 v S 2 (Eff 7-1-96); 146 v S 239. Eff 9-6-96.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2903. HOMICIDE AND ASSAULT
STALKING

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ORC Ann. 2903.22 (2011)

§ 2903.22. Menacing

(A) No person shall knowingly cause another to believe that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family.

(B) Whoever violates this section is guilty of menacing. Except as otherwise provided in this division, menacing is a misdemeanor of the fourth degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, menacing is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree.

HISTORY:

134 v H 511 (Eff 1-1-74); 146 v S 239 (Eff 9-6-96); 148 v H 412. Eff 4-10-2001.

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

Go to the Ohio Code Archive Directory

ORC Ann. 2907.02 (2011)

§ 2907.02. Rape

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

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

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

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

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

(B) Whoever violates this section is guilty of rape, a felony of the first degree. If the offender
under division (A)(1)(a) of this section substantially impairs the other person's judgment or control
by administering any controlled substance described in *section 3719.41 of the Revised Code* to the
other person surreptitiously or by force, threat of force, or deception, the prison term imposed upon

the offender shall be one of the prison terms prescribed for a felony of the first degree in *section 2929.14 of the Revised Code* that is not less than five years. Except as otherwise provided in this division, notwithstanding *sections 2929.11 to 2929.14 of the Revised Code*, an offender under division (A)(1)(b) of this section shall be sentenced to a prison term or term of life imprisonment pursuant to *section 2971.03 of the Revised Code*. If an offender is convicted of or pleads guilty to a violation of division (A)(1)(b) of this section, if the offender was less than sixteen years of age at the time the offender committed the violation of that division, and if the offender during or immediately after the commission of the offense did not cause serious physical harm to the victim, the victim was ten years of age or older at the time of the commission of the violation, and the offender has not previously been convicted of or pleaded guilty to a violation of this section or a substantially similar existing or former law of this state, another state, or the United States, the court shall not sentence the offender to a prison term or term of life imprisonment pursuant to *section 2971.03 of the Revised Code*, and instead the court shall sentence the offender as otherwise provided in this division. If an offender under division (A)(1)(b) of this section previously has been convicted of or pleaded guilty to violating division (A)(1)(b) of this section or to violating an existing or former law of this state, another state, or the United States that is substantially similar to division (A)(1)(b) of this section, if the offender during or immediately after the commission of the offense caused serious physical harm to the victim, or if the victim under division (A)(1)(b) of this section is less than ten years of age, in lieu of sentencing the offender to a prison term or term of life imprisonment pursuant to *section 2971.03 of the Revised Code*, the court may impose upon the offender a term of life without parole. If the court imposes a term of life without parole pursuant to this division, division (F) of *section 2971.03 of the Revised Code* applies, and the offender automatically is classified a tier III sex offender/child-victim offender, as described in that division.

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

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

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

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

(F) Upon approval by the court, the victim may be represented by counsel in any hearing in chambers or other proceeding to resolve the admissibility of evidence. If the victim is indigent or

otherwise is unable to obtain the services of counsel, the court, upon request, may appoint counsel to represent the victim without cost to the victim.

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

HISTORY:

134 v H 511 (Eff 1-1-74); 136 v S 144 (Eff 8-27-75); 139 v S 199 (Eff 7-1-83); 141 v H 475 (Eff 3-7-86); 145 v S 31 (Eff 9-27-93); 146 v S 2 (Eff 7-1-96); 147 v H 32 (Eff 3-10-98); 149 v H 485. Eff 6-13-2002; 151 v S 260, § 1, eff. 1-2-07; 152 v S 10, § 1, eff. 1-1-08.

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

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ORC Ann. 2907.03 (2011)

§ 2907.03. Sexual battery

(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:

(1) The offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution.

(2) The offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired.

(3) The offender knows that the other person submits because the other person is unaware that the act is being committed.

(4) The offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse.

(5) The offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person.

(6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person.

(7) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant

to division (D) of *section 3301.07 of the Revised Code*, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.

(8) The other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution.

(9) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person.

(10) The offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes.

(11) The other person is confined in a detention facility, and the offender is an employee of that detention facility.

(12) The other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric.

(13) The other person is a minor, the offender is a peace officer, and the offender is more than two years older than the other person.

(B) Whoever violates this section is guilty of sexual battery. Except as otherwise provided in this division, sexual battery is a felony of the third degree. If the other person is less than thirteen years of age, sexual battery is a felony of the second degree, and the court shall impose upon the offender a mandatory prison term equal to one of the prison terms prescribed in *section 2929.14 of the Revised Code* for a felony of the second degree.

(C) As used in this section:

(1) "Cleric" has the same meaning as in *section 2317.02 of the Revised Code*.

(2) "Detention facility" has the same meaning as in *section 2921.01 of the Revised Code*.

(3) "Institution of higher education" means a state institution of higher education defined in *section 3345.011 [3345.01.1] of the Revised Code*, a private nonprofit college or university located in this state that possesses a certificate of authorization issued by the Ohio board of regents pursuant to Chapter 1713. of the Revised Code, or a school certified under Chapter 3332. of the Revised Code.

(4) "Peace officer" has the same meaning as in *section 2935.01 of the Revised Code*.

HISTORY:

~~134 v H 511 (Eff 1-1-74); 145 v H 454 (Eff 7-19-94); 146 v S 2 (Eff 7-1-96); 147 v S 6 (Eff 6-20-97); 147 v H 32 (Eff 3-10-98); 149 v S 9 (Eff 5-14-2002); 149 v H 510. Eff 3-31-2003; 151 v S 17, § 1, eff. 8-3-06; 151 v H 95, § 1, eff. 8-3-06; 152 v H 209, § 1, eff. 4-7-09.~~

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

Go to the Ohio Code Archive Directory

ORC Ann. 2907.05 (2011)

§ 2907.05. Gross sexual imposition

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

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

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

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

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

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

resist or consent of the other person or of one of the other persons is substantially impaired because of a mental or physical condition or because of advanced age.

(B) No person shall knowingly touch the genitalia of another, when the touching is not through clothing, the other person is less than twelve years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

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

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

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

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

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

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

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

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

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

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

HISTORY:

134 v H 511 (Eff 1-1-74); 136 v S 144 (Eff 8-27-75); 137 v H 134 (Eff 8-8-77); 143 v H 208 (Eff 4-11-90); 145 v S 31 (Eff 9-27-93); 147 v H 32. Eff 3-10-98; 151 v H 95, § 1, eff. 8-3-06; 152 v S 10, § 1, eff. 1-1-08.

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

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ORC Ann. 2907.06 (2011)

§ 2907.06. Sexual imposition

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

- (1) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard.
- (2) The offender knows that the other person's, or one of the other person's, ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired.
- (3) The offender knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact.
- (4) The other person, or one of the other persons, is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen years of age and four or more years older than such other person.
- (5) The offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes.

(B) No person shall be convicted of a violation of this section solely upon the victim's testimony unsupported by other evidence.

(C) Whoever violates this section is guilty of sexual imposition, a misdemeanor of the third degree. If the offender previously has been convicted of a violation of this section or of section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.12* of the Revised Code, a violation of this section is a misdemeanor of the first degree.

HISTORY:

134 v H 511 (Eff 1-1-74); 137 v H 134 (Eff 8-8-77); 143 v H 44 (Eff 7-24-90); 146 v S 2 (Eff 7-1-96); 149 v S 9. Eff 5-14-2002.

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

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ORC Ann. 2929.06 (2011)

§ 2929.06. Resentencing after sentence of death or life imprisonment without parole is set aside,
nullified, or vacated

(A) If a sentence of death imposed upon an offender is set aside, nullified, or vacated because the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, or the supreme court, in cases in which the supreme court reviews the sentence upon appeal, could not affirm the sentence of death under the standards imposed by *section 2929.05 of the Revised Code*, is set aside, nullified, or vacated for the sole reason that the statutory procedure for imposing the sentence of death that is set forth in *sections 2929.03 and 2929.04 of the Revised Code* is unconstitutional, is set aside, nullified, or vacated pursuant to division (C) of *section 2929.05 of the Revised Code*, or is set aside, nullified, or vacated because a court has determined that the offender is mentally retarded under standards set forth in decisions of the supreme court of this state or the United States supreme court, the trial court that sentenced the offender shall conduct a hearing to resentence the offender. At the resentencing hearing, the court shall impose upon the offender a sentence of life imprisonment or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that is determined as specified in this division. If division (D) of *section 2929.03 of the Revised Code*, at the time the offender committed the aggravated murder for which the sentence of death was imposed, required the imposition when a sentence of death was not imposed of a sentence of life imprisonment without parole or a sentence of an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (A) or (B)(3) of *section 2971.03 of the Revised Code* and served pursuant to that section, the court shall impose the sentence so required. In all other cas-

es, the sentences of life imprisonment that are available at the hearing, and from which the court shall impose sentence, shall be the same sentences of life imprisonment that were available under division (D) of section 2929.03 or under *section 2909.24 of the Revised Code* at the time the offender committed the offense for which the sentence of death was imposed. Nothing in this division regarding the resentencing of an offender shall affect the operation of *section 2971.03 of the Revised Code*.

(B) Whenever any court of this state or any federal court sets aside, nullifies, or vacates a sentence of death imposed upon an offender because of error that occurred in the sentencing phase of the trial and if division (A) of this section does not apply, the trial court that sentenced the offender shall conduct a new hearing to resentence the offender. If the offender was tried by a jury, the trial court shall impanel a new jury for the hearing. If the offender was tried by a panel of three judges, that panel or, if necessary, a new panel of three judges shall conduct the hearing. At the hearing, the court or panel shall follow the procedure set forth in division (D) of *section 2929.03 of the Revised Code* in determining whether to impose upon the offender a sentence of death, a sentence of life imprisonment, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment. If, pursuant to that procedure, the court or panel determines that it will impose a sentence other than a sentence of death, the court or panel shall impose upon the offender one of the sentences of life imprisonment that could have been imposed at the time the offender committed the offense for which the sentence of death was imposed, determined as specified in this division, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that is determined as specified in this division. If division (D) of *section 2929.03 of the Revised Code*, at the time the offender committed the aggravated murder for which the sentence of death was imposed, required the imposition when a sentence of death was not imposed of a sentence of life imprisonment without parole or a sentence of an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (A) or (B)(3) of *section 2971.03 of the Revised Code* and served pursuant to that section, the court or panel shall impose the sentence so required. In all other cases, the sentences of life imprisonment that are available at the hearing, and from which the court or panel shall impose sentence, shall be the same sentences of life imprisonment that were available under division (D) of section 2929.03 or under *section 2909.24 of the Revised Code* at the time the offender committed the offense for which the sentence of death was imposed.

(C) If a sentence of life imprisonment without parole imposed upon an offender pursuant to *section 2929.021 [2929.02.1] or 2929.03 of the Revised Code* is set aside, nullified, or vacated for the sole reason that the statutory procedure for imposing the sentence of life imprisonment without parole that is set forth in *sections 2929.03 and 2929.04 of the Revised Code* is unconstitutional, the trial court that sentenced the offender shall conduct a hearing to resentence the offender to life imprisonment with parole eligibility after serving twenty-five full years of imprisonment or to life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(D) Nothing in this section limits or restricts the rights of the state to appeal any order setting aside, nullifying, or vacating a conviction or sentence of death, when an appeal of that nature otherwise would be available.

(E) This section, as amended by H.B. 184 of the 125th general assembly, shall apply to all offenders who have been sentenced to death for an aggravated murder that was committed on or after October 19, 1981, or for terrorism that was committed on or after May 15, 2002. This section, as

amended by H.B. 184 of the 125th general assembly, shall apply equally to all such offenders sentenced to death prior to, on, or after March 23, 2005, including offenders who, on March 23, 2005, are challenging their sentence of death and offenders whose sentence of death has been set aside, nullified, or vacated by any court of this state or any federal court but who, as of March 23, 2005, have not yet been resentenced.

HISTORY:

139 v S 1 (Eff 10-19-81); 146 v S 4 (Eff 9-21-95); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 258 (Eff 10-16-96); 146 v H 180 (Eff 1-1-97); 147 v S 107. Eff 7-29-98; 150 v H 184, § 1, eff. 3-23-05; 152 v S 10, § 1, eff. 1-1-08.

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

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ORC Ann. 2929.13 (2011)

Legislative Alert: LEXSEE 2011 Ohio HB 86 -- See sections 1 and 2.

§ 2929.13. Guidance by degree of felony; monitoring of sexually oriented offenders by global positioning device

(A) Except as provided in division (E), (F), or (G) of this section and unless a specific sanction is required to be imposed or is precluded from being imposed pursuant to law, a court that imposes a sentence upon an offender for a felony may impose any sanction or combination of sanctions on the offender that are provided in *sections 2929.14 to 2929.18 of the Revised Code*. The sentence shall not impose an unnecessary burden on state or local government resources.

If the offender is eligible to be sentenced to community control sanctions, the court shall consider the appropriateness of imposing a financial sanction pursuant to *section 2929.18 of the Revised Code* or a sanction of community service pursuant to *section 2929.17 of the Revised Code* as the sole sanction for the offense. Except as otherwise provided in this division, if the court is required to impose a mandatory prison term for the offense for which sentence is being imposed, the court also shall impose any financial sanction pursuant to *section 2929.18 of the Revised Code* that is required for the offense and may impose any other financial sanction pursuant to that section but may not impose any additional sanction or combination of sanctions under *section 2929.16 or 2929.17 of the Revised Code*.

If the offender is being sentenced for a fourth degree felony OVI offense or for a third degree felony OVI offense, in addition to the mandatory term of local incarceration or the mandatory pris-

on term required for the offense by division (G)(1) or (2) of this section, the court shall impose upon the offender a mandatory fine in accordance with division (B)(3) of *section 2929.18 of the Revised Code* and may impose whichever of the following is applicable:

(1) For a fourth degree felony OVI offense for which sentence is imposed under division (G)(1) of this section, an additional community control sanction or combination of community control sanctions under *section 2929.16 or 2929.17 of the Revised Code*. If the court imposes upon the offender a community control sanction and the offender violates any condition of the community control sanction, the court may take any action prescribed in division (B) of *section 2929.15 of the Revised Code* relative to the offender, including imposing a prison term on the offender pursuant to that division.

(2) For a third or fourth degree felony OVI offense for which sentence is imposed under division (G)(2) of this section, an additional prison term as described in division (D)(4) of *section 2929.14 of the Revised Code* or a community control sanction as described in division (G)(2) of this section.

(B) (1) Except as provided in division (B)(2), (E), (F), or (G) of this section, in sentencing an offender for a felony of the fourth or fifth degree, the sentencing court shall determine whether any of the following apply:

(a) In committing the offense, the offender caused physical harm to a person.

(b) In committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person with a deadly weapon.

(c) In committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person, and the offender previously was convicted of an offense that caused physical harm to a person.

(d) The offender held a public office or position of trust and the offense related to that office or position; the offender's position obliged the offender to prevent the offense or to bring those committing it to justice; or the offender's professional reputation or position facilitated the offense or was likely to influence the future conduct of others.

(e) The offender committed the offense for hire or as part of an organized criminal activity.

(f) The offense is a sex offense that is a fourth or fifth degree felony violation of *section 2907.03, 2907.04, 2907.05, 2907.22, 2907.31, 2907.321 [2907.32.1], 2907.322 [2907.32.2], 2907.323 [2907.32.3], or 2907.34 of the Revised Code*.

(g) The offender at the time of the offense was serving, or the offender previously had served, a prison term.

~~(h) The offender committed the offense while under a community control sanction, while on probation, or while released from custody on a bond or personal recognizance.~~

(i) The offender committed the offense while in possession of a firearm.

(2) (a) If the court makes a finding described in division (B)(1)(a), (b), (c), (d), (e), (f), (g), (h), or (i) of this section and if the court, after considering the factors set forth in *section 2929.12 of the Revised Code*, finds that a prison term is consistent with the purposes and principles of sentenc-

ing set forth in *section 2929.11 of the Revised Code* and finds that the offender is not amenable to an available community control sanction, the court shall impose a prison term upon the offender.

(b) Except as provided in division (E), (F), or (G) of this section, if the court does not make a finding described in division (B)(1)(a), (b), (c), (d), (e), (f), (g), (h), or (i) of this section and if the court, after considering the factors set forth in *section 2929.12 of the Revised Code*, finds that a community control sanction or combination of community control sanctions is consistent with the purposes and principles of sentencing set forth in *section 2929.11 of the Revised Code*, the court shall impose a community control sanction or combination of community control sanctions upon the offender.

(C) Except as provided in division (E), (F), or (G) of this section, in determining whether to impose a prison term as a sanction for a felony of the third degree or 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 this division for purposes of sentencing, the sentencing court shall comply with the purposes and principles of sentencing under *section 2929.11 of the Revised Code* and with *section 2929.12 of the Revised Code*.

(D) (1) Except as provided in division (E) or (F) of this section, for a felony of the first or second degree, for a felony drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code for which a presumption in favor of a prison term is specified as being applicable, and for a violation of division (A)(4) or (B) of *section 2907.05 of the Revised Code* for which a presumption in favor of a prison term is specified as being applicable, it is presumed that a prison term is necessary in order to comply with the purposes and principles of sentencing under *section 2929.11 of the Revised Code*. Division (D)(2) of this section does not apply to a presumption established under this division for a violation of division (A)(4) of *section 2907.05 of the Revised Code*.

(2) Notwithstanding the presumption established under division (D)(1) of this section for the offenses listed in that division other than a violation of division (A)(4) or (B) of *section 2907.05 of the Revised Code*, the sentencing court may impose a community control sanction or a combination of community control sanctions instead of a prison term on an offender for a felony of the first or second degree or for a felony drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code for which a presumption in favor of a prison term is specified as being applicable if it makes both of the following findings:

(a) A community control sanction or a combination of community control sanctions would adequately punish the offender and protect the public from future crime, because the applicable factors under *section 2929.12 of the Revised Code* indicating a lesser likelihood of recidivism outweigh the applicable factors under that section indicating a greater likelihood of recidivism.

(b) A community control sanction or a combination of community control sanctions would not demean the seriousness of the offense, because one or more factors under *section 2929.12 of the Revised Code* that indicate that the offender's conduct was less serious than conduct normally constituting the offense are applicable, and they outweigh the applicable factors under that section that indicate that the offender's conduct was more serious than conduct normally constituting the offense.

(E) (1) Except as provided in division (F) of this section, for any drug offense that is a violation of any provision of Chapter 2925. of the Revised Code and that is a felony of the third, fourth, or

fifth degree, the applicability of a presumption under division (D) of this section in favor of a prison term or of division (B) or (C) of this section in determining whether to impose a prison term for the offense shall be determined as specified in *section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 2925.36, or 2925.37 of the Revised Code*, whichever is applicable regarding the violation.

(2) If an offender who was convicted of or pleaded guilty to a felony violates the conditions of a community control sanction imposed for the offense solely by reason of producing positive results on a drug test, the court, as punishment for the violation of the sanction, shall not order that the offender be imprisoned unless the court determines on the record either of the following:

(a) The offender had been ordered as a sanction for the felony to participate in a drug treatment program, in a drug education program, or in narcotics anonymous or a similar program, and the offender continued to use illegal drugs after a reasonable period of participation in the program.

(b) The imprisonment of the offender for the violation is consistent with the purposes and principles of sentencing set forth in *section 2929.11 of the Revised Code*.

(3) A court that sentences an offender for a drug abuse offense that is a felony of the third, fourth, or fifth degree may require that the offender be assessed by a properly credentialed professional within a specified period of time. The court shall require the professional to file a written assessment of the offender with the court. If the offender is eligible for a community control sanction and after considering the written assessment, the court may impose a community control sanction that includes treatment and recovery support services authorized by *section 3793.02 of the Revised Code*. If the court imposes treatment and recovery support services as a community control sanction, the court shall direct the level and type of treatment and recovery support services after considering the assessment and recommendation of treatment and recovery support services providers.

(F) Notwithstanding divisions (A) to (E) of this section, the court shall impose a prison term or terms under *sections 2929.02 to 2929.06, section 2929.14, section 2929.142 [2929.14.2], or section 2971.03 of the Revised Code* and except as specifically provided in *section 2929.20 or 2967.191 [2967.19.1] of the Revised Code* or when parole is authorized for the offense under *section 2967.13 of the Revised Code* shall not reduce the term or terms pursuant to *section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code* for any of the following offenses:

(1) Aggravated murder when death is not imposed or murder;

(2) Any rape, regardless of whether force was involved and regardless of the age of the victim, or an attempt to commit rape if, had the offender completed the rape that was attempted, the offender would have been guilty of a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* and would be sentenced under *section 2971.03 of the Revised Code*;

(3) Gross sexual imposition or sexual battery, if the victim is less than thirteen years of age and if any of the following applies:

(a) Regarding gross sexual imposition, the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, gross sexual imposition, or sexual battery, and the victim of the previous offense was less than thirteen years of age;

(b) Regarding gross sexual imposition, the offense was committed on or after August 3, 2006, and evidence other than the testimony of the victim was admitted in the case corroborating the violation.

(c) Regarding sexual battery, either of the following applies:

(i) The offense was committed prior to August 3, 2006, the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than thirteen years of age.

(ii) The offense was committed on or after August 3, 2006.

(4) A felony violation of *section 2903.04, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, or 2907.07 of the Revised Code* if the section requires the imposition of a prison term;

(5) A first, second, or third degree felony drug offense for which *section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 2925.36, 2925.37, 3719.99, or 4729.99 of the Revised Code*, whichever is applicable regarding the violation, requires the imposition of a mandatory prison term;

(6) Any offense that is a first or second degree felony and that is not set forth in division (F)(1), (2), (3), or (4) of this section, if the offender previously was convicted of or pleaded guilty to aggravated murder, murder, any first or second degree felony, or an offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to one of those offenses;

(7) Any offense that is a third degree felony and either is a violation of *section 2903.04 of the Revised Code* or an attempt to commit a felony of the second degree that is an offense of violence and involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person if the offender previously was convicted of or pleaded guilty to any of the following offenses:

(a) Aggravated murder, murder, involuntary manslaughter, rape, felonious sexual penetration as it existed under *section 2907.12 of the Revised Code* prior to September 3, 1996, a felony of the first or second degree that resulted in the death of a person or in physical harm to a person, or complicity in or an attempt to commit any of those offenses;

(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 listed in division (F)(7)(a) of this section that resulted in the death of a person or in physical harm to a person.

(8) Any offense, other than a violation of *section 2923.12 of the Revised Code*, that is a felony, if the offender had a firearm on or about the offender's person or under the offender's control while committing the felony, with respect to a portion of the sentence imposed pursuant to division (D)(1)(a) of *section 2929.14 of the Revised Code* for having the firearm;

(9) Any offense of violence that is a felony, if the offender wore or carried body armor while committing the felony offense of violence, with respect to the portion of the sentence imposed pursuant to division (D)(1)(d) of *section 2929.14 of the Revised Code* for wearing or carrying the body armor;

(10) Corrupt activity in violation of *section 2923.32 of the Revised Code* when the most serious offense in the pattern of corrupt activity that is the basis of the offense is a felony of the first degree;

(11) Any violent sex offense or designated homicide, assault, or kidnapping offense if, in relation to that offense, the offender is adjudicated a sexually violent predator;

(12) A violation of division (A)(1) or (2) of *section 2921.36 of the Revised Code*, or a violation of division (C) of that section involving an item listed in division (A)(1) or (2) of that section, if the offender is an officer or employee of the department of rehabilitation and correction.

(13) A violation of division (A)(1) or (2) of *section 2903.06 of the Revised Code* if the victim of the offense is a peace officer, as defined in *section 2935.01 of the Revised Code*, or an investigator of the bureau of criminal identification and investigation, as defined in *section 2903.11 of the Revised Code*, with respect to the portion of the sentence imposed pursuant to division (D)(5) of *section 2929.14 of the Revised Code*;

(14) A violation of division (A)(1) or (2) of *section 2903.06 of the Revised Code* if the offender has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of *section 4511.19 of the Revised Code* or an equivalent offense, as defined in *section 2941.1415 [2941.14.15] of the Revised Code*, or three or more violations of any combination of those divisions and offenses, with respect to the portion of the sentence imposed pursuant to division (D)(6) of *section 2929.14 of the Revised Code*;

(15) Kidnapping, in the circumstances specified in *section 2971.03 of the Revised Code* and when no other provision of division (F) of this section applies;

(16) Kidnapping, abduction, compelling prostitution, promoting prostitution, engaging in a pattern of corrupt activity, illegal use of a minor in a nudity-oriented material or performance in violation of division (A)(1) or (2) of *section 2907.323 [2907.32.3] of the Revised Code*, or endangering children in violation of division (B)(1), (2), (3), (4), or (5) of *section 2919.22 of the Revised Code*, if the offender is convicted of or pleads guilty to a specification as described in *section 2941.1422 [2941.14.22] of the Revised Code* that was included in the indictment, count in the indictment, or information charging the offense;

(17) A felony violation of division (A) or (B) of *section 2919.25 of the Revised Code* if division (D)(3), (4), or (5) of that section, and division (D)(6) of that section, require the imposition of a prison term;

(18) A felony violation of *section 2903.11, 2903.12, or 2903.13 of the Revised Code*, if the victim of the offense was a woman that the offender knew was pregnant at the time of the violation, with respect to a portion of the sentence imposed pursuant to division (D)(8) of *section 2929.14 of the Revised Code*.

(G) Notwithstanding divisions (A) to (E) of this section, if an offender is being sentenced for a fourth degree felony OVI offense or for a third degree felony OVI offense, the court shall impose upon the offender a mandatory term of local incarceration or a mandatory prison term in accordance with the following:

(1) If the offender is being sentenced for a fourth degree felony OVI offense and if the offender has not been convicted of and has not pleaded guilty to a specification of the type described in *section 2941.1413 [2941.14.13] of the Revised Code*, the court may impose upon the offender a

mandatory term of local incarceration of sixty days or one hundred twenty days as specified in division (G)(1)(d) of *section 4511.19 of the Revised Code*. The court shall not reduce the term pursuant to section 2929.20, 2967.193 [2967.19.3], or any other provision of the Revised Code. The court that imposes a mandatory term of local incarceration under this division shall specify whether the term is to be served in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility, and the offender shall serve the term in the type of facility specified by the court. A mandatory term of local incarceration imposed under division (G)(1) of this section is not subject to any other Revised Code provision that pertains to a prison term except as provided in division (A)(1) of this section.

(2) If the offender is being sentenced for a third degree felony OVI offense, or if the offender is being sentenced for a fourth degree felony OVI offense and the court does not impose a mandatory term of local incarceration under division (G)(1) of this section, the court shall impose upon the offender a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification of the type described in *section 2941.1413 [2941.14.13] of the Revised Code* or shall impose upon the offender a mandatory prison term of sixty days or one hundred twenty days as specified in division (G)(1)(d) or (e) of *section 4511.19 of the Revised Code* if the offender has not been convicted of and has not pleaded guilty to a specification of that type. The court shall not reduce the term pursuant to section 2929.20, 2967.193 [2967.19.3], or any other provision of the Revised Code. The offender shall serve the one-, two-, three-, four-, or five-year mandatory prison term consecutively to and prior to the prison term imposed for the underlying offense and consecutively to any other mandatory prison term imposed in relation to the offense. In no case shall an offender who once has been sentenced to a mandatory term of local incarceration pursuant to division (G)(1) of this section for a fourth degree felony OVI offense be sentenced to another mandatory term of local incarceration under that division for any violation of division (A) of *section 4511.19 of the Revised Code*. In addition to the mandatory prison term described in division (G)(2) of this section, the court may sentence the offender to a community control sanction under *section 2929.16 or 2929.17 of the Revised Code*, but the offender shall serve the prison term prior to serving the community control sanction. The department of rehabilitation and correction may place an offender sentenced to a mandatory prison term under this division in an intensive program prison established pursuant to *section 5120.033 [5120.03.3] of the Revised Code* if the department gave the sentencing judge prior notice of its intent to place the offender in an intensive program prison established under that section and if the judge did not notify the department that the judge disapproved the placement. Upon the establishment of the initial intensive program prison pursuant to *section 5120.033 [5120.03.3] of the Revised Code* that is privately operated and managed by a contractor pursuant to a contract entered into under *section 9.06 of the Revised Code*, both of the following apply:

(a) The department of rehabilitation and correction shall make a reasonable effort to ensure that a sufficient number of offenders sentenced to a mandatory prison term under this division are placed in the privately operated and managed prison so that the privately operated and managed prison has full occupancy.

(b) Unless the privately operated and managed prison has full occupancy, the department of rehabilitation and correction shall not place any offender sentenced to a mandatory prison term under this division in any intensive program prison established pursuant to *section 5120.033 [5120.03.3] of the Revised Code* other than the privately operated and managed prison.

(H) If an offender is being sentenced for a sexually oriented offense or child-victim oriented offense that is a felony committed on or after January 1, 1997, the judge shall require the offender to submit to a DNA specimen collection procedure pursuant to *section 2901.07 of the Revised Code*.

(I) If an offender is being sentenced for a sexually oriented offense or a child-victim oriented offense 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.

(J) (1) Except as provided in division (J)(2) of this section, when considering sentencing factors under this section in relation to an offender who is convicted of or pleads guilty to an attempt to commit an offense in violation of *section 2923.02 of the Revised Code*, the sentencing court shall consider the factors applicable to the felony category of the violation of *section 2923.02 of the Revised Code* instead of the factors applicable to the felony category of the offense attempted.

(2) When considering sentencing factors under this section in relation to an offender who is convicted of or pleads guilty to an attempt to commit a drug abuse offense for which the penalty is determined by the amount or number of unit doses of the controlled substance involved in the drug abuse offense, the sentencing court shall consider the factors applicable to the felony category that the drug abuse offense attempted would be if that drug abuse offense had been committed and had involved an amount or number of unit doses of the controlled substance that is within the next lower range of controlled substance amounts than was involved in the attempt.

(K) As used in this section, "drug abuse offense" has the same meaning as in *section 2925.01 of the Revised Code*.

(L) At the time of sentencing an offender for any sexually oriented offense, if the offender is a tier III sex offender/child-victim offender relative to that offense and the offender does not serve a prison term or jail term, the court may require that the offender be monitored by means of a global positioning device. If the court requires such monitoring, the cost of monitoring shall be borne by the offender. If the offender is indigent, the cost of compliance shall be paid by the crime victims reparations fund.

HISTORY:

146 v S2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 445 (Eff 9-3-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 147 v H 32 (Eff 3-10-98); 147 v S 111 (Eff 3-17-98); 147 v H 293 (Eff 3-17-98); 147 v H 122 (Eff 7-29-98); 148 v S 142 (Eff 2-3-2000); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 528 (Eff 2-13-2001); 148 v S 222 (Eff 3-22-2001); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-8-2002); 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 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 S 260, § 1, eff. 1-2-07; 151 v S 281, § 1, eff. 1-4-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08; 152 v S 183, § 1, eff. 9-11-08; 152 v H 280, § 1, eff. 4-7-09; 152 v H 130, § 1, eff. 4-7-09; 153 v S 58, § 1, eff. 9-17-10.

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* CURRENT THROUGH THE LEGISLATION PASSED BY THE 129TH OHIO GENERAL
ASSEMBLY
AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 21 AND 23
The provisions of 2011 SB 5 are subject to referendum and will not become effective unless ap-
proved
at the November 2011 general election. *

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

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§ 2950.01. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) "Tier 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 dispo-

sitional 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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AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 21 AND 23
The provisions of 2011 SB 5 are subject to referendum and will not become effective unless ap-
proved
at the November 2011 general election. *

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

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ORC Ann. 2950.04 (2011)

§ 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 of-
fender who is convicted of or pleads guilty to a sexually oriented offense and is sentenced to a pris-
on term, a term of imprisonment, or any other type of confinement and before the offender is trans-
ferred 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 con-
fined, 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 de-
partment 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 juve-
nile 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 de-
linquent 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 Re-*

vised 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.

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AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 21 AND 23
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TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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ORC Ann. 2950.05 (2011)

§ 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 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 (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.

PAGE'S OHIO REVISED CODE ANNOTATED
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* CURRENT THROUGH THE LEGISLATION PASSED BY THE 129TH OHIO GENERAL ASSEMBLY

AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 21 AND 23
The provisions of 2011 SB 5 are subject to referendum and will not become effective unless approved at the November 2011 general election. *

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

Go to the Ohio Code Archive Directory

ORC Ann. 2950.99 (2011)

Legislative Alert: LEXSEE 2011 Ohio HB 86 -- See sections 1 and 2.

§ 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.

ARIZONA REVISED STATUTES

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*** CURRENT THROUGH THE FIFTIETH LEGISLATURE, 1ST REG. SESS. ***
*** AND THE FIRST, SECOND, AND THIRD SPECIAL SESSIONS ***
*** INCLUDING ALL 2011 LEGISLATION ***

*** FOR PROVISIONS OF SPECIFIC ACTS AFFECTING THIS SECTION, SEE HISTORY ***
*** ANNOTATIONS CURRENT THROUGH OPINIONS POSTED ON LEXIS.COM AS OF ***
*** APRIL 8, 2011 ***

TITLE 13. CRIMINAL CODE
CHAPTER 38. MISCELLANEOUS
ARTICLE 3. REGISTRATION OF SEX OFFENDERS AND OFFENDER MONITORING

Go to the Arizona Code Archive Directory

A.R.S. § 13-3821 (2011)

§ 13-3821. Persons required to register; procedure; identification card; assessment; definitions

A. A person who has been convicted of or adjudicated guilty except insane for a violation or attempted violation of any of the following offenses or who has been convicted of or adjudicated guilty except insane or not guilty by reason of insanity for an offense committed in another jurisdiction that if committed in this state would be a violation or attempted violation of any of the following offenses or an offense that was in effect before September 1, 1978 and that, if committed on or after September 1, 1978, has the same elements of an offense listed in this section or who is required to register by the convicting or adjudicating jurisdiction, within ten days after the conviction or adjudication or within ten days after entering and remaining in any county of this state, shall register with the sheriff of that county:

1. Unlawful imprisonment pursuant to *section 13-1303* if the victim is under eighteen years of age and the unlawful imprisonment was not committed by the child's parent.
2. Kidnapping pursuant to *section 13-1304* if the victim is under eighteen years of age and the kidnapping was not committed by the child's parent.
3. Sexual abuse pursuant to *section 13-1404* if the victim is under eighteen years of age.
4. Sexual conduct with a minor pursuant to *section 13-1405*.
5. Sexual assault pursuant to *section 13-1406*.
6. Sexual assault of a spouse if the offense was committed before August 12, 2005.
7. Molestation of a child pursuant to *section 13-1410*.

8. Continuous sexual abuse of a child pursuant to *section 13-1417*.
9. Taking a child for the purpose of prostitution pursuant to *section 13-3206*.
10. Child prostitution pursuant to *section 13-3212* subsection A or subsection B, paragraphs 1 or 2.
11. Commercial sexual exploitation of a minor pursuant to *section 13-3552*.
12. Sexual exploitation of a minor pursuant to *section 13-3553*.
13. Luring a minor for sexual exploitation pursuant to *section 13-3554*.
14. Sex trafficking of a minor pursuant to *section 13-1307*.
15. A second or subsequent violation of indecent exposure to a person under fifteen years of age pursuant to *section 13-1402*.
16. A second or subsequent violation of public sexual indecency to a minor under the age of fifteen years pursuant to *section 13-1403*, subsection B.
17. A third or subsequent violation of indecent exposure pursuant to *section 13-1402*.
18. A third or subsequent violation of public sexual indecency pursuant to *section 13-1403*.
19. A violation of *section 13-3822* or *13-3824*.
20. Unlawful age misrepresentation.
21. Aggravated luring a minor for sexual exploitation pursuant to *section 13-3560*.

B. Before the person is released from confinement the state department of corrections in conjunction with the department of public safety and each county sheriff shall complete the registration of any person who was convicted of or adjudicated guilty except insane for a violation of any offense listed under subsection A of this section. Within three days after the person's release from confinement, the state department of corrections shall forward the registered person's records to the department of public safety and to the sheriff of the county in which the registered person intends to reside. Registration pursuant to this subsection shall be consistent with subsection E of this section.

C. Notwithstanding subsection A of this section, the judge who sentences a defendant for any violation of chapter 14 or 35.1 of this title or for an offense for which there was a finding of sexual motivation pursuant to *section 13-118* may require the person who committed the offense to register pursuant to this section.

D. The court may require a person who has been adjudicated delinquent for an act that would constitute an offense specified in subsection A or C of this section to register pursuant to this section. Any duty to register under this subsection shall terminate when the person reaches twenty-five years of age.

E. A person who has been convicted, adjudicated guilty except insane or adjudicated delinquent and who is required to register in the convicting or adjudicating state for an act that would constitute an offense specified in subsection A or C of this section and who is not a resident of this state shall be required to register pursuant to this section if the person is either:

1. Employed full-time or part-time in this state, with or without compensation, for more than fourteen consecutive days or for an aggregate period of more than thirty days in a calendar year.

2. Enrolled as a full-time or part-time student in any school in this state for more than fourteen consecutive days or for an aggregate period of more than thirty days in a calendar year. For the purposes of this paragraph, "school" means an educational institution of any description, public or private, wherever located in this state.

F. Any duty to register under subsection D or E of this section for a juvenile adjudication terminates when the person reaches twenty-five years of age.

G. The court may order the termination of any duty to register under this section on successful completion of probation if the person was under eighteen years of age when the offense for which the person was convicted or adjudicated guilty except insane was committed.

H. The court may order the suspension or termination of any duty to register under this section after a hearing held pursuant to *section 13-923*.

I. At the time of registering, the person shall sign or affix an electronic fingerprint to a statement giving such information as required by the director of the department of public safety, including all names by which the person is known, any required online identifier and the name of any website or internet communication service where the identifier is being used. The sheriff shall fingerprint and photograph the person and within three days thereafter shall send copies of the statement, fingerprints and photographs to the department of public safety and the chief of police, if any, of the place where the person resides. The information that is required by this subsection shall include the physical location of the person's residence and the person's address. If the person has a place of residence that is different from the person's address, the person shall provide the person's address, the physical location of the person's residence and the name of the owner of the residence if the residence is privately owned and not offered for rent or lease. If the person receives mail at a post office box, the person shall provide the location and number of the post office box. If the person does not have an address or a permanent place of residence, the person shall provide a description and physical location of any temporary residence and shall register as a transient not less than every ninety days with the sheriff in whose jurisdiction the transient is physically present.

J. On the person's initial registration and every year after the person's initial registration, the person shall confirm any required online identifier and the name of any website or internet communication service where the identifier is being used and the person shall obtain a new nonoperating identification license or a driver license from the motor vehicle division in the department of transportation and shall carry a valid nonoperating identification license or a driver license. Notwithstanding *sections 28-3165* and *28-3171*, the license is valid for one year from the date of issuance, and the person shall submit to the department of transportation proof of the person's address and place of residence. The motor vehicle division shall annually update the person's address and photograph and shall make a copy of the photograph available to the department of public safety or to any law enforcement agency. The motor vehicle division shall provide to the department of public safety daily address updates for persons required to register pursuant to this section.

K. Except as provided in subsection E or L of this section, the clerk of the superior court in the county in which a person has been convicted of or adjudicated guilty except insane for a violation of any offense listed under subsection A of this section or has been ordered to register pursuant to subsection C or D of this section shall notify the sheriff in that county of the conviction or adjudication within ten days after entry of the judgment.

L. Within ten days after entry of judgment, a court not of record shall notify the arresting law enforcement agency of an offender's conviction of or adjudication of guilty except insane for a violation of *section 13-1402*. Within ten days after receiving this information, the law enforcement agency shall determine if the offender is required to register pursuant to this section. If the law enforcement agency determines that the offender is required to register, the law enforcement agency shall provide the information required by *section 13-3825* to the department of public safety and shall make community notification as required by law.

M. A person who is required to register pursuant to this section because of a conviction or adjudication of guilty except insane for the unlawful imprisonment of a minor or the kidnapping of a minor is required to register, absent additional or subsequent convictions or adjudications, for a period of ten years from the date that the person is released from prison, jail, probation, community supervision or parole and the person has fulfilled all restitution obligations. Notwithstanding this subsection, a person who has a prior conviction or adjudication of guilty except insane for an offense for which registration is required pursuant to this section is required to register for life.

N. A person who is required to register pursuant to this section and who is a student at a public or private institution of postsecondary education or who is employed, with or without compensation, at a public or private institution of postsecondary education or who carries on a vocation at a public or private institution of postsecondary education shall notify the county sheriff having jurisdiction of the institution of postsecondary education. The person who is required to register pursuant to this section shall also notify the sheriff of each change in enrollment or employment status at the institution.

O. At the time of registering, the sheriff shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from a person who has been convicted of or adjudicated guilty except insane for an offense committed in another jurisdiction that if committed in this state would be a violation or attempted violation of any of the offenses listed in subsection A of this section or an offense that was in effect before September 1, 1978 and that, if committed on or after September 1, 1978, has the same elements of an offense listed in subsection A of this section or who is required to register by the convicting or adjudicating jurisdiction. The sheriff shall transmit the sample to the department of public safety.

P. Any person who is required to register under subsection A of this section shall register the person's required online identifier and the name of any website or internet communication service where the identifier is being used or is intended to be used with the sheriff from and after December 31, 2007, regardless of whether the person was required to register an identifier at the time of the person's initial registration under this section.

Q. On conviction of or adjudication of guilty except insane for any offense for which a person is required to register pursuant to this section, in addition to any other penalty prescribed by law, the court shall order the person to pay an additional assessment of two hundred fifty dollars. This assessment is not subject to any surcharge. The court shall transmit the monies received pursuant to this section to the county treasurer. The county treasurer shall transmit the monies received to the state treasurer. The state treasurer shall deposit the monies received in the state general fund. Notwithstanding any other law, the court shall not waive the assessment imposed pursuant to this section.

R. For the purposes of this section:

1. "Address" means the location at which the person receives mail.
2. "Required online identifier" means any electronic e-mail address information or instant message, chat, social networking or other similar internet communication name, but does not include a social security number, date of birth or pin number.
3. "Residence" means the person's dwelling place, whether permanent or temporary.

HISTORY: Laws 1998, Ch. 291, § 2; Laws 1999, Ch. 261, § 32; Laws 1999, Ch. 305, § 1; Laws 2001, Ch. 109, § 2; Laws 2003, Ch. 42, § 1; Laws 2003, Ch. 173, § 1; Laws 2004, Ch. 142, § 2; Laws 2005, Ch. 176, § 1; Laws 2005, Ch. 185, § 8; Laws 2005, Ch. 282, § 3; Laws 2006, Ch. 101, § 2; Laws 2006, Ch. 135, § 2; Laws 2006, Ch. 160, § 1; Laws 2006, Ch. 184, § 1; Laws 2007, Ch. 176, § 4; Laws 2007, Ch. 84, § 1; Laws 2008, Ch. 97, § 3; Laws 2008, Ch. 301, § 89; Laws 2010, 7th Sp. Sess., Ch. 6, § 4; Laws 2010, 2nd Reg. Sess., Ch. 234, § 1; Laws 2010, 2nd Reg. Sess., Ch. 255, § 8.

LexisNexis (TM) New Jersey Annotated Statutes

*** THIS SECTION IS CURRENT THROUGH NEW JERSEY 214TH LEGISLATURE ***
 2ND ANNUAL SESSION (P.L. 2011 CHAPTER 88 AND JR 6)
 STATE CONSTITUTION CURRENT THROUGH THE NOVEMBER, 2010 ELECTION
 ANNOTATIONS CURRENT THROUGH JULY 21, 2011.

TITLE 9. CHILDREN -- JUVENILE AND DOMESTIC RELATIONS COURTS
 SUBTITLE 3. PROTECTIVE WELFARE LAWS
 CHAPTER 6. ABUSE, ABANDONMENT, CRUELTY AND NEGLECT OF A CHILD
 ARTICLE 1. IN GENERAL

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 9:6-1 (2011)

§ 9:6-1. Abuse, abandonment, cruelty and neglect of child; what constitutes

Abuse of a child shall consist in any of the following acts: (a) disposing of the custody of a child contrary to law; (b) employing or permitting a child to be employed in any vocation or employment injurious to its health or dangerous to its life or limb, or contrary to the laws of this State; (c) employing or permitting a child to be employed in any occupation, employment or vocation dangerous to the morals of such child; (d) the habitual use by the parent or by a person having the custody and control of a child, in the hearing of such child, of profane, indecent or obscene language; (e) the performing of any indecent, immoral or unlawful act or deed, in the presence of a child, that may tend to debauch or endanger or degrade the morals of the child; (f) permitting or allowing any other person to perform any indecent, immoral or unlawful act in the presence of the child that may tend to debauch or endanger the morals of such child; (g) using excessive physical restraint on the child under circumstances which do not indicate that the child's behavior is harmful to himself, others or property; or (h) in an institution as defined in section 1 of P.L.1974, c. 119 (C. 9:6-8.21), willfully isolating the child from ordinary social contact under circumstances which indicate emotional or social deprivation.

Abandonment of a child shall consist in any of the following acts by anyone having the custody or control of the child: (a) willfully forsaking a child; (b) failing to care for and keep the control and custody of a child so that the child shall be exposed to physical or moral risk without proper and sufficient protection; (c) failing to care for and keep the control and custody of a child so that the child shall be liable to be supported and maintained at the expense of the public, or by child caring societies or private persons not legally chargeable with its or their care, custody and control.

Cruelty to a child shall consist in any of the following acts: (a) inflicting unnecessarily severe corporal punishment upon a child; (b) inflicting upon a child unnecessary suffering or pain, either mental or physical; (c) habitually tormenting, vexing or afflicting a child; (d) any willful act of

omission or commission whereby unnecessary pain and suffering, whether mental or physical, is caused or permitted to be inflicted on a child; (e) or exposing a child to unnecessary hardship, fatigue or mental or physical strains that may tend to injure the health or physical or moral well-being of such child.

Neglect of a child shall consist in any of the following acts, by anyone having the custody or control of the child: (a) willfully failing to provide proper and sufficient food, clothing, maintenance, regular school education as required by law, medical attendance or surgical treatment, and a clean and proper home, or (b) failure to do or permit to be done any act necessary for the child's physical or moral well-being. Neglect also means the continued inappropriate placement of a child in an institution, as defined in section 1 of P.L.1974, c. 119 (*C. 9:6-8.21*), with the knowledge that the placement has resulted and may continue to result in harm to the child's mental or physical well-being.

HISTORY: Amended by L. 1987, c. 341, § 1.

LexisNexis (TM) New Jersey Annotated Statutes

*** THIS SECTION IS CURRENT THROUGH NEW JERSEY 214TH LEGISLATURE ***
2ND ANNUAL SESSION (P.L. 2011 CHAPTER 88 AND JR 6)
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TITLE 9. CHILDREN -- JUVENILE AND DOMESTIC RELATIONS COURTS
SUBTITLE 3. PROTECTIVE WELFARE LAWS
CHAPTER 6. ABUSE, ABANDONMENT, CRUELTY AND NEGLECT OF A CHILD
ARTICLE 1. IN GENERAL

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 9:6-3 (2011)

§ 9:6-3. Cruelty and neglect of children; crime of fourth degree; remedies

Any parent, guardian or person having the care, custody or control of any child, who shall abuse, abandon, be cruel to or neglectful of such child, or any person who shall abuse, be cruel to or neglectful of any child shall be deemed to be guilty of a crime of the fourth degree. If a fine be imposed, the court may direct the same to be paid in whole or in part to the parent, or to the guardian, custodian or trustee of such minor child or children; provided, however, that whenever in the judgment of the court it shall appear to the best interest of the child to place it in the temporary care or custody of a society or corporation, organized or incorporated under the laws of this State, having as one of its objects the prevention of cruelty to children, and the society or corporation is willing to assume such custody and control, the court may postpone sentence and place the child in the custody of such society or corporation, and may place defendant on probation, either with the county probation officers or an officer of the society or corporation to which the child is ordered, and may order the parent, guardian or person having the custody and control of such child to pay to such society or corporation a certain stated sum for the maintenance of such child. When, however, a child is so placed in the custody of such society or corporation, and defendant fails to make the payments as ordered by the court, the court shall cause the arrest and arraignment before it of such defendant, and shall impose upon the defendant the penalty provided in this section.

HISTORY: Amended 1944,c.196,s.1; 1990,c.26,s.5.



TEXAS STATUTES AND CODES

*** ARCHIVE MATERIAL ***

*** THIS DOCUMENT IS CURRENT THROUGH THE 1995 SUPPLEMENT (1993 SESSION)

[NO LEGISLATION ENACTED IN 1994]

PENAL CODE
TITLE 3. PUNISHMENTS
CHAPTER 12. PUNISHMENTS
SUBCHAPTER A. GENERAL PROVISIONS

Tex. Penal Code § 12.04 (1995)

§ 12.04. Classification of Felonies

(a) Felonies are classified according to the relative seriousness of the offense into five categories:

- (1) capital felonies;
- (2) felonies of the first degree;
- (3) felonies of the second degree;
- (4) felonies of the third degree; and
- (5) state jail felonies.

(b) An offense designated a felony in this code without specification as to category is a state jail felony.



TEXAS STATUTES AND CODES

*** ARCHIVE MATERIAL ***

*** THIS DOCUMENT IS CURRENT THROUGH THE 1995 SUPPLEMENT (1993 SESSION)

[NO LEGISLATION ENACTED IN 1994]

PENAL CODE

TITLE 5. OFFENSES AGAINST THE PERSON
CHAPTER 22. ASSAULTIVE OFFENSES

Tex. Penal Code § 22.021 (1995)

§ 22.021. Aggravated Sexual Assault

(a) A person commits an offense:

(1) if the person:

(A) intentionally or knowingly:

(i) causes the penetration of the anus or female sexual organ of another person by any means, without that person's consent;

(ii) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(iii) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(B) intentionally or knowingly:

(i) causes the penetration of the anus or female sexual organ of a child by any means;

(ii) causes the penetration of the mouth of a child by the sexual organ of the actor;

(iii) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; and

(2) if:

(A) the person:

(i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;

(ii) by acts or words places the victim in fear that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;

(iii) by acts or words occurring in the presence of the victim threatens to cause the death, serious bodily injury, or kidnapping of any person;

(iv) uses or exhibits a deadly weapon in the course of the same criminal episode; or

(v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or

(B) the victim is younger than 14 years of age.

(b) In this section, "child" has the meaning assigned that term by Section 22.011(c).

(c) An aggravated sexual assault under this section is without the consent of the other person if the aggravated sexual assault occurs under the same circumstances listed in Section 22.011(b).

(d) The defense provided by Section 22.011(d) applies to this section.

~~(e) An offense under this section is a felony of the first degree.~~

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*** CURRENT THROUGH PL 112-23, APPROVED 6/29/2011 ***

TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I. CRIMES
CHAPTER 117. TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY AND RELATED
CRIMES

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18 USCS § 2423

§ 2423. Transportation of minors

(a) Transportation with intent to engage in criminal sexual activity. A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title and imprisoned not less than 10 years or for life.

(b) Travel with intent to engage in illicit sexual conduct. A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

(c) Engaging in illicit sexual conduct in foreign places. Any United States citizen or alien admitted for permanent residence who travels in foreign commerce, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

(d) Ancillary offenses. Whoever, for the purpose of commercial advantage or private financial gain, arranges, induces, procures, or facilitates the travel of a person knowing that such a person is traveling in interstate commerce or foreign commerce for the purpose of engaging in illicit sexual conduct shall be fined under this title, imprisoned not more than 30 years, or both.

(e) Attempt and conspiracy. Whoever attempts or conspires to violate subsection (a), (b), (c), or (d) shall be punishable in the same manner as a completed violation of that subsection.

(f) Definition. As used in this section, the term "illicit sexual conduct" means (1) a sexual act (as defined in section 2246 [18 USCS § 2246]) with a person under 18 years of age that would be in violation of chapter 109A [18 USCS §§ 2241 et seq.] if the sexual act occurred in the special maritime and territorial jurisdiction of the United States; or (2) any commercial sex act (as defined in section 1591 [18 USCS § 1591]) with a person under 18 years of age.

(g) Defense. In a prosecution under this section based on illicit sexual conduct as defined in subsection (f)(2), it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the person with whom the defendant engaged in the commercial sex act had attained the age of 18 years.

HISTORY:

(June 25, 1948, ch 645, § 1, 62 Stat. 812; Feb. 6, 1978, P.L. 95-225, § 3(a), 92 Stat. 8; Nov. 7, 1986, P.L. 99-628, § 5(b)(1), 100 Stat. 3511; Dec. 23, 1995, P.L. 104-71, § 5, 109 Stat. 774; Sept. 13, 1994, P.L. 103-322, Title XVI, § 160001(g), 108 Stat. 2037; Dec. 23, 1995, P.L. 104-71, § 5, 109 Stat. 774; Oct. 11, 1996, P.L. 104-294, Title VI, §§ 601(b)(4), 604(b)(33), 110 Stat. 3499, 3508; Oct 30, 1998, P.L. 105-314, Title I, § 103, 112 Stat. 2976; Nov. 2, 2002, P.L. 107-273, Div B, Title IV, § 4002(c)(1), 116 Stat. 1808; April 30, 2003, P.L. 108-21, Title I, §§ 103(a)(2)(C), (b)(2)(B), 105, 117 Stat. 652, 653; July 27, 2006, P.L. 109-248, Title II, § 204, 120 Stat. 613.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Based on *title 18, U.S.C., 1940 ed., § 400* (June 25, 1910, ch. 395, § 4, 36 Stat. 826).

Words "deemed guilty of a felony" were deleted as unnecessary in view of definition of felony in section 1 of this title. (See reviser's note under section 550 of this title.)

Words "and on conviction thereof shall be" were deleted as surplusage since punishment cannot be imposed until a conviction is secured.

Words "Possession of the United States" were inserted twice. (See reviser's note under section 2421 of this title.)

Minor changes were made in phraseology.

Amendments:

~~1978. Act Feb. 6, 1978, substituted the text of this section for text which read: "Whoever knowingly persuades, induces, entices, or coerces any woman or girl who has not attained her eighteenth birthday, to go from one place to another by common carrier, in interstate commerce or within the District of Columbia or any Territory or Possession of the United States, with intent that she be induced or coerced to engage in prostitution, debauchery or other immoral practice, shall be fined not more than \$ 10,000 or imprisoned not more than ten years, or both."~~

1986. Act Nov. 7, 1986, substituted the text of this section for text which read:

"(a) Any person who transports, finances in whole or part the transportation of, or otherwise causes or facilitates the movement of, any minor in interstate or foreign commerce, or within the District of Columbia or any territory or other possession of the United States, with the intent--

"(1) that such minor engage in prostitution; or

"(2) that such minor engage in prohibited sexual conduct, if such person so transporting, financing, causing, or facilitating movement knows or has reason to know that such prohibited sexual conduct will be commercially exploited by any person;

shall be fined not more than \$ 10,000 or imprisoned not more than ten years, or both.

"(b) As used in this section--

"(1) the term 'minor' means a person under the age of eighteen years;

"(2) the term 'prohibited sexual conduct' means--

"(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

"(B) bestiality;

"(C) masturbation;

"(D) sado-masochistic abuse (for the purpose of sexual stimulation); or

"(E) lewd exhibition of the genitals or pubic area of any person; and

"(3) the term 'commercial exploitation' means having as a direct or indirect goal monetary or other material gain."

1994. Act Sept. 13, 1994, as amended by Act Oct. 11, 1996 (effective on 9/13/94, pursuant to § 604(d) of such Act, which appears as *18 USCS § 13* note) substituted "(a) Transportation with intent to engage in criminal sexual activity. A person who" for "Whoever".

Such Act further added subsec. (b).

1995. Act Dec. 23, 1995, in subsec. (b), substituted "2246" for "2245".

1996. Act Oct. 11, 1996 purported to amend subsec. (b) by substituting "2246" for "2245"; however, because of a prior amendment, this amendment could not be executed. This amendment was repealed by Act Nov. 2, 2002, effective Oct. 11, 1996.

Such Act further (effective on 9/13/94, pursuant to § 604(d) of such Act, which appears as *18 USCS § 13* note) amended the directory language of Act Sept. 13, 1994 without affecting the text of this section.

1998. Act Oct. 30, 1998, substituted subsec. (a) for one which read: "(a) Transportation with intent to engage in criminal sexual activity. A person who knowingly transports any individual under the age of 18 years in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than ten years, or both."; and, in subsec. (b), substituted "15 years" for "10 years".

2002. Act Nov. 2, 2002 (effective 10/11/1996, pursuant to § 4002(c)(1) of such Act), amended Act Oct. 11, 1996 by repealing an amendment which could not be executed.

2003. Act April 30, 2003, in subsec. (a), deleted "or attempts to do so," following "offense," substituted "and imprisoned not less than 5 years and" for ", imprisoned", substituted "30" for "15", and deleted ", or both" preceding the concluding period; and substituted subsecs. (b)-(g) for former subsec. (b), which read: "(b) Travel with intent to engage in sexual act with a juvenile. A person who travels in interstate commerce, or conspires to do so, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, or conspires to do so, for the purpose of engaging in any sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States shall be fined under this title, imprisoned not more than 15 years, or both."

2006. Act July 27, 2006, in subsec. (a), substituted "10 years or for life" for "5 years and not more than 30 years".