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STATEMENT OF THE CASE AND FACTS

At the age of 21, Travis Blankenship engaged in consensual sexual conduct with a 15 year-old girl. He pleaded guilty to a bill of information charging one count of unlawful sexual conduct with a minor, a violation of R.C. 2907.04 and a fourth-degree felony. At the time of the offense, Mr. Blankenship was attending Clark State and working a part-time job at a department store. *State v. Blankenship*, 2d. Dist. Clark No. 2012-CA-74, 2014-Ohio-232, ¶ 17 (Donovan, J., dissenting).

“As part of the pre-sentence investigation, a psychologist evaluated him and opined that he was not ‘a sexual offender’ despite having committed a sex offense. The psychologist found that Blankenship’s risk of re-offending was not high.” *Blankenship* at ¶ 2. At sentencing, the trial court recognized that though the psychologist, Dr. Roush, recommended psychological therapy, he did not recommend, “in fact strongly opposed, sexual offender therapy.” Sept. 28, 2012 Transcript, p. 9.

Mr. Blankenship was sentenced to five years of community control with conditions, including a six-month jail sentence, which was suspended after approximately ten days. *Blankenship* at ¶ 2, 15. At sentencing, Mr. Blankenship objected to being classified as a sex offender and argued that such classification violated the Eighth Amendment’s prohibition against cruel and unusual punishment. Sept. 28, 2012 Transcript p. 6, 13. The trial court noted the objection, and told defense counsel, “[y]ou can see if you can get the Court of Appeals to change the requirements of my job.” Sept. 28, 2012 Transcript, p. 13. As required by law, Mr. Blankenship was classified as a Tier II sex-offender. *Blankenship* at ¶ 2.

As a Tier II sex offender, Mr. Blankenship is required to register in person with the sheriff of the county where he establishes residency within three days of coming into that county,

as well as with the sheriff of the county in which he establishes a place of education or employment immediately upon coming into that county. He is also required to verify his residence address, place of employment and/or place of education in person every 180 days for 25 years. Sept. 28, 2012 Transcript, p. 11-13.

On direct appeal, the Second District Court of Appeals overruled the single assignment of error, addressing the Eighth Amendment issue, and affirmed the trial court's judgment. *Id.* at ¶ 11-12. The dissent would have reversed, having found that the punitive nature of the Tier II registration requirement was "grossly disproportionate to the nature of the offense and the character of the offender" and thus an Eighth Amendment violation. *Id.* at ¶ 17 (Donovan, J., dissenting).

Mr. Blankenship submitted a timely Notice of Appeal and Memorandum in Support of Jurisdiction to this Court. On May 28, 2014, this Court accepted Mr. Blankenship's appeal.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW

Mandatory sex offender classifications under Senate Bill 10 constitute cruel and unusual punishment where the classification is grossly disproportionate to the nature of the offense and character of the offender. Eighth and Fourteenth Amendments to the United States Constitution; Article 1, Section 9 of the Ohio Constitution.

This Court has held that the enhanced sex-offender reporting and notification requirements enacted by Senate Bill 10 (“S.B. 10”), are punitive in nature. “Following the enactment of S.B. 10 all doubt has been removed: R.C. Chapter 2950 is punitive.” *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, ¶ 16. While *Williams* pertained to retroactive application of R.C. 2950’s requirements, this case concerns the mandatory nature of sex offender classification in violation of the Eighth Amendment’s prohibition on cruel and unusual punishment.

I. Eighth Amendment to the United States Constitution

“The Eighth Amendment, applicable to the States through the Fourteenth Amendment, provides that ‘[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.’ The Amendment proscribes ‘all excessive punishments, as well as cruel and unusual punishments that may or may not be excessive.’” *Kennedy v. Louisiana*, 554 U.S. 407, 419, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008), quoting *Atkins v. Virginia*, 536 U.S. 304, 311, fn. 7, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002). The United States Supreme Court has explained that the Eighth Amendment’s protection against excessive or cruel and unusual punishments flows from the basic “precept of justice that punishment for [a] crime should be graduated and proportioned to [the] offense.” *Weems v. United States*, 217 U.S. 349, 367, 30 S.Ct. 544, 54 L.Ed. 793 (1910). As this case does, the bulk of Eighth Amendment jurisprudence

concerns whether a punishment is disproportionate to the crime. *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, ¶ 25.

Proportionality Review

Proportionality review falls within two general classifications: the first involving challenges to the length of terms-of-years sentences, and the second involving categorical restrictions. *Graham v. Florida*, 560 U.S.48, 59, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010). Until recently, categorical restriction challenges involved the death penalty. But in *Graham*, the United States Supreme Court used this approach to find that sentencing juveniles to life without parole for non-homicide convictions was cruel and unusual punishment. *Id.* at 60-62, 82. This Court has also used this approach to hold that mandatory lifelong sex-offender classification for juveniles constituted cruel and unusual punishment. *In re C.P.* at ¶ 27, 58.

Within the categorical classification, successful challenges have dealt with the nature of the offense committed as well as the characteristics of the offender. *See, e.g., Kennedy* at 437 (addressing the nature of the offense and holding that the Eighth Amendment required a categorical restriction against capital punishment for nonhomicide crimes against individuals); *Graham* at 60-62, 82 (addressing the characteristics of the offender and holding that the Eighth Amendment required a categorical restriction against life without parole for juvenile offenders committing non-homicide crimes).

This case deals with an individual who committed a sexually oriented offense but was determined not to be a sex offender. Despite the record demonstrating that Mr. Blankenship is not a sex offender, is not likely to commit another sex offense, and does not require sexual offender therapy, he was labeled a Tier II sex offender under S.B. 10 and is consequently required to register accordingly for 25 years. Sept. 28, 2012 Transcript, p. 11-13. After pleading

guilty to a bill of information for sexual conduct with a minor and as part of the presentence investigation, Mr. Blankenship was determined by a psychologist, Dr. Roush, not to be a sex offender. However, under S.B. 10 he was required to be labelled as a Tier II sex offender and consequently must register his home address, work address, and any school address in person with the sheriff of the appropriate county every 180 days for the next 25 years or face criminal prosecution and incarceration. Sept. 28, 2012 Transcript, p. 11-13. This punishment is disproportionate to the offense and nature of the offender. Being labelled a sex offender and required to register as a sex offender, despite the record demonstrating that he is not a sex offender, violates the Eighth Amendment's prohibition against cruel and unusual punishment.

2-Step Analysis

When adopting categorical rules, the United States Supreme Court considers whether there is a national consensus against the sentencing practice and also determines “in the exercise of its own independent judgment whether the punishment in question violates the Constitution.” *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, at ¶ 29, quoting *Graham*, 560 U.S. at 61, 130 S.Ct. 2011.

Step 1: National Consensus

A court first considers “objective indicia of society's standards, as expressed in legislative enactments and state practice” to determine whether there is a national consensus against the sentencing practice at issue. *Roper v. Simmons*, 543 U.S. 551, 563, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005).

Prior to any national legislation regarding sex offender registration, Ohio enacted its first sex offender registration statute in 1963. *State v. Cook*, 83 Ohio St.3d 404, 406, 700 N.E.2d 570 (1998). The original law was rarely used and existed without amendment for three decades.

State v. Bodyke, 126 Ohio St.3d 1235, 2010-Ohio-3737, 933 N.E.2d 753, ¶ 3. However, several high-profile child-rape and murder cases in the late 1980s and early 1990s set in motion a new wave of sex offender registration statutes, including federal legislation. Schubert, Comment, *Challenging Ohio's Adam Walsh Act: Senate Bill 10 Blurs the Line Between Punishment and Remedial Treatment of Sex Offenders*, 35 U.Dayton L.Rev. 277 (2010).

In 1994 Congress enacted the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, requiring all 50 states to create and implement a sex offender registry and two years later Congress amended that act to require community notification provisions. *Bodyke* at ¶ 5-6. The amended act became known as the federal "Megan's Law." *Id.* at ¶ 5. In 1996, in order to comply with the federal requirements, Ohio's General Assembly amended Ohio's existing sex offender registration law and created Ohio's first comprehensive registration and classification system for sex offenders as part of Am.Sub.H.B. No. 180, 146 Ohio Laws, Part II, 2560 ("H.B. 180"). *Id.* at ¶ 7. In 2003, the Ohio General Assembly amended Ohio's sex offender registration statutes to what is now known as Ohio's Sex Offender Registration and Notification Law ("SORN"). Am.Sub.S.B. No. 5, 150 Ohio Laws, Part IV, 6558 ("S.B. 5"). *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, 896 N.E.2d 110, ¶ 1.

On July 27, 2006, the United States Congress enacted the Adam Walsh Act ("AWA"), which tightened federal guidelines and requirements for sexually oriented offenders, and established registration and notification requirements referred to as SORNA. Adam Walsh Child Protection and Safety Act, Pub.L. 109-248, 120 Stat. 587 (codified as amended at 42 U.S.C. 16901-16991(2006)) And, similar to the Jacob Wetterling Act and Megan's Law, all 50 states were required to enact similar legislation by July 27, 2009, or risk losing a portion of a federal law enforcement grant. Office of the Attorney General; The National Guidelines for Sex

Offender Registration and Notification; Notice. 73 Fed. Reg. 128 (July 2, 2008) (Codified as 42 U.S.C. 16911 et seq.). The 127th Session of the Ohio General Assembly enacted Ohio's version of the AWA, 2007 Am.Sub.S.B. No. 10, to comply with the federal guidelines. The amended provisions of S.B. 10 took effect on January 1, 2008. *Ferguson* at fn1. Ohio was the first state to substantially comply with AWA, and has consequently been at the forefront of legislation and litigation regarding the required sex offender classification and registration.

Senate Bill 10 drastically changed the landscape of Ohio's SORN provisions. The bill created a three-tiered, offense-based classification scheme, which eliminated the requirement that classification levels be determined after a full hearing. R.C. 2950.01(E), (F), and (G); Former R.C. 2950.09 (Repealed July 1, 2007). Rather, under S.B. 10, classifications were automatic and removed judicial discretion from the classification process. S.B. 10 increased the length of time that adult offenders in any classification level must register with county law enforcement; and increased the amount of information that registrants are required to give to local law enforcement officers. R.C. 2950.07(B); R.C. 2950.041(B) and (C).

Though all states have some form of sex offender registration requirements, as of the submission of this brief, the Justice Department reports that only 17 states, including Ohio, have substantially implemented SORNA's requirements. Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, *Jurisdictions that have substantially implemented SORNA*, http://www.smart.gov/newsroom_jurisdictions_sorna.htm (accessed August 5, 2014).

While classification and registration schemes vary across states, other states addressing Eighth Amendment challenges to mandatory sex offender classification for adults have rested on findings that the registration schemes were civil in nature and not punitive. *See, e.g., State v.*

Fruge, La. Ct. App. NO. 2012 KA 0066, 2012 La. App. Unpub. LEXIS 748 (Nov. 2, 2012) (denying defendant’s constitutional challenge because, among other reasons, the reporting and registration requirements were not a punishment). However, this Court has established that S.B. 10 is punitive. *Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, at ¶ 16. While there does not appear to be a national consensus against mandatory sex offender classification in terms of the Eighth Amendment “consensus, while ‘entitled to great weight,’ is not itself determinative of whether a punishment is cruel and unusual.” *Graham*, 560 U.S. at 67, 130 S.Ct. 2011, *Kennedy*, 554 U.S. at 434, 128 S.Ct. 2641.

Furthermore, when it comes to laws that involve sex offenders, the passions of the majority must be tempered with reason. Lester, *The Legitimacy of Sex Offender Residence and Employment Restrictions*, 40 Akron L.Rev. 339, 340 (2007). “Overborne by a mob mentality for justice, officials at every level of government are enacting laws that effectively exile convicted sex offenders from their midst with little contemplation as to the appropriateness or constitutionality of their actions.” *Id.* However, “[g]iven that the sex-offender lobby is neither large nor vocal, it will be up to the courts to protect the interests of this disenfranchised group.” *Id.* (internal citations omitted). In the present case, this Court must protect the interests of people in Mr. Blankenship’s position, convicted of a sex offense, but demonstrably not a sex offender, nevertheless burdened with a 25-year punishment reserved for sex offenders.

Step 2: Court’s Independent Judgment

“In accordance with the constitutional design, ‘the task of interpreting the Eighth Amendment remains [the court’s] responsibility.’” *Graham v. Florida*, 560 U.S.48, 59, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), quoting *Roper v. Simmons*, 543 U.S. 551, 575, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005).

The United States Supreme Court has established that the judicial exercise of independent judgment requires consideration of 1) the culpability of the offenders at issue in light of their crimes and characteristics, 2) the severity of the punishment in question, and 3) whether the challenged sentencing practice serves legitimate penological goals. *Graham* at 67-68.

Culpability of Offenders in Light of the Crimes and Characteristics

In *Graham*, the United States Supreme Court stated that when conducting its own independent review, a court must consider the culpability of the offenders at issue in light of their crimes and characteristics. *Id.* Here, Mr. Blankenship belongs to a category of individuals whom the record reflects are not sex offenders, despite the fact that they committed sexually oriented offenses. While Mr. Blankenship, and any others who belong in his category are culpable for their underlying sexually oriented offenses, and are appropriately punished for those crimes, they are not culpable regarding classification and registration as sex offenders. Though he did commit a sexually oriented offense, the psychologist who evaluated Mr. Blankenship as part of the sentencing process determined that he was not a sex offender, strongly opposed any sex offender therapy, and found that he was not likely to commit another sexually based offense. Nevertheless, despite these findings, Mr. Blankenship received a 25 year punishment reserved for sex offenders.

Additionally, in *In re C.P.*, this Court noted that when addressing culpability for Eighth Amendment purposes, the Court should consider the nature of the offenses to which the penalty may apply. Here, mandatory sex offender registration applies to sexually oriented offenses, as defined by R.C. 2950.01(A). As in *In re C.P.*, those crimes differ from crimes like homicide crimes in a moral sense. *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, at ¶ 42, quoting *Graham*, 560 U.S. at 69, 130 S.Ct. 2011.

Mr. Blankenship's particular characteristics and crime further highlight the disproportionate punishment that he has received. Judge Donovan stated in her dissent that "some of the analysis of *In Re: C.P.* applies equally to young adult offenders such as Blankenship who do not have prior felonies and who pose no real threat to the community." *Blankenship*, 2d. Dist. Clark No. 2012-CA-74, 2014-Ohio-232, at ¶ 16 (Donovan, J., dissenting).

Juveniles as a class are distinguished from adults in terms of their culpability as evidenced by the separate juvenile justice system. *In re C.P.* at ¶ 39. However, much of the recent science underlying the Supreme Court's decisions in *Roper*, *Graham*, and *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), regarding juveniles and brain development is equally applicable to young adults in their early twenties. *See* Lave and McCrary, *Do Sexually Violent Predator Laws Violate Double Jeopardy or Substantive Due Process?* 78 Brooklyn L. Rev. 1391, 1430 (2013) ("The studies that ended up proving so influential to the Court were due in large part to advances in brain imaging technology which allowed scientists to observe that the adolescent brain was still developing until a person was in his or her mid-20s, including in areas of the brain that governed impulse control, reasoning, and judgment"). Here, Mr. Blankenship was 21 years old at the time he committed the fourth-degree felony. The psychologist who evaluated him prior to sentencing, while opposing sex offender therapy, did recommend psychotherapy to address issues of cognitive distortions and appropriate healthy relationships with Mr. Blankenship. Sept. 28, 2012 Transcript, p. 9.

Mr. Blankenship's young age, low-level felony based on a consensual relationship, and lower maturity levels, as evidenced by the psychologist's recommendations regarding therapy, his specific characteristics, in addition to the characteristics of the category as a whole, establish reduced culpability.

Severity of Punishment in Question

A court's independent review also includes a consideration of the severity of the punishment in question. *Graham*, 560 U.S. at 67, 130 S.Ct. 2011. Here, the severity of the punishment in question is critical. Sex offender registration presents significant hurdles and difficulties for those required to register. This Court noted that "registration and notification necessarily involve stigmatization." *In re C.P.* at ¶ 45. Judge Donovan recognized this in her dissent, when she stated "[t]his classification carries significant restraints on Blankenship's liberty and a social stigma that interferes with employability, travel and housing." *Blankenship*, 2d. Dist. Clark No. 2012-CA-74, 2014-Ohio-232, at ¶ 15 (Donovan, J., dissenting).

In addition to difficulties finding and securing housing and employment, the "community notification and public dissemination provisions, which publicize where an ex-offender lives and information about his crime, have led to widespread labeling, ostracizing, and attacks on the ex-offender." Klein, *An Analysis of Thirty-Five Years of Rape Reform: A Frustrating Search for Fundamental Fairness*, 41 Akron L.Rev. 981 (2008). See also Radio Interview with Franklin County Sheriff's Office Chief Deputy Stephan Martin, WOSO Radio (June 10, 2010) (available at: <http://wosu.org/2012/allsides/sex-offender-registry/>) (accessed August 5, 2014).

As discussed previously, the record demonstrates that Mr. Blankenship is not a sex offender. To punish an individual "with a scarlet letter of twenty-five years duration," by requiring him to register as a sex offender when he has been determined not to be a sex offender is an especially disproportionate punishment. *Blankenship*, 2d. Dist. Clark No. 2012-CA-74, 2014-Ohio-232, ¶ 15 (Donovan, J., dissenting).

Additional facts of this case highlight the severity of the punishment for Mr. Blankenship specifically. Like the juveniles in *In re C.P.*, Mr. Blankenship was at the beginning of his adult

life, and the length of this punishment is extraordinary. While he was sentenced to community control for his fourth-degree felony, as a function of his classification he is required to register every 180 days for 25 years. For Mr. Blankenship, as with a juvenile offender, the punishment “is imposed at an age at which the character of the offender is not yet fixed.” *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, at ¶ 45. The consequences to Mr. Blankenship as he is beginning his adult life mirror those of a juvenile also beginning his adult life: he is hampered in his education, in his relationships, and in his work life. Mr. Blankenship will have to wait until he is 46 to gain a fresh start. In *In re C.P.* this Court noted that “[w]hile not a harsh penalty to a career criminal used to serving time in a penitentiary, a lifetime or even 25-year requirement of community notification means everything to a juvenile.” *Id.* Similarly, while a 25-year punishment of registration may be appropriate for a sex offender determined to be at high risk for reoffending, it is as stigmatizing as it is disproportionate in Mr. Blankenship’s case.

Penological Justification

Lastly, the Court must consider the penological justification for the sentencing practice. *Graham*, 560 U.S. at 67, 130 S.Ct. 2011. Congress’s expressed intent of the Adam Walsh Act was “to protect children from sexual exploitation and violent crime, to prevent child abuse and child pornography, to promote Internet safety, and to honor the memory of Adam Walsh and other child crime victims.” Adam Walsh Child Protection and Safety Act, Pub.L. 109-248, 120 Stat. 587 (codified as amended at 42 U.S.C. 16901-16991(2006)). Likewise, the stated purpose of S.B. 10 and its registration and community notification requirements is to “protect the safety and general welfare of the people of this state” and to “assur[e] public protection.” R.C. 2950.02(B). Requiring individuals like Mr. Blankenship, who the record demonstrates are not

sex offenders, to register as such does not serve the stated purpose of the registration laws. The public does not need protection from individuals who are deemed not to be sex offenders, and therefore not determined to be a threat to society. Furthermore, there is empirical evidence which indicates that sex-offender registration and notification laws do little to protect the community. *See, e.g.,* Wagner, Note, *Sex Offender Residency Restrictions: How Common Sense Places Children at Risk*, 1 Drexel L.Rev. 175, 195 (2009) (addressing the extent to which residency restrictions actually increase recidivism); Vasquez, *The Influence of Sex Offender Registration and Notification Laws in the United States*, 54 Crime & Delinquency 175, 179, 188 (2008) (noting that empirical research indicates that sex-offender legislation seems to have had no uniform and observable influence on the number of rapes reported); Pierce, *Next Comes Burning at the Stake: Is Ohio Getting Too Tough on Sex Offenders?* CityBeat, (Aug. 15, 2007) http://citybeat.com/cincinnati/article-3033-cover_story_next_comes_burning_at_the_stake.html (noting that Ohio has never studied the effectiveness of sex offender registration) (accessed Aug. 5, 2014).

Given that S.B. 10 is punitive in nature, the penological justifications for criminal punishment are also relevant. R.C. 2929.11(A) establishes the purpose of felony sentencing:

A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

Similarly, *Graham* recognized retribution, deterrence, incapacitation, and rehabilitation as legitimate penal goals. *Graham*, 560 U.S. at 71, 130 S.Ct. 2011. When addressing those goals

in *In re C.P.*, this Court held that retribution does not justify imposing the same serious penalty on a less culpable defendant. *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, at ¶ 51. Here, because Mr. Blankenship is less culpable, given his individual characteristics and because he has been determined not to be a sex offender, requiring his registration as a sex offender cannot be justified as retribution. Similar to *In re C.P.*, incapacitation is not relevant here. *See In re C.P.* at ¶ 53 (finding incapacitation irrelevant because sex offender classification is focused on what happens after confinement). The goal of rehabilitation is also not served by classification and registration. Instead, as discussed previously, requiring Mr. Blankenship to register for the first half of his adult life stigmatizes him and hampers his ability to successfully reintegrate into society. Requiring an individual such as Mr. Blankenship, who is deemed not to be a sex offender, to register as a sex offender does not serve the purpose of S.B. 10 nor is it justified by penological theory.

Individuals like Mr. Blankenship, who have been deemed not to be sex offenders, have diminished culpability in terms of the goals and purposes of sex offender classification requirements captured in S.B. 10. It is disproportionately severe to require such individuals to register as sex offenders. Penological theory does not justify doing so. Consequently, requiring classification and registration as a sex offender violates the Eighth Amendment's prohibition against cruel and unusual punishment for such individuals.

II. Ohio Constitution, Article I, Section 9

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” Ohio Constitution, Article I, Section 9. The Ohio Constitution's prohibition against cruel and unusual punishment, provides unique protection for Ohioans independent of the protection provided by the Eighth Amendment. *In re C.P.*, 131 Ohio St.3d

513, 2012-Ohio-1446, 967 N.E.2d 729, at ¶ 59, citing *Arnold v. Cleveland*, 67 Ohio St.3d 35, 616 N.E.2d 163, paragraph one of the syllabus (1993).

This Court has recognized that cases involving cruel and unusual punishments under Article I, Section 9 are “limited to those involving sanctions which under the circumstances would be considered shocking to any reasonable person.” *In re C.P.* at ¶ 60, quoting *McDougle v. Maxwell*, 1 Ohio St.2d 68, 70, 203 N.E.2d 334 (1964). When determining if a punishment violates the Ohio Constitution, lack of proportionality is a key factor. *In re C.P.* at ¶ 60 (“A punishment does not violate the constitutional prohibition against cruel and unusual punishments, if it be not so greatly disproportionate to the offense as to shock the sense of justice of the community.”) (quoting *State v. Chaffin*, 30 Ohio St.2d 13, 282 N.E.2d 46, paragraph three of the syllabus (1972)).

For individuals whom the record reflects are not sex offenders, despite the fact that they committed a sexually oriented offense, R.C. 2950’s requirement that those individuals nonetheless be classified and required to register as sex offenders for decades is shocking to a reasonable person. Additionally, the specifics of Mr. Blankenship’s character and the nature of his offense underscore how disproportionate a mandatory 25-year punishment is for Mr. Blankenship.

An evaluating psychologist, as part of the pre-sentence investigation, found that Mr. Blankenship was not a sexual offender despite having committed a sexual offense, that his risk of reoffending was not high, and that he did not need sex offender treatment. Mr. Blankenship did not have prior felonies and posed no real threat to the community. *State v. Blankenship*, 2d. Dist. Clark No. 2012-CA-74, 2014-Ohio-232, ¶ 16 (Donovan, J., dissenting). He was 21 at the time of his offense, and pleaded guilty to one count of unlawful sexual conduct with a minor, a fourth-

degree felony and was sentenced to five years of community control. The basis of that offense was a consensual relationship with a 15-year-old girl. While his underlying low-level felony was adequately punished by community control, he was mandatorily branded with “a scarlet letter of twenty-five years duration.” *Id.* at ¶ 15 (Donovan, J., dissenting). The fact that this registration requirement attached at the beginning of his adult life, accentuates how extraordinary the punishment is. “This classification carries significant restraints on Blankenship’s liberty and a social stigma that interferes with employability, travel, and housing.” *Id.* “Blankenship was just shy of graduating with an associates degree from Clark State and was working 16-20 hours per week while in school at a department store. Numerous teachers, his former high school principal, and former employer vouched for his character and future promise.” *Id.* at ¶ 17. It is often difficult to ascertain what a community would find shocking. However, over 15 members of Mr. Blankenship’s community submitted letters with the sentencing court in support of Mr. Blankenship and these letters of support highlight how shocking his classification as a sex offender is to the community. Because this mandatory classification and registration requirement “shocks the sense of justice of the community” it therefore violates Ohio’s prohibition against cruel and unusual punishments.

CONCLUSION

The federal and state constitutional prohibitions on disproportionate punishment are not negated by statutorily imposed, automatic punitive sex offender registration requirements. In cases such as Mr. Blankenship’s, where despite having committed a sexually oriented offense, the record demonstrates that the offender is not a sex offender, it is cruel and unusual punishment to classify that individual as a sex offender and require him to register for decades. Such a disproportionate punishment violates the Eighth Amendment to the United States Constitution as

well as Ohio's prohibition against cruel and unusual punishment. Consequently, this Court should reverse Mr. Blankenship's classification as a Tier II sex offender.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

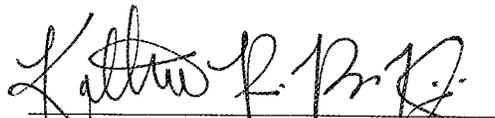

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COUNSEL FOR APPELLANT,
TRAVIS BLANKENSHIP

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **MERIT BRIEF OF APPELLANT TRAVIS BLANKENSHIP** was forwarded by regular U.S. Mail to Ryan A. Saunders, Clark County Assistant Prosecuting Attorney, 50 East Columbia Street, Suite 449, Springfield, Ohio 45502, this 11th day of August, 2014.


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Assistant State Public Defender

COUNSEL FOR APPELLANT,
TRAVIS BLANKENSHIP

#424126

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

v.

TRAVIS BLANKENSHIP,

Defendant-Appellant.

:
: Case No. 2014-0363
:
: On Discretionary Appeal from the
: Clark County Court of Appeals,
: 2nd Appellate District,
: Case No. 2012-CA-74
:
:

APPENDIX TO MERIT BRIEF OF APPELLANT TRAVIS BLANKENSHIP

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

v.

TRAVIS BLANKENSHIP,

Defendant-Appellant.

:
: Case No. **14-0363**
:
: On Discretionary Appeal from the
: Clark County Court of Appeals,
: 2nd Appellate District,
: Case No. 2012-CA-74
:
:

NOTICE OF APPEAL OF APPELLANT TRAVIS BLANKENSHIP

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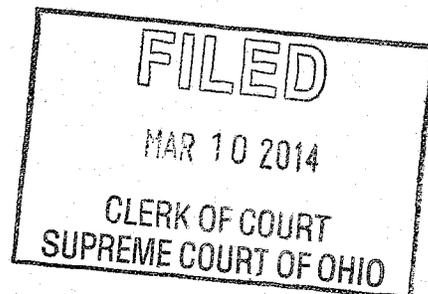
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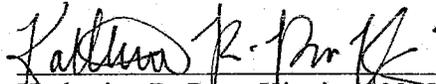
NOTICE OF APPEAL OF APPELLANT TRAVIS BLANKENSHIP

Appellant Travis Blankenship hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Clark County Court of Appeals, Second Appellate District, entered in Court of Appeals Case No. 12-CA-74 on January 24, 2014.

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

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



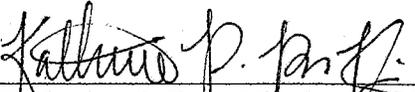
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COUNSEL FOR APPELLANT,
TRAVIS BLANKENSHIP

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF APPEAL OF APPELLANT TRAVIS BLANKENSHIP** was forwarded by regular U.S. Mail to Lisa M. Fannin, Clark County Assistant Prosecuting Attorney, 50 East Columbia Street, 4th Floor, P.O. Box 1608, Springfield, Ohio 45501, this 10th day of March, 2014.


Katherine R. Ross-Kinzie (0089762)
Assistant State Public Defender

COUNSEL FOR APPELLANT,
TRAVIS BLANKENSHIP

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE OF OHIO

Plaintiff-Appellee

v.

TRAVIS BLANKENSHIP

Defendant-Appellant

Appellate Case No. 2012-CA-74

Trial Court Case No. 12-CR-318

(Criminal Appeal from
Common Pleas Court)

FINAL ENTRY

CL/
COURT

JAN 28

RONALD

24th day

Pursuant to the opinion of this court rendered on the _____ day
of January, 2014, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the clerk of the Clark County
Court of Appeals shall immediately serve notice of this judgment upon all parties and make
a note in the docket of the mailing.

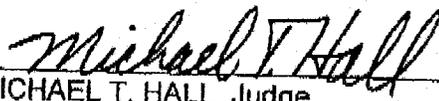
CLARK COUNTY
COURT OF APPEALS

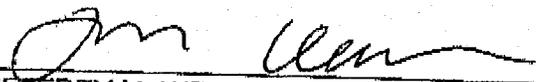
JAN 28 2014

FILED
RONALD E. VINCENT, CLERK

MARY E. DONOVAN, Judge

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT


MICHAEL T. HALL, Judge


JEFFREY M. WELBAUM, Judge

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Clark County Common Pleas Court
Courthouse, 101 N. Limestone
Springfield, OH 45502-1120

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE OF OHIO

Plaintiff-Appellee

v.

TRAVIS BLANKENSHIP

Defendant-Appellant

Appellate Case No. 2012-CA-74

Trial Court Case No. 12-CR-318

(Criminal Appeal from
Common Pleas Court)

CLARK COUNTY
COURT OF APPEALS
JAN 28 2014
FILED
RONALD E. VINCENT, CLERK

.....
OPINION

Rendered on the 24th day of January, 2014.

.....
LISA M. FANNIN, Atty. Reg. #0082337, Clark County Prosecutor's Office, 50 East
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Attorney for Plaintiff-Appellee

RICHARD E. MAYHALL, Atty. Reg. #0030017, 20 South Limestone Street, Suite 120,
Springfield, Ohio 45502
Attorney for Defendant-Appellant

.....
HALL, J.,

{¶ 1} Travis Blankenship appeals from his conviction and sentence on one count of
unlawful sexual conduct with a minor, a fourth-degree felony.

{¶ 2} The record reflects that Blankenship pled guilty to the foregoing charge, which involved sexual conduct with a fifteen-year-old girl. He was twenty-one years old at the time. As part of the pre-sentence investigation, a psychologist evaluated him and opined that he was not "a sexual offender" despite having committed a sex offense. The psychologist found that Blankenship's risk of re-offending was not high. The trial court sentenced Blankenship to community control and designated him a Tier II sex offender as required by law.

{¶ 3} In his sole assignment of error, Blankenship contends requiring him to register as a Tier II sex offender constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. In support, he stresses the psychologist's belief that he is not a sex offender and that he does not need sex-offender treatment. He also notes the existence of evidence that he has a "caring relationship" with the victim and that no aggravating facts, such as the use of drugs or alcohol, exist. Blankenship additionally stresses his relative youth and the twenty-five-year length of his registration requirement. He argues that this registration period serves no legitimate penological purpose in his case.

{¶ 4} In advancing the foregoing arguments, Blankenship urges us to extend the holding of *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729. In that case, the Ohio Supreme Court recently held that imposing automatic, lifetime sex-offender registration and notification requirements on juvenile sex offenders tried in the juvenile system violates the constitutional prohibition against cruel and unusual punishment. *Id.* at ¶58. Having examined *In re C.P.*, we conclude that its rationale does not extend to Blankenship.

{¶ 5} "Central to the Constitution's prohibition against cruel and unusual punishment is the 'precept of justice that punishment for crime should be graduated and proportioned to [the] offense.'" *Id.* at ¶25, quoting *Weems v. United States*, 217 U.S. 349, 367, 30 S.Ct. 544, 54 L.Ed. 793 (1910). "Proportionality review falls within two general classifications: the first involves 'challenges to the length of term-of-years sentences given all the circumstances in a particular case.' The second, which until recently was applied only in capital cases, involves 'cases in which the Court implements the proportionality standard by certain categorical restrictions.'" *Id.* at ¶26, quoting *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 2021, 176 L.Ed.2d 825 (2010).

{¶ 6} The Ohio Supreme Court's decision in *In re C.P.* involved the second classification—proportionality review based on categorical restrictions. The court noted that this classification itself involved two subsets, one based on the nature of the offense and one based on the characteristics of the offender. *Id.* at ¶27. *In re C.P.* dealt with the second subset, the characteristics of the offender. *Id.* Specifically, the Ohio Supreme Court considered the offender's status as a juvenile and whether *that particular characteristic* made the imposition of automatic, lifetime sex-offender registration and notification requirements unconstitutionally disproportional. *Id.* at ¶27-58.

{¶ 7} Unlike the offender in *In re C.P.*, Blankenship was not a juvenile when he committed his sex offense. Because he does not fit within the category at issue in *In re C.P.*, the Ohio Supreme Court's Eighth Amendment analysis in that case has little, if any, applicability to him. Blankenship also fails clearly to identify any other group into which he does fit where a categorical rule might be established prohibiting Tier II sex-offender registration as cruel and unusual punishment.

{¶ 8} As noted above, proportionality review based on categorical restrictions can consider the nature of the offense (for example, a categorical prohibition of capital punishment for non-homicide crimes against individuals) or the characteristics of the offender (for example, a categorical prohibition of capital punishment for offenders who committed their crimes before age eighteen). *Id.* at ¶27-28. At best, Blankenship's appellate brief suggests a categorical prohibition of Tier II sex-offender registration for young-adult offenders who present a relatively low risk of recidivism, who have a caring relationship with their victim, and who did not use drugs or alcohol to facilitate their sex offenses.

{¶ 9} When considering Eighth Amendment challenges on the basis of cruel and unusual punishment, courts engage "in a two-step process in adopting categorical rules in regard to punishment: first, the court considers whether there is a national consensus against the sentencing practice at issue, and second, the court determines "in the exercise of its own independent judgment whether the punishment in question violates the Constitution." *Id.* at ¶29, quoting *Graham*.

{¶ 10} On appeal, Blankenship concedes the lack of a national consensus against lengthy sex-offender registration for individuals such as him. This fact militates against his Eighth Amendment challenge. With regard to our own independent judgment, we also find no Eighth Amendment violation. Blankenship contends he is not a sex offender and that he is not in need of any treatment. Implicit in this argument is that there is no need for sex-offender registration. (Appellant's brief at 5). As a matter of law, however, Blankenship is a sex offender by virtue of his conviction for a sexually-oriented offense. The fact that a psychologist believes he is unlikely to re-offend does not make his registration requirement

cruel and unusual punishment. Nor are we persuaded that anything about the facts of Blankenship's case establishes an Eighth Amendment violation. He met the fifteen-year-old victim on the internet. The record contains evidence that he knew the victim's age before twice having sex with her. While the criminal case against him was pending, he violated a court order by having contact with the victim. He then lied and denied the contact. The psychologist's report estimates his risk of committing another sex offense at twelve percent over five years and nineteen percent over fifteen years, placing him in the low-to-moderate risk category.

{¶ 11} This court has recognized that "Eighth Amendment violations are rare, and instances of cruel and unusual punishment are limited to those punishments, which, under the circumstances, would be considered shocking to any reasonable person." *State v. Harding*, 2d Dist. Montgomery No. 20801, 2006-Ohio-481, ¶77. We see nothing in the foregoing facts to convince us that Blankenship's Tier II sex-offender registration requirement constitutes cruel and unusual punishment. Accordingly, his assignment of error is overruled.

{¶ 12} The trial court's judgment is affirmed.

.....

WELBAUM, J., concurs.

DONOVAN, J., dissenting:

{¶ 13} I disagree. Although ensuring public safety is a fundamental regulatory goal and should be given serious weight in the classification of sex offenders, Blankenship's designation, in my view, is illustrative of a classification that is grossly disproportionate to the nature of the offense and character of Blankenship. The 25-year designation

completely ignores the nature of the felony of the fourth degree, the characteristics of a young adult offender who has no prior felony convictions and is at low to moderate risk to re-offend.

{¶ 14} Justice is blindfolded to reflect neutrality, but this does not mean that justice should be sightless to the consequences of a Tier II Sex Offender classification on a 21-year-old for half of his adult life. As the Supreme Court stated in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, at ¶ 16: "Following the enactment of S.B. 10, all doubt has been removed: R.C. Chapter 2950 is punitive. The statutory scheme has changed dramatically since this court described the registration process imposed on sex offenders as an inconvenience 'comparable to renewing a driver's license.' [*State v. Cook*, 83 Ohio St.3d [404,] at 418, 700 N.E. 2d 570 [1998]]."

{¶ 15} Blankenship received a thirty-day jail sentence with twenty days suspended, a total of ten days in jail. Yet he was punished with a scarlet letter of twenty-five years duration. This twenty-five years is part of his punishment and, in my view, is grossly disproportionate in severity to the crime committed. This classification carries significant restraints on Blankenship's liberty and a social stigma that interferes with employability, travel and housing.

{¶ 16} In my view, some of the analysis of *In Re: C.P.* applies equally to young adult offenders such as Blankenship who do not have prior felonies and who pose no real threat to the community. Although I accept and understand that juveniles and adults are constitutionally different in Eighth Amendment analysis of sentencing due to their diminished culpability and prospects of reform, this distinction should not preclude consideration of whether Blankenship's classification is cruel, unusual and excessive.

Blankenship is certainly an individual to whom the trial judge should have the discretion to apply less onerous punishment.

{¶ 17} Blankenship was just shy of graduating with an associates degree from Clark State and was working 16-20 hours per week while in school at a department store. Numerous teachers, his former high school principal, and former employer vouched for his character and future promise. There is a mismatch between the culpability and character of Blankenship and the severity of his punishment, a 25-year classification. Although I recognize and accept that the legislature's role is to affix punishment for certain offenses, the 25-year classification for Blankenship is a sentence which is demonstrably grossly disproportionate to the nature of the offense and character of the offender. I would find an Eighth Amendment violation and reverse.

Copies mailed to:

Lisa M. Fannin
Richard E. Mayhall
Hon. Richard J. O'Neill

AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV

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

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

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

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

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

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I. BILL OF RIGHTS

§ 9 BAIL; CRUEL AND UNUSUAL PUNISHMENTS

All persons shall be bailable by sufficient sureties, except for capital offences where the proof is evident, or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

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Current through Legislation passed by the 130th General Assembly
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*** Annotations current through May 19, 2014 ***

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

ORC Ann. 2907.04 (2014)

§ 2907.04. Unlawful sexual conduct with minor

(A) No person who is eighteen years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard.

(B) Whoever violates this section is guilty of unlawful sexual conduct with a minor.

(1) Except as otherwise provided in divisions (B)(2), (3), and (4) of this section, unlawful sexual conduct with a minor is a felony of the fourth degree.

(2) Except as otherwise provided in division (B)(4) of this section, if the offender is less than four years older than the other person, unlawful sexual conduct with a minor is a misdemeanor of the first degree.

(3) Except as otherwise provided in division (B)(4) of this section, if the offender is ten or more years older than the other person, unlawful sexual conduct with a minor is a felony of the third degree.

(4) If 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*, unlawful sexual conduct with a minor is a felony of the second degree.

HISTORY:

134 v H 511 (Eff 1-1-74); 143 v H 44 (Eff 7-24-90); 146 v S 2 (Eff 7-1-96); 148 v H 442. Eff 10-17-2000.

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

ORC Ann. 2929.11 (2014)

§ 2929.11. Purposes of felony sentencing; discrimination prohibited

(A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

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

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

HISTORY:

146 v S 2. Eff 7-1-96; 2011 HB 86, § 1, eff. Sept. 30, 2011.

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Current through Legislation passed by the 130th General Assembly
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 *** Annotations current through May 19, 2014 ***

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

ORC Ann. 2950.01 (2014)

Legislative Alert: LEXSEE 2013 Ohio HB 130 -- See sections 1 and 2.

§ 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, 2907.22, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code;*

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

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

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

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

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

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

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

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

(10) A violation of division (B) of section 2903.03, 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 *section 2905.32 of the Revised Code* when the offender knowingly recruited, lured, enticed, isolated, harbored, transported, provided, obtained, or maintained, or knowingly attempted to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, another person knowing that the person would be compelled to engage in sexual activity for hire, engage in a performance that was obscene, sexually oriented, or nudity oriented, or be a model or participant in the production of material that was obscene, sexually oriented, or nudity oriented;

(12) 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), (10), or (11) of this section;

(13) 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), (11), or (12) 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, 2907.22, or 2907.32 of the Revised Code*;

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

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

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

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

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

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

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

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

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

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

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

(a) A violation of *section 2907.21, 2907.321, or 2907.322 of the Revised Code*;

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

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

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

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

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

(g) A violation of *section 2905.32 of the Revised Code* when the offender knowingly recruited, lured, enticed, isolated, harbored, transported, provided, obtained, or maintained, or knowingly attempted to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, another person knowing that the person would be compelled to engage in sexual activity for hire, engage in a performance that was obscene, sexually oriented, or nudity oriented, or be a model or participant in the production of material that was obscene, sexually oriented, or nudity oriented;

(h) 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), (f), or (g) of this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) A violation of division (B) of *section 2903.03 of the Revised Code*;

(h) 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), (f), or (g) of this section;

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

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

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

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

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

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

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

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

(6) A sex offender who is convicted of, pleads guilty to, was convicted of, or pleaded guilty to a sexually oriented offense, if the sexually oriented offense and the circumstances in which it was committed are such that division (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 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 of-

fense, who is fourteen years of age or older at the time of committing the offense, and who a juvenile court judge, pursuant to an order issued under *section 2152.82, 2152.83, 2152.84, 2152.85, or 2152.86 of the Revised Code*, classifies a juvenile offender registrant and specifies has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code*. "Juvenile offender registrant" includes a person who prior to January 1, 2008, was a "juvenile offender registrant" under the definition of the term in existence prior to January 1, 2008, and a person who prior to July 31, 2003, was a "juvenile sex offender registrant" under the former definition of that former term.

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

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

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

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

(c) A violation of division (B) of *section 2903.03 of the Revised Code*.

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

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

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

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

and a person who prior to July 31, 2003, was an "out-of-state juvenile sex offender registrant" under the former definition of that former term.

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

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

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

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

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

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

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

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

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; 2012 HB 262, § 1, eff. June 27, 2012; 2012 SB 160, § 1, eff. Mar. 22, 2013.

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Current through Legislation passed by the 130th General Assembly
and filed with the Secretary of State through File 117
*** Annotations current through May 19, 2014 ***

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

ORC Ann. 2950.02 (2014)

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

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

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

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

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

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

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

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

(B) The general assembly hereby declares that, in providing in this chapter for registration regarding offenders and certain delinquent children who have committed sexually oriented offenses or who have committed child-victim oriented offenses and for community notification regarding tier III sex offenders/child-victim offenders who are criminal offenders, public registry-qualified juvenile offender registrants, and certain other juvenile offender registrants who are about to be or have been released from imprisonment, a prison term, or other confinement or detention and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood, it is the general assembly's intent to protect the safety and general welfare of the people of this state. The general assembly further declares that it is the policy of this state to require the exchange in accordance with this chapter of relevant information about sex offenders and child-victim offenders among public agencies and officials and to authorize the release in accordance with this chapter of necessary and relevant information about sex offenders and child-victim offenders to members of the general public as a means of assuring public protection and that the exchange or release of that information is not punitive.

HISTORY:

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

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Current through Legislation passed by the 130th General Assembly
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*** Annotations current through May 19, 2014 ***

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

ORC Ann. 2950.041 (2014)

§ 2950.041. Duty to register resulting from child-victim oriented offense; notice of intent to reside

(A) (1) (a) Immediately after a sentencing hearing is held on or after January 1, 2008, for an offender who is convicted of or pleads guilty to a child-victim oriented offense and is sentenced to a prison term, a term of imprisonment, or any other type of confinement and before the offender is transferred to the custody of the department of rehabilitation and correction or to the official in charge of the jail, workhouse, state correctional institution, or other institution where the offender will be confined, the offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender was convicted of or pleaded guilty to the child-victim offense.

(b) Immediately after a dispositional hearing is held on or after January 1, 2008, for a child who is adjudicated a delinquent child for committing a child-victim oriented offense, is classified a juvenile offender registrant based on that adjudication, and is committed to the custody of the department of youth services or to a secure facility that is not operated by the department and before the child is transferred to the custody of the department of youth services or the secure facility to which the delinquent child is committed, the delinquent child shall register personally with the sheriff, or the sheriff's designee, of the county in which the delinquent child was classified a juvenile offender registrant based on that child-victim oriented offense.

(c) A law enforcement officer shall be present at the sentencing hearing or dispositional hearing described in division (A)(1)(a) or (b) of this section to immediately transport the offender or delinquent child who is the subject of the hearing to the sheriff, or the sheriff's designee, of the county in which the offender or delinquent child is convicted, pleads guilty, or is adjudicated a delinquent child.

(d) After an offender who has registered pursuant to division (A)(1)(a) of this section is released from a prison term, a term of imprisonment, or any other type of confinement, the offender shall register as provided in division (A)(2) of this section. After a delinquent child who has registered pursuant to division (A)(1)(b) of this section is released from the custody of the department of youth services or from a secure facility that is not operated by the department, the delinquent child shall register as provided in division (A)(3) of this section.

(2) Regardless of when the child-victim oriented offense was committed, each offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a child-victim oriented offense shall comply with all of the following registration requirements:

(a) The offender shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the offender's coming into a county in which the offender resides or temporarily is domiciled for more than three days.

(b) The offender shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state.

(c) The offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(d) The offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(e) The offender shall register personally with the sheriff, or the sheriff's designee, or other appropriate person of the other state immediately upon entering into any state other than this state in which the offender attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than this state for more than three days or for an aggregate period of fourteen or more days in that calendar year regardless of whether the offender resides or has a temporary domicile in this state, the other state, or a different state.

(3) Regardless of when the child-victim oriented offense was committed, each child who on or after July 31, 2003, is adjudicated a delinquent child for committing a child-victim oriented offense and who is classified a juvenile offender registrant based on that adjudication shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the delinquent child's coming into a county in which the delinquent child resides or temporarily is domiciled for more than three days. If the delinquent child is committed for the child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department, this duty begins when the delinquent child is discharged or released in any manner from custody in a department of youth services secure facility or from the secure facility that is not operated by the department if pursuant to the discharge or release the delinquent child is not committed to any other secure facility of the department or any other secure facility.

(4) Regardless of when the child-victim oriented offense was committed, each person who is convicted, pleads guilty, or is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a child-victim oriented offense shall comply with all of the following registration requirements if, at the time the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than three days, the offender enters this state to attend the school or institution of higher education, or the offender is employed in this state for more than the specified period of time, the offender or delinquent child has a duty to register as a child-victim

offender or sex offender under the law of that other jurisdiction as a result of the conviction, guilty plea, or adjudication:

(a) Each offender and delinquent child shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the offender's or delinquent child's coming into the county in which the offender or delinquent child resides or temporarily is domiciled for more than three days.

(b) Each offender shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state.

(c) Each offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen days or more in that calendar year.

(d) Each offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has not been employed at any location or locations in this state for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(5) An offender is not required to register under division (A)(2), (3), or (4) of this section if a court issues an order terminating the offender's duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code* pursuant to *section 2950.15 of the Revised Code*. A delinquent child who is a juvenile offender registrant but is not a public registry-qualified juvenile offender registrant is not required to register under any of those divisions if a juvenile court issues an order declassifying the delinquent child as a juvenile offender registrant pursuant to *section 2152.84 or 2152.85 of the Revised Code*.

(B) An offender or delinquent child who is required by division (A) of this section to register in this state personally shall do so in the manner described in division (B) of *section 2950.04 of the Revised Code*, and the registration is complete as described in that division.

(C) The registration form to be used under divisions (A) and (B) of this section shall include or contain all of the following for the offender or delinquent child who is registering:

(1) The offender's or delinquent child's name, any aliases used by the offender or delinquent child, and a photograph of the offender or delinquent child;

(2) The offender's or delinquent child's social security number and date of birth, including any alternate social security numbers or dates of birth that the offender or delinquent child has used or uses;

(3) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(1) of this section, a statement that the offender is serving a prison term, term of imprisonment, or any other type of confinement or a statement that the delinquent child is in the custody of the department of youth services or is confined in a secure facility that is not operated by the department;

(4) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(2), (3), or (4) of this section as a result of the offender or delinquent child residing in this state or temporarily being domiciled in this state for more than three days, all of the information described in division (C)(4) of *section 2950.04 of the Revised Code*;

(5) Regarding an offender who is registering under a duty imposed under division (A)(2) or (4) of this section as a result of the offender attending a school or institution of higher education on a full-time or part-time basis or being employed in this state or in a particular county in this state, whichever is applicable, for more than three days or for an aggregate of fourteen or more days in any calendar year, all of the information described in division (C)(5) of *section 2950.04 of the Revised Code*;

(6) The identification license plate number issued by this state or any other state of each vehicle the offender or delinquent child owns, of each vehicle registered in the offender's or delinquent child's name, of each vehicle the offender or delinquent child operates as a part of employment, and of each other vehicle that is regularly available to be operated by the offender or delinquent child; a description of where each vehicle is habitually parked, stored, docked, or otherwise kept; and, if required by the bureau of criminal identification and investigation, a photograph of each of those vehicles;

(7) If the offender or delinquent child has a driver's or commercial driver's license or permit issued by this state or any other state or a state identification card issued under *section 4507.50 or 4507.51 of the Revised Code* or a comparable identification card issued by another state, the driver's license number, commercial driver's license number, or state identification card number;

(8) If the offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the child-victim oriented offense resulting in the registration duty in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States, a DNA specimen, as defined in *section 109.573 of the Revised Code*, from the offender or delinquent child, a citation for, and the name of, the child-victim oriented offense resulting in the registration duty, and a certified copy of a document that describes the text of that child-victim oriented offense;

(9) Copies of travel and immigration documents;

(10) A description of each professional and occupational license, permit, or registration, including those licenses, permits, and registrations issued under Title XLVII of the Revised Code, held by the offender or delinquent child;

(11) Any email addresses, internet identifiers, or telephone numbers registered to or used by the offender or delinquent child;

(12) Any other information required by the bureau of criminal identification and investigation.

(D) Division (D) of *section 2950.04 of the Revised Code* applies when an offender or delinquent child registers with a sheriff pursuant to this section.

(E) No person who is required to register pursuant to divisions (A) and (B) of this section, and no person who is required to send a notice of intent to reside pursuant to division (G) of this section, shall fail to register or send the notice as required in accordance with those divisions or that division.

(F) An offender or delinquent child who is required to register pursuant to divisions (A) and (B) of this section shall register pursuant to this section for the period of time specified in *section 2950.07 of the Revised Code*, with the duty commencing on the date specified in division (A) of that section.

(G) If an offender or delinquent child who is required by division (A) of this section to register is a tier III sex offender/child-victim offender, the offender or delinquent child also shall send the sheriff, or the sheriff's designee, of the county in which the offender or delinquent child intends to reside written notice of the offender's or delinquent child's intent to reside in the county. The offender or delinquent child shall send the notice of intent to reside at least twenty days prior to the date the offender or delinquent child begins to reside in the county. The notice of intent to reside shall contain all of the following information:

(1) The information specified in divisions (G)(1) and (2) of *section 2950.04 of the Revised Code*;

(2) The child-victim oriented offense of which the offender was convicted, to which the offender pleaded guilty, or for which the child was adjudicated a delinquent child

(H) If, immediately prior to January 1, 2008, an offender or delinquent child who was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing a child-victim oriented offense or a sexually oriented offense as those terms were defined in *section 2950.01 of the Revised Code* prior to January 1, 2008, was required by division (A) of this section or *section 2950.04 of the Revised Code* to register and if, on or after January 1, 2008, that offense is a child-victim oriented offense as that term is defined in *section 2950.01 of the Revised Code* on and after January 1, 2008, the duty to register that is imposed pursuant to this section on and after January 1, 2008, shall be considered, for purposes of *section 2950.07 of the Revised Code* and for all other purposes, to be a continuation of the duty imposed upon the offender or delinquent child prior to January 1, 2008, under this section or *section 2950.04 of the Revised Code*.

HISTORY:

150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 152 v S 10, § 1, eff. 1-1-08.

Page's Ohio Revised Code Annotated:
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Current through Legislation passed by the 130th General Assembly
and filed with the Secretary of State through File 117
*** Annotations current through May 19, 2014 ***

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

ORC Ann. 2950.07 (2014)

§ 2950.07. Commencement of duty to register; duration

(A) The duty of an offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense and the duty of a delinquent child who is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or who is an out-of-state juvenile offender registrant to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code* commences on whichever of the following dates is applicable:

(1) If the offender's duty to register is imposed pursuant to division (A)(1)(a) of section 2950.04 or division (A)(1)(a) of *section 2950.041 of the Revised Code*, the offender's duty to comply with those sections commences immediately after the entry of the judgment of conviction.

(2) If the delinquent child's duty to register is imposed pursuant to division (A)(1)(b) of section 2950.04 or division (A)(1)(b) of *section 2950.041 of the Revised Code*, the delinquent child's duty to comply with those sections commences immediately after the order of disposition.

(3) If the offender's duty to register is imposed pursuant to division (A)(2) of section 2950.04 or division (A)(2) of *section 2950.041 of the Revised Code*, subject to division (A)(7) of this section, the offender's duty to comply with those sections commences on the date of the offender's release from a prison term, a term of imprisonment, or any other type of confinement, or if the offender is not sentenced to a prison term, a term of imprisonment, or any other type of confinement, on the date of the entry of the judgment of conviction of the sexually oriented offense or child-victim oriented offense.

(4) If the offender's or delinquent child's duty to register is imposed pursuant to division (A)(4) of section 2950.04 or division (A)(4) of *section 2950.041 of the Revised Code*, the offender's duty to comply with those sections commences regarding residence addresses on the date that the offender begins to reside or becomes temporarily domiciled in this state, the offender's duty regarding addresses of schools, institutions of higher education, and places of employment commences on the date the offender begins attending any school or institution of higher education in this state on a full-time or part-time basis or becomes employed in this state, and the delinquent child's duty com-

mences on the date the delinquent child begins to reside or becomes temporarily domiciled in this state.

(5) If the delinquent child's duty to register is imposed pursuant to division (A)(3) of section 2950.04 or division (A)(3) of *section 2950.041 of the Revised Code*, if the delinquent child's classification as a juvenile offender registrant is made at the time of the child's disposition for that sexually oriented offense or child-victim oriented offense, whichever is applicable, and if the delinquent child is committed for the sexually oriented offense or child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department, the delinquent child's duty to comply with those sections commences on the date of the delinquent child's discharge or release from custody in the department of youth services secure facility or from the secure facility not operated by the department as described in that division.

(6) If the delinquent child's duty to register is imposed pursuant to division (A)(3) of section 2950.04 or division (A)(3) of *section 2950.041 of the Revised Code* and if either the delinquent child's classification as a juvenile offender registrant is made at the time of the child's disposition for that sexually oriented offense or child-victim oriented offense, whichever is applicable, and the delinquent child is not committed for the sexually oriented offense or child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department or the child's classification as a juvenile offender registrant is made pursuant to section 2152.83 or division (A)(2) of *section 2152.86 of the Revised Code*, subject to divisions (A)(7) of this section, the delinquent child's duty to comply with those sections commences on the date of entry of the court's order that classifies the delinquent child a juvenile offender registrant.

(7) If the offender's or delinquent child's duty to register is imposed pursuant to division (A)(2), (3), or (4) of *section 2950.04* or *section 2950.041 of the Revised Code* and if the offender or delinquent child prior to January 1, 2008, has registered a residence, school, institution of higher education, or place of employment address pursuant to *section 2950.04*, *2950.041*, or *2950.05 of the Revised Code* as they existed prior to that date, the offender or delinquent child initially shall register in accordance with *section 2950.04* or *2950.041 of the Revised Code*, whichever is applicable, as it exists on and after January 1, 2008, not later than the earlier of the dates specified in divisions (A)(7)(a) and (b) of this section. The offender's or delinquent child's duty to comply thereafter with *sections 2950.04*, *2950.041*, *2950.05*, and *2950.06 of the Revised Code* as they exist on and after January 1, 2008, commences on the date of that initial registration. The offender or delinquent child initially shall register under *section 2950.04* or *2950.041 of the Revised Code* as it exists on and after January 1, 2008, not later than the earlier of the following:

(a) The date that is six months after the date on which the offender or delinquent child received a registered letter from the attorney general under division (A)(2) or (B) of *section 2950.031 of the Revised Code*;

(b) The earlier of the date on which the offender or delinquent child would be required to verify a previously registered address under *section 2950.06 of the Revised Code* as it exists on and after January 1, 2008, or, if the offender or delinquent child has changed a previously registered address, the date on which the offender or delinquent child would be required to register a new residence, school, institution of higher education, or place of employment address under *section 2950.05 of the Revised Code* as it exists on and after January 1, 2008.

(8) If the offender's or delinquent child's duty to register was imposed pursuant to *section 2950.04 or 2950.041 of the Revised Code* as they existed prior to January 1, 2008, the offender's or delinquent child's duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code* as they exist on and after January 1, 2008, is a continuation of the offender's or delinquent child's former duty to register imposed prior to January 1, 2008, under *section 2950.04 or 2950.041 of the Revised Code* and shall be considered for all purposes as having commenced on the date that the offender's duty under that section commenced.

(B) The duty of an offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense and the duty of a delinquent child who is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or who is an out-of-state juvenile offender registrant to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code* continues, after the date of commencement, for whichever of the following periods is applicable:

(1) Except as otherwise provided in this division, if the person is an offender who is a tier III sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, if the person is a delinquent child who is a tier III sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, or if the person is a delinquent child who is a public registry-qualified juvenile offender registrant relative to the sexually oriented offense, the offender's or delinquent child's duty to comply with those sections continues until the offender's or delinquent child's death. Regarding a delinquent child who is a tier III sex offender/child-victim offender relative to the offense but is not a public registry-qualified juvenile offender registrant relative to the offense, if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is a tier III sex offender/child-victim offender, the delinquent child's duty to comply with those sections continues for the period of time that is applicable to the delinquent child under division (B)(2) or (3) of this section, based on the reclassification of the child pursuant to *section 2152.84 or 2152.85 of the Revised Code* as a tier I sex offender/child-victim offender or a tier II sex offender/child-victim offender. In no case shall the lifetime duty to comply that is imposed under this division on an offender who is a tier III sex offender/child-victim offender be removed or terminated. A delinquent child who is a public registry-qualified juvenile offender registrant may have the lifetime duty to register terminated only pursuant to *section 2950.15 of the Revised Code*.

(2) If the person is an offender who is a tier II sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the offender's duty to comply with those sections continues for twenty-five years. Except as otherwise provided in this division, if the person is a delinquent child who is a tier II sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the delinquent child's duty to comply with those sections continues for twenty years. Regarding a delinquent child who is a tier II sex offender/child-victim offender relative to the offense but is not a public registry-qualified juvenile offender registrant relative to the offense, if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is a tier II sex offender/child-victim offender but remains a juvenile offender registrant, the delinquent child's duty to comply with those sections continues for the period of time that is applicable to the delinquent child under division

(B)(3) of this section, based on the reclassification of the child pursuant to *section 2152.84 or 2152.85 of the Revised Code* as a tier I sex offender/child-victim offender.

(3) Except as otherwise provided in this division, if the person is an offender who is a tier I sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the offender's duty to comply with those sections continues for fifteen years. Except as otherwise provided in this division, if the person is a delinquent child who is a tier I sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the delinquent child's duty to comply with those sections continues for ten years. Regarding a delinquent child who is a juvenile offender registrant and a tier I sex offender/child-victim offender but is not a public registry-qualified juvenile offender registrant, if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is to be classified a juvenile offender registrant, the delinquent child's duty to comply with those sections terminates upon the court's entry of the determination. A person who is an offender who is a tier I sex offender/child-victim offender may have the fifteen-year duty to register terminated only pursuant to *section 2950.15 of the Revised Code*.

(C) (1) If an offender has been convicted of or pleaded guilty to a sexually oriented offense and the offender subsequently is convicted of or pleads guilty to another sexually oriented offense or a child-victim oriented offense, if an offender has been convicted of or pleaded guilty to a child-victim oriented offense and the offender subsequently is convicted of or pleads guilty to another child-victim oriented offense or a sexually oriented offense, if a delinquent child has been adjudicated a delinquent child for committing a sexually oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant and the child subsequently is adjudicated a delinquent child for committing another sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant relative to that offense or subsequently is convicted of or pleads guilty to another sexually oriented offense or a child-victim oriented offense, or if a delinquent child has been adjudicated a delinquent child for committing a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant and the child subsequently is adjudicated a delinquent child for committing another child-victim oriented offense or a sexually oriented offense and is classified a juvenile offender registrant relative to that offense or subsequently is convicted of or pleads guilty to another child-victim oriented offense or a sexually oriented offense, the period of time for which the offender or delinquent child must comply with the sections specified in division (A) of this section shall be separately calculated pursuant to divisions (A)(1) to (8) and (B)(1) to (3) of this section for each of the sexually oriented offenses and child-victim oriented offenses, and the offender or delinquent child shall comply with each separately calculated period of time independently.

If a delinquent child has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense, is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant relative to that offense, and, after attaining eighteen years of age, subsequently is convicted of or pleads guilty to another sexually oriented offense or child-victim oriented offense, the subsequent conviction or guilty plea does not limit, affect, or supersede the duties imposed upon the delinquent child under this chapter relative to the delinquent child's classification as a juvenile offender registrant or as an out-of-state juvenile offender registrant, and the delinquent child shall comply with both those duties and the duties imposed under this chapter relative to the subsequent conviction or guilty plea.

(2) If a delinquent child has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant relative to the offense and if the juvenile judge or the judge's successor in office subsequently reclassifies the offense tier in which the child is classified pursuant to *section 2152.84 or 2152.85 of the Revised Code*, the judge's subsequent determination to reclassify the child does not affect the date of commencement of the delinquent child's duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code* as determined under division (A) of this section. The child's duty to comply with those sections after the reclassification is a continuation of the child's duty to comply with the sections that was in effect prior to the reclassification, and the duty shall continue for the period of time specified in division (B)(1), (2), or (3) of this section, whichever is applicable.

If, prior to January 1, 2008, an offender had a duty to comply with the sections specified in division (A) of this section as a result of a conviction of or plea of guilty to a sexually oriented offense or child-victim oriented offense as those terms were defined in *section 2950.01 of the Revised Code* prior to January 1, 2008, or a delinquent child had a duty to comply with those sections as a result of an adjudication as a delinquent child for committing one of those offenses as they were defined prior to January 1, 2008, the period of time specified in division (B)(1), (2), or (3) of this section on and after January 1, 2008, for which a person must comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code* applies to the person, automatically replaces the period of time for which the person had to comply with those sections prior to January 1, 2008, and is a continuation of the person's duty to comply with the sections that was in effect prior to the reclassification. If, prior to January 1, 2008, an offender or a delinquent child had a duty to comply with the sections specified in division (A) of this section, the offender's or delinquent child's classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender for purposes of that period of time shall be determined as specified in *section 2950.031 or 2950.032 of the Revised Code*, as applicable.

(D) The duty of an offender or delinquent child to register under this chapter is tolled for any period during which the offender or delinquent child is returned to confinement in a secure facility for any reason or imprisoned for an offense when the confinement in a secure facility or imprisonment occurs subsequent to the date determined pursuant to division (A) of this section. The offender's or delinquent child's duty to register under this chapter resumes upon the offender's or delinquent child's release from confinement in a secure facility or imprisonment.

(E) An offender or delinquent child who has been or is convicted, has pleaded or pleads guilty, or has been or is adjudicated a delinquent child, in a court in another state, in a federal court, military court, or Indian tribal court, or in a court of any nation other than the United States for committing a sexually oriented offense or a child-victim oriented offense may apply to the sheriff of the county in which the offender or delinquent child resides or temporarily is domiciled, or in which the offender attends a school or institution of higher education or is employed, for credit against the duty to register for the time that the offender or delinquent child has complied with the sex offender or child-victim offender registration requirements of another jurisdiction. The sheriff shall grant the offender or delinquent child credit against the duty to register for time for which the offender or delinquent child provides adequate proof that the offender or delinquent child has complied with the sex offender or child-victim offender registration requirements of another jurisdiction. If the offender or delinquent child disagrees with the determination of the sheriff, the offender or delinquent child may appeal the determination to the court of common pleas of the county in which the offend-

er or delinquent child resides or is temporarily domiciled, or in which the offender attends a school or institution of higher education or is employed.

HISTORY:

146 v H 180 (Eff 7-1-97); 147 v H 565 (Eff 3-30-99); 149 v S 3 (Eff 1-1-2002); 149 v H 485. Eff 6-13-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

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*** ARCHIVE MATERIAL ***

*** CURRENT THROUGH LEGISLATION PASSED BY THE 126TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH MARCH 6, 2007 ***

*** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2007 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JANUARY 23, 2007 ***

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

ORC Ann. 2950.09 (2006)

§ 2950.09. Classification as sexual predator; determination hearing; petition for removal from classification

(A) If a person is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually oriented offense that is not a registration-exempt sexually oriented offense, and if the sexually oriented offense is a violent sex offense or a designated homicide, assault, or kidnapping offense and the offender is adjudicated a sexually violent predator in relation to that offense, the conviction of or plea of guilty to the offense and the adjudication as a sexually violent predator automatically classifies the offender as a sexual predator for purposes of this chapter. If a person is convicted of or pleads guilty to committing on or after the effective date of this amendment a sexually oriented offense that is a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* and if either the person is sentenced under *section 2971.03 of the Revised Code*, or the court imposes upon the offender a sentence of life without parole under division (B) of *section 2907.02 of the Revised Code*, the conviction of or plea of guilty to the offense automatically classifies the offender as a sexual predator for purposes of this chapter. If a person is convicted of or pleads guilty to committing on or after the effective date of this amendment attempted rape and also is convicted of or pleads guilty to a specification of the type described in *section 2941.1418 [2941.14.18]*, *2941.1419 [2941.14.19]*, or *2941.1420 [2941.14.20]* of the Revised Code, the conviction of or plea of guilty to the offense and the specification automatically classify the offender as a sexual predator for purposes of this chapter. If a person is convicted, pleads guilty, or is adjudicated a delinquent child, in a court in another state, in a federal court, military court, or Indian tribal court, or in a court of any nation other than the United States for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, and if, as a result of that conviction, plea of guilty, or adjudication, the person is required, under the law of the jurisdiction in which the person was convicted, pleaded guilty, or was adjudicated, to register as a sex offender until the person's death, that conviction

tion, plea of guilty, or adjudication automatically classifies the person as a sexual predator for the purposes of this chapter, but the person may challenge that classification pursuant to division (F) of this section. In all other cases, a person who is convicted of or pleads guilty to, has been convicted of or pleaded guilty to, or is adjudicated a delinquent child for committing, a sexually oriented offense may be classified as a sexual predator for purposes of this chapter only in accordance with division (B) or (C) of this section or, regarding delinquent children, divisions (B) and (C) of *section 2152.83 of the Revised Code*.

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

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

(ii) Regardless of when the sexually oriented offense was committed, the offender is to be sentenced on or after January 1, 1997, for a sexually oriented offense that is not a registration-exempt sexually oriented offense, and that is not a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* committed on or after the effective date of this amendment for which sentence is imposed under *section 2971.03 of the Revised Code* or for which a sentence of life without parole is imposed under division (B) of *section 2907.02 of the Revised Code*, and that is not attempted rape committed on or after the effective date of this amendment when the offender also is convicted of or pleads guilty to a specification of the type described in *section 2941.1418 [2941.14.18]*, *2941.1419 [2941.14.19]*, or *2941.1420 [2941.14.20]* of the Revised Code, and either of the following applies: the sexually oriented offense is a violent sex offense other than a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* committed on or after the effective date of this amendment and other than attempted rape committed on or after that date when the offender also is convicted of or pleads guilty to a specification of the type described in *section 2941.1418 [2941.14.18]*, *2941.1419 [2941.14.19]*, or *2941.1420 [2941.14.20]* of the Revised Code, and a sexually violent predator specification was not included in the indictment, count in the indictment, or information charging the violent sex offense; or the sexually oriented offense is a designated homicide, assault, or kidnapping offense and either a sexual motivation specification or a sexually violent predator specification, or both such specifications, were not included in the indictment, count in the indictment, or information charging the designated homicide, assault, or kidnapping offense.

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

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

(i) The judge is required by section 2152.82 or division (A) of *section 2152.83 of the Revised Code* to classify the child a juvenile offender registrant.

(ii) Division (B) of *section 2152.83 of the Revised Code* applies regarding the child, the judge conducts a hearing under that division for the purposes described in that division, and the judge determines at that hearing that the child will be classified a juvenile offender registrant.

(2) Regarding an offender, the judge shall conduct the hearing required by division (B)(1)(a) of this section prior to sentencing and, if the sexually oriented offense for which sentence is to be imposed is a felony and if the hearing is being conducted under division (B)(1)(a) of this section, the judge may conduct it as part of the sentencing hearing required by *section 2929.19 of the Revised Code*. Regarding a delinquent child, the judge may conduct the hearing required by division (B)(1)(b) of this section at the same time as, or separate from, the dispositional hearing, as specified in the applicable provision of *section 2152.82 or 2152.83 of the Revised Code*. The court shall give the offender or delinquent child and the prosecutor who prosecuted the offender or handled the case against the delinquent child for the sexually oriented offense notice of the date, time, and location of the hearing. At the hearing, the offender or delinquent child and the prosecutor shall have an opportunity to testify, present evidence, call and examine witnesses and expert witnesses, and cross-examine witnesses and expert witnesses regarding the determination as to whether the offender or delinquent child is a sexual predator. The offender or delinquent child shall have the right to be represented by counsel and, if indigent, the right to have counsel appointed to represent the offender or delinquent child.

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

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

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

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

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

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

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

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

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

conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;

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

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

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

(5) A hearing shall not be conducted under division (B) of this section regarding an offender if any of the following applies:

(a) The sexually oriented offense in question is a sexually violent offense, the indictment, count in the indictment, or information charging the offense also included a sexually violent predator specification, and the offender is convicted of or pleads guilty to that sexually violent predator specification.

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

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

(C) (1) If a person was convicted of or pleaded guilty to a sexually oriented offense that is not a registration-exempt sexually oriented offense prior to January 1, 1997, if the person was not sen-

tenced for the offense on or after January 1, 1997, and if, on or after January 1, 1997, the offender is serving a term of imprisonment in a state correctional institution, the department of rehabilitation and correction shall do whichever of the following is applicable:

(a) If the sexually oriented offense was an offense described in division (D)(1)(c) of *section 2950.01 of the Revised Code* or was a violent sex offense, the department shall notify the court that sentenced the offender of this fact, and the court shall conduct a hearing to determine whether the offender is a sexual predator.

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

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

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

The court may conduct a hearing to determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense or a child-victim oriented offense but may make the determination without a hearing. However, if the court determines that the offender previously has been convicted of or pleaded guilty to such an offense, it shall not impose a requirement that the offender be subject to the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code* without a hearing. In determining whether to impose the community notification requirement, the court, in the circumstances described in division (E)(2) of this section, shall apply the presumption specified in that division. The court shall include in the offender's institutional record any determination made under this division as to whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense or child-victim oriented offense, and, as such, whether the offender is a habitual sex offender.

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

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

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

(ii) If the court determines that the offender is not a sexual predator but that the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the hearing is being conducted or previously has been convicted of or pleaded guilty to a child-victim oriented offense, it shall include in the offender's institutional record its determination that the offender is not a sexual predator but is a habitual sex offender and the reason or reasons why it determined that the offender is not a sexual predator, shall attach the determinations and the reason or reasons to the offender's sentence, shall specify that the determinations were pursuant to division (C) of this section, shall provide a copy of the determinations and the reason or reasons to the offender, to the prosecuting attorney, and to the department of rehabilitation and correction, and may impose a requirement that the offender be subject to the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code*. In determining whether to impose the community notification requirements, the court, in the circumstances described in division (E)(2) of this section, shall apply the presumption specified in that division. The offender shall not be subject to those community notification provisions relative to the sexually oriented offense in question if the court does not so impose the requirement described in this divi-

sion. If the court imposes that requirement, the offender may appeal the judge's determination that the offender is a habitual sex offender.

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

If the hearing is scheduled under division (C)(2)(b) of this section to determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense or a child-victim oriented offense or whether to subject the offender to the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code*, upon making the determination, the court shall attach the determination or determinations to the offender's sentence, shall provide a copy to the offender, to the prosecuting attorney, and to the department of rehabilitation and correction and may impose a requirement that the offender be subject to the community notification provisions. In determining whether to impose the community notification requirements, the court, in the circumstances described in division (E)(2) of this section, shall apply the presumption specified in that division. The offender shall not be subject to the community notification provisions relative to the sexually oriented offense in question if the court does not so impose the requirement described in this division. If the court imposes that requirement, the offender may appeal the judge's determination that the offender is a habitual sex offender.

(3) The changes made in divisions (C)(1) and (2) of this section that take effect on July 31, 2003, do not require a court to conduct a new hearing under those divisions for any offender regarding a sexually oriented offense if, prior to July 31, 2003, the court previously conducted a hearing under those divisions regarding that offense to determine whether the offender was a sexual predator. The changes made in divisions (C)(1) and (2) of this section that take effect on July 31, 2003, do not require a court to conduct a hearing under those divisions for any offender regarding a sexually oriented offense if, prior to July 31, 2003, and pursuant to those divisions, the department of rehabilitation and correction recommended that the offender be adjudicated a sexual predator regarding that offense, and the court denied the recommendation and determined that the offender was not a sexual predator without a hearing, provided that this provision does not apply if the sexually oriented offense in question was an offense described in division (D)(1)(c) of *section 2950.01 of the Revised Code*.

(D) (1) Division (D)(1) of this section does not apply to any person who has been convicted of or pleaded guilty to a sexually oriented offense. Division (D) of this section applies only to delinquent children as provided in Chapter 2152. of the Revised Code. A person who has been adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense and who has been classified by a juvenile court judge a juvenile offender registrant or, if applicable, additionally has been determined by a juvenile court judge to be a sexual predator or habitual sex offender, may petition the adjudicating court for a reclassification or declassification pursuant to *section 2152.85 of the Revised Code*.

A judge who is reviewing a sexual predator determination for a delinquent child under *section 2152.84 or 2152.85 of the Revised Code* shall comply with this section. At the hearing, the

judge shall consider all relevant evidence and information, including, but not limited to, the factors set forth in division (B)(3) of this section. The judge shall not enter a determination that the delinquent child no longer is a sexual predator unless the judge determines by clear and convincing evidence that the delinquent child is unlikely to commit a sexually oriented offense in the future. If the judge enters a determination under this division that the delinquent child no longer is a sexual predator, the judge shall notify the bureau of criminal identification and investigation of the determination and shall include in the notice a statement of the reason or reasons why it determined that the delinquent child no longer is a sexual predator. Upon receipt of the notification, the bureau promptly shall notify the sheriff with whom the delinquent child most recently registered under *section 2950.04 or 2950.05 of the Revised Code* of the determination that the delinquent child no longer is a sexual predator.

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

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

(a) The judge is required by section 2152.82 or division (A) of *section 2152.83 of the Revised Code* to classify the child a juvenile offender registrant;

(b) Division (B) of *section 2152.83 of the Revised Code* applies regarding the child, the judge conducts a hearing under that division for the purposes described in that division, and the judge determines at that hearing that the child will be classified a juvenile offender registrant.

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

If, under division (E)(1) of this section, the judge determines that the offender or delinquent child previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child

for committing, a sexually oriented offense or a child-victim oriented offense and that the offender satisfies all other criteria for being a habitual sex offender, the offender or delinquent child is a habitual sex offender or habitual child-victim offender and the court shall determine whether to impose a requirement that the offender or delinquent child be subject to the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code*. In making the determination regarding the possible imposition of the community notification requirement, if at least two of the sexually oriented offenses or child-victim oriented offenses that are the basis of the habitual sex offender or habitual child-victim offender determination were committed against a victim who was under eighteen years of age, it is presumed that subjecting the offender or delinquent child to the community notification provisions is necessary in order to comply with the determinations, findings, and declarations of the general assembly regarding sex offenders and child-victim offenders that are set forth in *section 2950.02 of the Revised Code*. When a judge determines as described in this division that an offender or delinquent child is a habitual sex offender or a habitual child-victim offender, the judge shall specify in the offender's sentence and the judgment of conviction that contains the sentence or in the order classifying the delinquent child a juvenile offender registrant that the judge has determined that the offender or delinquent child is a habitual sex offender and may impose a requirement in that sentence and judgment of conviction or in that order that the offender or delinquent child be subject to the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code*. Unless the habitual sex offender also has been adjudicated a sexual predator relative to the sexually oriented offense in question or the habitual sex offender was convicted of or pleaded guilty to an aggravated sexually oriented offense, the offender or delinquent child shall be subject to those community notification provisions only if the court imposes the requirement described in this division in the offender's sentence and the judgment of conviction or in the order classifying the delinquent child a juvenile offender registrant. If the court determines pursuant to this division or division (C)(2) of this section that an offender is a habitual sex offender, the determination is permanent and continues in effect until the offender's death, and in no case shall the determination be removed or terminated.

If a court in another state, a federal court, military court, or Indian tribal court, or a court in any nation other than the United States determines a person to be a habitual sex offender in that jurisdiction, the person is considered to be determined to be a habitual sex offender in this state. If the court in the other state, the federal court, military court, or Indian tribal court, or the court in the nation other than the United States subjects the habitual sex offender to community notification regarding the person's place of residence, the person, as much as is practicable, is subject to the community notification provisions regarding the person's place of residence that are contained in *sections 2950.10 and 2950.11 of the Revised Code*, unless the court that so subjected the person to community notification determines that the person no longer is subject to community notification.

(F) (1) An offender or delinquent child classified as a sexual predator may petition the court of common pleas or, for a delinquent child, the juvenile court of the county in which the offender or delinquent child resides or temporarily is domiciled to enter a determination that the offender or delinquent child is not an adjudicated sexual predator in this state for purposes of the registration and other requirements of this chapter or the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code* if all of the following apply:

(a) The offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing, a sexually oriented offense that is not a registration-exempt

sexually oriented offense in another state, in a federal court, a military court, or Indian tribal court, or in a court of any nation other than the United States.

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

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

(2) The court may enter a determination that the offender or delinquent child filing the petition described in division (F)(1) of this section is not an adjudicated sexual predator in this state for purposes of the registration and other requirements of this chapter or the community notification provisions contained in *sections 2950.10 and 2950.11 of the Revised Code* only if the offender or delinquent child proves by clear and convincing evidence that the requirement of the other jurisdiction that the offender or delinquent child register as a sex offender until the offender's or delinquent child's death is not substantially similar to a classification as a sexual predator for purposes of this chapter. If the court enters a determination that the offender or delinquent child is not an adjudicated sexual predator in this state for those purposes, the court shall include in the determination a statement of the reason or reasons why it so determined.

(G) If, prior to July 31, 2003, an offender or delinquent child was adjudicated a sexual predator or was determined to be a habitual sex offender under this section or *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code* and if, on and after July 31, 2003, the sexually oriented offense upon which the classification or determination was based no longer is considered a sexually oriented offense but instead is a child-victim oriented offense, notwithstanding the redesignation of that offense, on and after July 31, 2003, all of the following apply:

(1) Divisions (A)(1) or (2) or (E)(1) and (2) of *section 2950.091 [2950.09.1] of the Revised Code* apply regarding the offender or child, and the judge's classification or determination made prior to July 31, 2003, shall be considered for all purposes to be a classification or determination that classifies the offender or child as described in those divisions.

(2) The offender's or child's classification or determination under divisions (A)(1) or (2) or (E)(1) and (2) of *section 2950.091 [2950.09.1] of the Revised Code* shall be considered, for purposes of *section 2950.07 of the Revised Code* and for all other purposes, to be a continuation of the classification or determination made prior to July 31, 2003.

(3) The offender's or child's duties under this chapter relative to that classification or determination shall be considered for all purposes to be a continuation of the duties related to that classification or determination as they existed prior to July 31, 2003.

HISTORY:

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