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Final Analysis
Legislative Service Commission

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(As Passed by the General Assembly)

Reps. DePiero, Redfern, Clancy, Schuring, Distel, Hartnett, Flannery, Vesper, Van Vyven, Patton, Allen, Britton, Pringle, Womer Benjamin, Myers, Taylor, Jerse, Sullivan, D. Miller, Verich, Amstutz, Tiberi, Logan, Mottley, Grendell, Terwilleger, Carey, Stevens, Ford, Barrett, Perry, Salerno, Barnes, Gardner, Ogg, Gooding, Boyd, Roman, Krupinski, Damschroder, Winkler, Jones, Widener, Hoops, Gerberry

Sens. Latta, Spada, Mumper

Effective date: *

ACT SUMMARY

- With respect to a sex offender who is serving any type of confinement on or after January 1, 1997, for a sexually oriented offense and who has a duty to register under the Sex Offender Registration and Notification Law, replaces the requirement that the offender be given notice of those duties at least ten days before the offender's release from confinement with a requirement that the offender simply be given notice of those duties before the offender's release from confinement.
- For an offender who, prior to January 1, 1997, was sentenced for a sexually oriented offense and is imprisoned for that offense in a state correctional institution on or after that date: (1) permits the Department of Rehabilitation and Correction to determine whether to recommend that the offender be adjudicated as being a sexual predator either before or after the offender's release from the term of imprisonment, and (2) authorizes a court to adjudicate the offender a sexual predator either prior to the offender's release from imprisonment or within one year after that release.

** The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Requires that, if an offender is released from confinement for a sexually oriented offense and, after the release, is adjudicated a sexual predator, the offender must register within seven days of the adjudication with the sheriff of the county in which the offender resides or temporarily is domiciled for more than seven days and, within seven days of coming into the county, must register with the sheriff of any county in which the offender subsequently resides or temporarily is domiciled for more than seven days.
- Requires that, if an offender is released from confinement for a sexually oriented offense and if, subsequent to the release, a court adjudicates the offender to be a sexual predator, the court must provide the offender a notice of the offender's duties under the Sex Offender Registration and Notification Law that replaces any notice that the offender previously may have received.

CONTENT AND OPERATION

Notice of duty to register given to imprisoned sex offenders who are released on or after January 1, 1997

Under preexisting law, unchanged by the act, regardless of when the offender committed the sexually oriented offense, if an offender has been convicted of a "sexually oriented offense" (see Definitions," below) and has a duty to register under the preexisting Sex Offender Registration and Notification Law (the SORN Law), if the offender is sentenced for the sexually oriented offense to a prison term, a term of imprisonment, or any other type of confinement, and if, on or after January 1, 1997, the offender is serving that term or is under that confinement, the official in charge of the institution in which the offender serves the prison term, term of imprisonment, or confinement, or a designee of that official, must provide to the offender notice of the offender's duties under the SORN Law. Formerly, the official or designee was required to provide the notice to the offender *at least ten days* before the offender was released pursuant to any type of supervised release or *at least ten days* before the offender otherwise was released from the prison term, term of imprisonment, or confinement (R.C. 2950.03(A)(1)).

The act replaces the requirement that the notice be provided at least ten days before the person's release with a requirement that the notice simply be provided *before the person's release*. Thus, under the act, the official in charge of the institution in which the offender serves the prison term, term of imprisonment, or confinement, or a designee of that official, must provide the notice to such an

offender *before* the offender is released pursuant to any type of supervised release or *before* the offender otherwise is released from the prison term, term of imprisonment, or confinement. (R.C. 2950.03(A)(1).)

Revised time period for adjudicating as a sexual predator a sex offender sentenced prior to January 1, 1997, and serving a term of imprisonment in a state correctional institution on or after that date

The act revises the time period in which a sex offender who was sentenced for a sexually oriented offense prior to January 1, 1997, and is serving a term of imprisonment for that offense on or after that date may be adjudicated a sexual predator under the SORN Law. Formerly, the court was required to make such an adjudication prior to the offender's release from imprisonment. The act permits the court to make such an adjudication either prior to the offender's release or within one year after that release. The act also conforms other aspects of the SORN Law to the revised time period. A discussion of the act's changes in these regards follows.

Definition of being "adjudicated as being a sexual predator"

The SORN Law specifies a number of circumstances in which an offender is "adjudicated as being a sexual predator." Formerly, one of the circumstances was if, prior to January 1, 1997, the offender was convicted of or pleaded guilty to, and was sentenced for, a sexually oriented offense (see **Definitions**," below), the offender was imprisoned in a state correctional institution on or after January 1, 1997, and, *prior to the offender's release from imprisonment*, the court determined pursuant to R.C. 2950.09(C) that the offender was a sexual predator (R.C. 2950.01(G)(3)). The other circumstances in which an offender is "adjudicated as being a sexual predator," which are not changed by the act, are described in **COMMENT 1**.

The act expands the above-described portion of the definition of "adjudicated as being a sexual predator" by removing the requirement that a court determine such an offender to be a sexual predator prior to the offender's release from imprisonment. (R.C. 2950.01(G)(3).)

As used in this final analysis, "adjudicated as being a sexual predator" means that, in addition to satisfying the definition of the phrase, the person has not been subsequently determined under the SORN Law to no longer be a sexual predator.

Procedure for adjudicating an offender sentenced prior to January 1, 1997, and serving a term of imprisonment in a state correctional institution to be a sexual predator

Recommendation for adjudication as sexual predator. Formerly, if a person was sentenced prior to January 1, 1997, for committing a sexually oriented

offense, and if, on or after January 1, 1997, the offender was serving a term of imprisonment in a state correctional institution, *prior to the offender's release from the term of imprisonment*, the Department of Rehabilitation and Correction (DRC) was required under the SORN Law to determine whether to recommend that the offender be adjudicated as being a sexual predator. In making this determination, DRC was required to consider all relevant factors, including, but not limited to, certain statutorily specified factors. If DRC determined that it would recommend that the offender be adjudicated as being a sexual predator, it was required to immediately send the recommendation to the court that sentenced the offender and to enter its determination and recommendation in the offender's institutional record.

The act generally retains these provisions but removes the requirement that DRC's determination as to whether to recommend that the offender be adjudicated as being a sexual predator be made *prior to the offender's release from the term of imprisonment*. (R.C. 2950.09(C)(1).)

Adjudication as a sexual predator. Under preexisting law, if pursuant to the provision described in the second preceding paragraph DRC sends to a court a recommendation that the offender be adjudicated as being a sexual predator, the court is not bound by DRC's recommendation, and the court may conduct a hearing to determine whether the offender is a sexual predator. The court may deny the recommendation and determine that the offender is not a sexual predator without a hearing but is prohibited from making a determination that the offender is a sexual predator in any case without a hearing. If the court determines without a hearing that the offender is not a sexual predator, it must include its determination in the offender's institutional record and must 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 court determined that the offender is not a sexual predator. (See **COMMENT 2.**)

The act retains these preexisting provisions but specifies that the court may hold the specified sexual predator hearing and make the specified determination prior to the offender's release from imprisonment or at any time within one year following the offender's release from imprisonment. (R.C. 2950.09(C)(2)(a).)

Duty to register

Preexisting law. Under preexisting provisions of the SORN Law, retained by the act except as described below, an offender who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense, and who is sentenced for or released from confinement for the offense on or after July 1, 1997, must, within seven days of coming into the county, register with the sheriff of any county in which the offender resides or temporarily is domiciled for more than seven days. Preexisting law also imposes the duty to register upon a few other,

more limited categories of offenders who have been convicted of or pleaded to a sexually oriented offense.

An offender who is required to register personally must obtain from the sheriff or from a designee of the sheriff a registration form, complete and sign the form, and return the completed form together with the offender's photograph to the sheriff or the designee. The sheriff or designee must sign the form and indicate on the form the date on which it is returned. The registration is complete when the offender returns the form, containing the requisite information, photograph, signatures, and date, to the sheriff or designee.

The registration form must contain certain statutorily specified information. Additionally, if the sentencing judge determined that the offender is a habitual sex offender, the offender must include on the signed, written registration form a specific declaration that the person has been determined to be a habitual sex offender. If the offender is adjudicated as being a sexual predator relative to the sexually oriented offense in question, the offender must include on the signed, written registration form a specific declaration that the person is under such an adjudication and the identification license plate number of each motor vehicle the offender owns and of each motor vehicle registered in the offender's name. (R.C. 2950.04(A), (B), and (C).)

Operation of the act. The act modifies the registration requirement for one category of offender who is subject to the requirement. Under the act, if: (1) an offender convicted of a sexually oriented offense is sentenced for the sexually oriented offense to a prison term, a term of imprisonment, or any other type of confinement, regardless of when the sexually oriented offense was committed, (2) on or after July 1, 1997, the offender is released in any manner from the prison term, term of imprisonment, or confinement, and (3) subsequent to the offender's release, the offender is adjudicated to be a sexual predator under the SORN Law as modified by the act, then the offender must register within seven days of the adjudication with the sheriff of the county in which the offender resides or temporarily is domiciled for more than seven days and must register with the sheriff of any county in which the offender subsequently resides or temporarily is domiciled for more than seven days within seven days of coming into that county. The provisions regarding the manner of registration described above under "**Preexisting law**" also apply to this duty to register. (R.C. 2950.04(A)(6).)

Notice of duty to register

Preexisting law. Under preexisting provisions of the SORN Law, retained by the act except as described below, each person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense and who has a duty to register under that Law must be provided notice of the

offender's duties under that Law. The notice is provided in a variety of ways, depending upon the circumstances present. One of the notice provisions specifies that, regardless of when the offender committed the sexually oriented offense, if the offender is sentenced for the sexually oriented offense to a prison term, a term of imprisonment, or any other type of confinement, and if, on or after January 1, 1997, the offender is serving that term or is under that confinement, the official in charge of the institution in which the offender serves the prison term, term of imprisonment, or confinement, or a designee of that official, must provide the notice to the offender *at least ten days before the offender is released* pursuant to any type of supervised release or *at least ten days before the offender otherwise is released* from the prison term, term of imprisonment, or confinement. (R.C. 2950.03(A)(1).) (Also, see "Notice of duty to register given to imprisoned sex offenders who are released on or after January 1, 1997," above.)

In all cases in which the notice is required, it must inform the offender of the offender's duty to register under the SORN Law, to notify the appropriate officials of a change in the offender's residence address and to register the new residence address, and to periodically verify a residence address. The official or official's designee must require the offender to read and sign a form prescribed by the Bureau of Criminal Identification and Investigation (BCII), stating that the offender's duties have been explained to the offender. If the offender is unable to read, the official or designee must certify on the form that the official or designee specifically informed the offender of those duties and that the offender indicated an understanding of those duties.

After an offender has signed the form or the official or designee has certified on it that the form has been explained to the offender and that the offender indicated an understanding of the duties indicated on it, the official or designee must give one copy of the form to the offender, within three days must send one copy of the form to BCII, and must send one copy of the form to the sheriff of the county in which the offender expects to reside. The official or designee must determine the offender's name, identifying factors, and expected future residence address, must obtain the offender's criminal history, and must obtain a photograph and the fingerprints of the offender. The official or designee must obtain this information and these items prior to giving the notice. Within three days after receiving this information and these items, the official or designee must forward the information and items to BCII and to the sheriff of the county in which the offender expects to reside. If it has not already done so, BCII must forward a copy of the fingerprints and conviction data received to the FBI. (R.C. 2950.03(B) and (C).)

Operation of the act. The act provides that if, subsequent to release, an offender who is in the category described above under "Preexisting law" is adjudicated as being a sexual predator under the SORN Law as modified by the act,

the judge must provide the notice of the offender's duties under the SORN Law to the offender at the time of the adjudication (R.C. 2950.03(A)(4)). The provisions relating to notices described above under "Preexisting law" also apply to this new notice. In addition, the BCII-prescribed form that is used for this type of offender also must include: (1) a statement that the notice replaces any notice previously provided to the offender before the offender was released from the prison term, term of imprisonment, or confinement, (2) a statement that the offender's duties described in the new notice supersede the duties described in the prior notice, and (3) a statement that, if the offender already has registered under the SORN Law, the offender must register again in accordance with the act's provisions described above in "Duty to register" (R.C. 2950.03(A)(1), (A)(4), (B)(1)(b) and (d), (B)(2), and (C)(1)). (Also, see "Notice of duty to register given to imprisoned sex offenders who are released on or after January 1, 1997," above.)

COMMENT

1. Under the preexisting SORN Law, the other circumstances in which an offender is "adjudicated as being a sexual predator," unchanged by the act, are if any of the following apply (R.C. 2950.01(G)):

(a) The offender is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually oriented offense that is a sexually violent offense (see "Definitions," above) and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information that charged the sexually violent offense.

(b) Regardless of when the sexually oriented offense was committed, on or after January 1, 1997, the offender is sentenced for a sexually oriented offense (see "Definitions," above), and the sentencing judge determines pursuant to specified statutory criteria that the offender is a sexual predator.

(c) Regardless of when the sexually oriented offense was committed, the offender is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense in another jurisdiction, as a result of that conviction or plea of guilty, the offender is required, under the law of that jurisdiction, to register as a sex offender until the offender's death and to verify the offender's address on at least a quarterly basis each year, and, on or after July 1, 1997, the offender moves to and resides in this state or temporarily is domiciled in Ohio for more than seven days, unless a court of common pleas determines that the offender is not a sexual predator pursuant to R.C. 2950.09(F).

2. In *State v. Brewer* (1999), 86 Ohio St.3d 160, the Ohio Supreme Court held that a sexual predator hearing conducted pursuant to R.C. 2950.09(C)(2) must

take place prior to the offender's release from confinement. The court also held that the hearing must be scheduled far enough in advance of the offender's release date to allow officials to satisfy their statutory duty to notify the offender of the offender's registration duties under R.C. 2950.03(A)(1).

3. Under the preexisting SORN Law, unchanged by the act in this regard, in making a determination as to whether an offender is a sexual predator, the judge must consider all relevant factors, including, but not limited to, all of the following (R.C. 2950.09(B)(2)):

- (a) The offender's age;
- (b) The offender's prior criminal 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;
- (d) Whether the sexually oriented offense for which sentence is to be imposed involved multiple victims;
- (e) Whether the offender used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting;
- (f) If the offender previously has been convicted of or pleaded guilty to any criminal offense, whether the offender completed any sentence imposed for the prior offense and, if the prior offense was a sex offense or a sexually oriented offense, whether the offender participated in available programs for sexual offenders;
- (g) Any mental illness or mental disability of the offender;
- (h) The nature of the offender'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, during the commission of the sexually oriented offense for which sentence is to be imposed, displayed cruelty or made one or more threats of cruelty;
- (j) Any additional behavioral characteristics that contribute to the offender's conduct.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-18-99	p. 1371
Reported, H. Criminal Justice	02-17-00	pp. 1623-1624
Passed House (92-0)	03-21-00	p. 1694
Reported, S. Judiciary	09-20-00	p. 2087
Passed Senate (32-0)	11-08-00	pp. 2189-2190

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