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Bill Analysis
Legislative Service Commission

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(As Introduced)

**Reps. DePiero, Redfern, Clancy, Schuring, Distel, Hartnett, Flannery, Vesper,
Van Vyven, Patton, Allen, Britton, Pringle**

BILL SUMMARY

- Clarifies that, for an offender who, prior to January 1, 1997, was sentenced for a sexually oriented offense and is imprisoned in a state correctional institution on or after that date, a court is prohibited from making a determination that the offender is a sexual predator unless the court both holds the statutorily required hearing and makes the statutorily required determination prior to the offender's release from imprisonment.

CONTENT AND OPERATION

Overview and operation of the bill

Under the Sex Offender Registration and Notification Law (the SORN Law), the term "sexual predator" means a person who has been convicted of or pleaded guilty to committing a sexually oriented offense and is likely to engage in the future in one or more "sexually oriented offenses" (see "***Definitions***," below). (R.C. 2950.01(E).) For offenders convicted of sexually oriented offenses on or after January 1, 1997, the court adjudicates the offender to be a sexual predator in the course of the trial. For offenders sentenced prior to that date to a state correctional institution for committing a sexually oriented offense, and who are imprisoned in a state correctional institution after that date, the court may adjudicate the offender to be a sexual predator if certain criteria are met and certain procedures followed. The bill prohibits the court, in that latter circumstance, from adjudicating the offender to be a sexually oriented offender unless the court holds the required hearing and makes the required findings prior to the offender's release from imprisonment. (R.C. 2950.09(C)(2)(a).)

Existing law

Definition of being "adjudicated as being a sexual predator"

An offender may be "adjudicated as being a sexual predator" 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 is imprisoned in a state correctional institution on or after January 1, 1997, and, *prior to the offender's release from imprisonment*, the court determines pursuant to R.C. 2950.09(C) that the offender is a sexual predator (R.C. 2950.01(G)(3)). An offender may be "adjudicated as being a sexual predator" in other circumstances described in **COMMENT 1**.

As used in this analysis, "adjudicated being a sexual predator" means that the person has not been subsequently determined 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

If a person was sentenced for committing a sexually oriented offense prior to January 1, 1997, and if, on or after January 1, 1997, the offender is 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) must determine whether to recommend that the offender be adjudicated as being a sexual predator. In making this determination, DRC must consider all relevant factors, including, but not limited to, certain statutorily specified factors. If DRC determines that it will recommend that the offender be adjudicated as being a sexual predator, it immediately must send the recommendation to the court that sentenced the offender and must enter its determination and recommendation in the offender's institutional record.

If 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.

If the court schedules a hearing, the court must 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. At the hearing, the offender and the prosecutor must 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 is a sexual predator. The offender has the right to be represented by counsel and, if indigent, the right to have counsel appointed to represent the offender. In making a determination as to whether the offender is a sexual predator, the court must consider all relevant factors, including, but not limited to, certain statutorily specified factors (see **COMMENT 2**). After reviewing all testimony and evidence presented at the sexual predator hearing and the statutorily specified factors, the court must determine by clear and convincing evidence whether the offender is a sexual predator. If the court determines that the offender is *not* a sexual predator, it also 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 hearing is being conducted.

Upon making its determinations at the hearing, the court must proceed as follows:

(1) 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), it must include its determinations in the offender's institutional record.

(2) 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), it must (a) include its determination that the offender is not a sexual predator but is a habitual sex offender in the offender's institutional record, (b) attach the determinations to the offender's sentence, (c) specify that the determinations were pursuant to R.C. 2950.09(C), and (d) provide a copy of the determinations to the offender, to the prosecuting attorney, and to DRC. The court may impose a requirement that the offender be subject to the SORN Law's community notification provisions regarding the offender's place of residence. If the court does not impose the requirement, the offender is not subject to those community notification provisions relative to the sexually oriented offense in question. If the court imposes those community notification provisions, the offender may appeal the judge's determination that the offender is a habitual sex offender.

(3) If the court determined without a hearing 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 court determined that the offender is not a sexual predator), and, as such, is a habitual sex offender, and the hearing is solely to determine whether to impose a requirement that the offender be subject to the SORN Law's community notification provisions, after the hearing, the court may impose a community notification requirement regarding the offender's place of residence. If the court does not impose the community notification requirement, the offender is not subject to the community notification provisions relative to the sexually oriented offense in question. If the court imposes those community notification provisions, the offender may appeal the judge's determination that the offender is a habitual sex offender.

(4) If the court determines by clear and convincing evidence that the offender is a sexual predator, it must enter its determination in the offender's institutional record, attach the determination to the offender's sentence, specify that the determination was pursuant to R.C. 2950.09(C), and provide a copy of the determination to the offender, to the prosecuting attorney, and to DRC. The offender and the prosecutor may appeal as a matter of right the judge's determination as to whether the offender is, or is not, a sexual predator. (R.C. 2950.09(C).)

Procedure relative to determining that an offender no longer is a sexual predator

Existing law provides procedures by which an offender who is adjudicated as being a sexual predator may petition the judge who made the determination, or that judge's successor in office, to enter a determination that the offender no longer is a sexual predator. Existing law specifies procedures by which petitions of this nature and the related determinations must be made. (R.C. 2950.09(D), (E), and (F).)

Effect of being adjudicated as being a sexual predator

Numerous sections of the Revised Code impose restrictions or additional duties on a person who is convicted of a sexually oriented offense. A person who is adjudicated as being a sexual predator is subject to additional restrictions and duties. The most notable of those restrictions and duties are sex offender registration, victim notification, and community notification.

Sex offender registration. An offender who is convicted of or pleads guilty to, or has been convicted of or pleads guilty to, a sexually oriented offense must comply with the registration requirements under the SORN Law. This Law requires the offender to register with the sheriff of the county in which the

offender resides or is temporarily domiciled for more than seven days (R.C. 2950.04 and 2950.07(A)). The offender also must periodically verify with that sheriff the offender's current residence address. The frequency with which the offender must verify the offender's current residence address varies depending on whether or not the offender has been adjudicated as being a sexual predator. If the offender has been adjudicated as being a sexual predator, the offender must verify the offender's current residence address every 90 days after the offender's initial registration. In all other cases, the offender must verify the offender's current residence address on each anniversary of the date of the offender's initial registration. (R.C. 2950.06(B).)

The duration of the registration requirements also depends on whether or not the offender has been adjudicated as being either a sexual predator or a habitual sex offender. Generally, a sex offender's duty to comply with the registration requirements continues for ten years. If the judge who sentenced the offender for the sexually oriented offense determined that the offender is a habitual sex offender, the offender's duty to comply with the registration requirements continues for 20 years. If the offender has been adjudicated as being a sexual predator relative to the sexually oriented offense, the offender's duty to comply with the registration requirements generally continues until the offender's death. If the judge who sentenced the offender or that judge's successor in office subsequently enters a determination that the offender no longer is a sexual predator, the offender's duty to comply with the registration requirements continues for the period of time that otherwise would have been applicable to the offender. (R.C. 2950.07(B).)

Notices to victim regarding offender. The sheriff with whom a sexual predator registers must provide written notice to the victim of the sexually oriented offense relative to which the offender was adjudicated as being a sexual predator if all of the following apply: (1) the offender has been adjudicated as being a sexual predator, (2) the offender registers with a sheriff pursuant to the SORN Law, and (3) the victim of the sexually oriented offense has made a proper request to be provided notice. The notice must state that the offender has registered and include the offender's name and residence address or addresses. The sheriff must provide the notice at the most recent residence address available for the victim, not later than 72 hours after the offender registers with the sheriff. The sheriff must provide a similar notice if the offender notifies the sheriff of a change of residence address. (R.C. 2950.10(A)(1) and (2).)

Community notification. The sheriff with whom a sexual predator has most recently registered under the SORN Law must provide a written notice to specified persons in the sexual predator's community, including the occupants of residences adjacent to the sexual predator's place of residence, the executive

director of the local public children services agency, the superintendent of the local boards of education and specified officers of other local schools, day care centers, and specified law enforcement officers. The notice must include the sexual predator's name, the address or addresses at which the sexual predator resides, the sexually oriented offense of which the sexual predator was convicted or to which the sexual predator pleaded guilty, and a statement that the sexual predator has been adjudicated as being a sexual predator. (R.C. 2950.11(A) and (B).)

Definitions

Sexually oriented offense

Under existing law, "sexually oriented offense" means for the purposes of the SORN Law any of the following offenses (R.C. 2950.01(D)):

(1) Regardless of the age of the victim of the offense, the offense of rape, sexual battery, or gross sexual imposition, or the former offense of felonious sexual penetration;

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

(a) The offense of kidnapping, abduction, unlawful restraint, the former offense of child stealing, criminal child enticement, or corruption of a minor when the victim of the offense is under 18 years of age;

(b) The offense of compelling prostitution when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under 18 years of age;

(c) The offense of pandering sexually oriented matter involving a minor or the offense of pandering obscenity involving a minor when the offense involves creating, reproducing, or publishing obscene material that has a minor as one of its participants or portrayed observers or when the offense involves creating, directing, or producing an obscene performance that has a minor as one of its participants;

(d) The offense of illegal use of a minor in nudity-oriented material or performance when the offense involves photographing a minor who is not the person's child or ward in a state of nudity, or creating, directing, producing, or transferring any material or performance that shows the minor in a state of nudity or when the offense involves consenting to the photographing of the person's

minor child or ward, or photograph the person's minor child or ward, in a state of nudity or consenting to the use of the person's minor child or ward in a state of nudity in any material or performance, or using or transferring a material or performance of that nature;

(e) The offense of endangering children when the offense involves enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter when the child who is involved in the offense is under 18 years of age.

(3) Regardless of the age of the victim of the offense and when the offense is committed with a purpose to gratify the sexual needs or desires of the offender, the offense of aggravated murder, murder, felonious assault, or kidnapping, or involuntary manslaughter committed as a proximate result of the offender's committing or attempting to commit a felony;

(4) A sexually violent offense (see "**Sexually violent offense**," below);

(5) A violation of any former law of this state that was substantially equivalent to any offense listed in paragraph (1), (2), (3), or (4), above;

(6) A violation of an existing or former municipal ordinance or law of another state or the United States, or a violation under the law applicable in a military court, that is or was substantially equivalent to any offense listed in paragraph (1), (2), (3), or (4), above;

(7) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (1), (2), (3), (4), (5), or (6), above.

Sexually violent offense

Under existing law, "sexually violent offense" means a "violent sex offense" (see "**Violent sex offense**," below), or a "designated homicide, assault, or kidnapping offense" (see "**Designated homicide, assault, or kidnapping offense**," below) for which the offender also was convicted of or pleaded guilty to a sexual motivation specification under the Sexually Violent Predator Law (R.C. 2971.01(G)--not in the bill).

Violent sex offense

"Violent sex offense" means any of the following (R.C. 2971.01(L)--not in the bill):

(1) The offense of rape, sexual battery, gross sexual imposition when the victim or one of the victims of the offense is less than 13 years of age, or the former offense of felonious sexual penetration;

(2) A felony violation of a former Ohio law that is substantially equivalent to a violation listed in paragraph (1) or of an existing or former law of the United States or of another state that is substantially equivalent to a violation listed in paragraph (1);

(3) An attempt to commit or complicity in committing a violation listed in paragraph (1) or (2) if the attempt or complicity is a felony.

Designated homicide, assault, or kidnapping offense

"Designated homicide, assault, or kidnapping offense" means any of the following (R.C. 2971.01(B)--not in the bill):

(1) The offense of aggravated murder, murder, felonious assault, or kidnapping, or involuntary manslaughter committed as a proximate result of the offender's committing or attempting to commit a felony;

(2) An attempt to commit or complicity in committing a violation listed in paragraph (1), if the attempt or complicity is a felony.

COMMENT

1. An offender also may be "adjudicated as being a sexual predator" 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 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 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.

3. 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).

HISTORY

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