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Reps. Willamowski, Faber, Young, Hughes, Latta, Callender, Womer Benjamin, Flowers, Allen, Otterman, Perry, D. Miller, Flannery, White, Driehaus, Setzer, Sferra, Schaffer, Webster, Salerno, Collier, Coates, Barrett, Schmidt, Roman, Reidelbach, Clancy, Niehaus, Buehrer, Seitz, Schneider, Calvert, Metzger, Aslanides, G. Smith, Widowfield, DeBose

Effective date: *

ACT SUMMARY

- Provides that, if a person is to be sentenced for a sexually oriented offense and that person was acquitted of a sexually violent predator specification included in the document charging the sexually oriented offense, the judge who is to sentence the offender must conduct a hearing to determine whether the offender is a sexual predator for purposes of the Sex Offender Registration and Notification Law (the SORN Law).
- Makes a managing officer of a state correctional institution and an officer or employee of the Department of Rehabilitation and Correction generally immune from liability in a civil action to recover damages for injury, death, or loss to person or property allegedly caused by an act or omission in connection with a power, duty, responsibility, or authorization under the SORN Law or under rules adopted under authority of that Law.
- If an offender or delinquent child who is required to register under the SORN Law is a sexual predator or habitual sex offender subject to community notification, requires the offender or delinquent child to also

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

send the sheriff of the county in which the offender or delinquent child intends to reside written notice of the offender's or delinquent child's intent to reside in the county, at least 20 days prior to the date the offender or delinquent child begins to reside in the county.

- Extends the time within which an offender or delinquent child subject to the SORN Law must notify the sheriff of the offender's or delinquent child's change of address and register the offender's or delinquent child's new address from seven days prior to the change in residence address to 20 days prior to the change in residence address.
- Expands the community notification provisions in the SORN Law to also require the sheriff to provide community notification when the sheriff receives under the act a notice of intent to reside, and revises the time within which the notification must be provided to reflect this expansion.
- Expands the community notification provisions in the SORN Law to require the sheriff to notify not just all occupants of residences *adjacent to* the offender's or delinquent child's place of residence that are located within the county served by the sheriff but all occupants of residences *within 1,000 feet of* the offender's or delinquent child's place of residence that are located within the county served by the sheriff.
- Revises the age brackets of the victim relative to certain prohibitions contained within the offense of importuning, and clarifies the penalty for the offense of importuning.
- If the offender commits importuning by means of a telecommunications device and the person who is solicited is either 13 years of age or older but less than 16 years of age or a law enforcement officer posing as a person who is 13 years of age or older but less than 16 years of age, imposes the additional requirement that the offender be four or more years older than the person who is solicited or four or more years older than the age the law enforcement officer assumes in posing as the person who is 13 years of age or older but less than 16 years of age.
- Makes an adult's importuning a minor by means of a telecommunications device a sexually oriented offense.
- Declares an emergency.

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CONTENT AND OPERATION

Introduction regarding the SORN Law

Continuing law requires certain specified offenders who have been convicted of or pleaded guilty to a "sexually oriented offense" (see '**SORN Law definitions**,' below) to register with a county sheriff, to provide notification to specified sheriffs if they change their residence address, and to periodically verify with specified sheriffs their residence address. It also provides for victim notification and community notification of the residence addresses of the offenders if they also are classified "sexual predators" or, in certain circumstances, "habitual sex offenders" (see '**SORN Law definitions**,' below). This law, contained in R.C. Chapter 2950., generally is referred to as the Sex Offender Registration and Notification Law (the SORN Law) or Ohio Megan's Law. A summary of the registration, change of address, residence address verification, victim notification, and community notification provisions of the SORN Law is set forth in the **COMMENT**.

The SORN Law also sets forth registration requirements that apply, in specified circumstances, regarding children who have been adjudicated delinquent



children for committing an act that would be a sexually oriented offense if committed by an adult, who are at least 14 years of age, and who have been classified by a juvenile court as a juvenile sex offender registrant under R.C. 2152.82 to 2152.85 (not in the act).

Under the continuing Sexually Violent Predator Law (R.C. Chapter 2971.-- not in the act), if a person is convicted of a "sexually oriented offense" that is a sexually violent offense and a "sexually violent predator specification," the court must adjudicate the person to be a "sexually violent predator" and, unless the person is sentenced to death, sentence the person to a term of life imprisonment or an indefinite term consisting of a minimum term set by the court from a specified range of minimum terms and a maximum term of life imprisonment. In limited circumstances, the sexually violent predator may be released from imprisonment.

Sexual predator classification under the SORN Law

Background

Continuing law, described below in "Continuing and prior law," specifies several distinct manners in which a person convicted of a sexually oriented offense may be classified as a "sexual predator" (see "SORN Law definitions," below) for the purposes of the SORN Law (R.C. 2950.09). In one set of circumstances, the offender automatically is classified as a sexual predator. In all other circumstances, the offender may be classified as a sexual predator only if the court makes specified findings at a hearing. If a person is classified as a sexual predator, subject to potential "declassification," the person is subject to lifetime requirements regarding registration, change of address notification, and address verification, is subject to more frequent address verification requirements than persons who are not so classified, and is subject to the provisions requiring victim notification and community notification of the person's residence addresses, as described in the **COMMENT**.

Operation of the act

The act adds a new circumstance in which a court that is sentencing a person for a sexually oriented offense must conduct a sexual predator hearing regarding the offender. Under the act, regardless of when the sexually oriented offense was committed, if a person is to be sentenced on or after the act's effective date for a sexually oriented offense and that person was acquitted of a "sexually violent predator specification" (see "SORN Law definitions," below) that was included in the indictment, count in the indictment, or information charging the sexually oriented offense, the judge who is to sentence the offender must conduct a hearing to determine whether the offender is a sexual predator. The hearing must be conducted in the same manner, and is subject to the same procedures, as

sexual predator hearings conducted under continuing law, as described below in "(2) Classification when offender sentenced on or after January 1, 1997--hearing" under "Continuing and prior law." (R.C. 2950.09(B)(1) and (2).)

Consistent with the change described in the preceding paragraph, the act modifies a preexisting provision that prohibits the conduct of a sexual predator hearing regarding an offender if the sexually oriented offense in question is a sexually violent offense and the indictment, count in the indictment, or information charging the offense also included a sexually violent predator specification so that the prohibition applies only if the offender is convicted of or pleads guilty to that sexually violent predator specification (R.C. 2950.04(B)(5)).

The act does not change the preexisting sexual predator classification provisions described below in "(1) Automatic classification" and "(3) Classification when offender sentenced prior to January 1, 1997, and is imprisoned on or after that date," under "Continuing and prior law."

Continuing and prior law

Continuing law specifies several manners in which a person convicted of a sexually oriented offense may be classified as a sexual predator. A discussion of the manners in which a person convicted of a criminal offense may be classified as a sexual predator follows:

(1) Automatic classification. Continuing law specifies that a person is automatically classified as a sexual predator for purposes of the SORN Law if either of the following applies (R.C. 2950.09(A)):

(a) The person is convicted of or pleads guilty to committing, on or after January 1, 1997, a "sexually oriented offense" that is a "sexually violent offense" and also is convicted of or pleads guilty to a "sexually violent predator specification" (see "SORN Law definitions," below).

(b) The person is convicted of or pleads guilty to a sexually oriented offense in a state other than Ohio, or in a federal court, military court, or an Indian tribal court and is required, under the law of that other jurisdiction, to register as a sex offender until the person's death and to verify the person's address at least quarterly.

Continuing law specifies that, in all cases not described in (1)(a) or (b), above, a person who is convicted of or pleads guilty to a sexually oriented offense may be classified as a sexual predator for purposes of the SORN Law only as described below in (2) or (3) (R.C. 2950.09(A)).

(2) Classification when offender sentenced on or after January 1, 1997--hearing. Under continuing law, if a person is to be sentenced on or after January 1, 1997, for a sexually oriented offense that is not a sexually violent offense, or for a sexually oriented offense that is a sexually violent offense when a sexually violent predator specification was not included in the indictment, count in the indictment, or information charging the sexually violent offense, the judge who is to sentence the offender must conduct a hearing to determine whether the offender is a sexual predator. The judge must conduct the hearing prior to sentencing and, if the sexually oriented offense is a felony, may conduct it as part of the sentencing hearing required by law. The court must give the offender and the prosecutor notice of the date, time, and location of the hearing. At the hearing: (a) the offender and the prosecutor have an opportunity to testify, present evidence, call and examine witnesses and expert witnesses, and cross-examine witnesses and expert witnesses regarding the sexual predator determination, and (b) the offender has the right to be represented by counsel and, if indigent, the right to have counsel appointed to represent him or her. Continuing law requires the judge, in making a sexual predator determination at the hearing, to consider all relevant factors, including, but not limited to, certain factors specifically identified by law.

If the judge determines that the offender is not a sexual predator, the judge must specify in the offender's sentence and the judgment of conviction that the judge has determined that the offender is not a sexual predator. If the judge determines by clear and convincing evidence that the offender is a sexual predator, the judge must specify in the offender's sentence and the judgment of conviction that the judge has determined that the offender is a sexual predator and must specify that the determination was pursuant to the SORN Law's hearing mechanism. The offender and the prosecutor who prosecuted the offender for the sexually oriented offense in question may appeal as a matter of right the judge's determination as to whether the offender is, or is not, a sexual predator.

Prior law provided that *a hearing could not be conducted under the provisions described in the preceding paragraph regarding an offender if the sexually oriented offense in question was a sexually violent offense and the indictment, count in the indictment, or information charging the offense also included a sexually violent predator specification.* (R.C. 2950.09(B).)

(3) Classification when offender sentenced prior to January 1, 1997, and is imprisoned on or after that date. Continuing law contains special provisions under which a person who was convicted of or pleaded guilty to a sexually oriented offense prior to January 1, 1997, and who is serving a term of imprisonment in a state correctional institution may be adjudicated a sexual predator, but these provisions are not related to the act. Continuing law also

contains separate, related provisions regarding the determination of whether the person in question is an habitual sex offender. (R.C. 2950.09(C).)

Ohio Supreme Court decision

In a recent decision, the Ohio Supreme Court interpreted the provisions of R.C. 2950.09(A) to (C) that formerly governed the manners in which a person convicted of a criminal offense could be classified as a sexual predator, as described above under "**Continuing and prior law.**" The case involved a person who was charged with multiple sexually oriented offenses that were sexually violent offenses, with each count containing a sexually violent predator specification. The person was convicted of several of the sexually violent offenses but was acquitted by the court of all of the sexually violent predator specifications. Notwithstanding the acquittal of the specifications, the court determined that the person was a sexual predator.

On appeal, the court of appeals held that if a defendant is acquitted of a sexually violent predator specification contained in the indictment, the trial court is prohibited from determining that the defendant is a sexual predator. Based on its holding, the court of appeals reversed the trial court's determination that the person was a sexual predator.

The Supreme Court agreed with the court of appeals and affirmed its decision on this point. The Supreme Court stated that "(c)learly, R.C. 2950.09(B)(4) (R.C. 2950.09(B)(5) under the version of the section amended by the act) precludes a trial court from conducting a sexual predator hearing when, as in the case before us, the indictment charging the offender included a sexually violent predator specification." It also rejected the state's claim that, in those circumstances, the court could find the offender to be a sexual predator without holding a sexual predator hearing. In sum, it stated that "we agree with the court of appeals' determination that R.C. 2950.09 prohibits a trial court from classifying a defendant as a sexual predator once that defendant has been acquitted of a sexually violent predator specification." *State v. Jones* (October 3, 2001), 93 Ohio St.3d 391.

Duties of offenders and delinquent children under the SORN Law

Notice to sheriff of intent to reside in the sheriff's county

Continuing law. Continuing law generally requires offenders who are convicted of a sexually oriented offense and children who are adjudicated delinquent children for committing a sexually oriented offense and classified by a juvenile court as a juvenile sex offender registrant, to register, within seven days of his or her coming into any county in which he or she resides or temporarily is



domiciled for more than seven days, with the sheriff of that county. Continuing law specifies the manner of registering and requires the sheriff, after an offender or delinquent child registers with the sheriff, to forward the registration materials to the Bureau of Criminal Identification and Investigation (BCII). (R.C. 2950.04(A), (B), (C), and (D).)

Continuing law also does the following (R.C. 2950.09, and R.C. 2152.82 to 2152.85--not in the act): (1) provides several distinct manners in which a person convicted of a sexually oriented offense may be classified a sexual predator (the act expands this law, as described above in "***Sexual predator classifications***"), (2) provides circumstances in which a person convicted of a sexually oriented offense may be classified a habitual sex offender and may be subjected to the SORN Law's community notification requirements, and (3) provides circumstances in which a child who is adjudicated a delinquent child for committing a sexually oriented offense may be classified a sexual predator, or may be classified a habitual sex offender and may be subjected to the SORN Law's community notification requirements.

Operation of the act. The act imposes a new duty upon certain offenders and delinquent children who are required to register under the SORN Law. Under the act, if an offender or delinquent child who is required to register is a sexual predator or habitual sex offender subject to community notification, the offender or delinquent child also must send the sheriff of the county in which the offender or delinquent child intends to reside written notice of the offender's or delinquent child's intent to reside in the county. The offender or delinquent child must give the "notice of intent to reside" at least 20 days prior to the date the offender or delinquent child begins to reside in the county (R.C. 2950.04(G)). The notice of intent to reside must contain the following information (R.C. 2950.04(G)):

- (1) The offender's or delinquent child's name;
- (2) The address or addresses at which the offender or delinquent child intends to reside;
- (3) The sexually oriented offense of which the offender was convicted, to which the offender pleaded guilty, or for which the child was adjudicated a delinquent child;
- (4) A statement that the offender or delinquent child has been adjudicated as being a sexual predator and that, as of the date of the notice, the court has not entered a determination that the offender or delinquent child no longer is a sexual predator, or a statement that the sentencing or reviewing judge has determined that the offender or delinquent child is a habitual sex offender and that (in the case of a

delinquent child), as of the date of the notice, the determination has not been removed.

Duties regarding change of residence address

Prior and continuing law. Under prior law, if an offender or delinquent child was required to register under the SORN Law, the offender or delinquent child, at least *seven* days prior to changing his or her residence address during the period of required registration, was required to do both of the following: (1) provide written notice of the residence address change to the sheriff with whom the offender or delinquent child most recently registered, and (2) register the new residence address with the sheriff of the county in which his or her new residence address is located. The provisions applied regardless of whether the person's new residence address was in Ohio or in another state.

Under continuing law, upon receiving from an offender or delinquent child notice of a change of the offender's or delinquent child's residence address, a sheriff promptly must forward the new residence address to BCII if the new residence address is in another state or, if the offender's or delinquent child's new residence address is located in another county in Ohio, to the sheriff of that county. BCII must include all information forwarded to it in the State Registry of Sex Offenders and forward notice of the new residence address to the appropriate officials in the other state. (R.C. 2950.05(A) to (D), and (F).)

Operation of the act. The act extends the prior notice and registration requirements regarding a change of residence address from seven days to 20 days. Thus, under the act, the offender or delinquent child, at least *20* days prior to changing his or her residence address during the period of required registration, must do both of the following: (1) provide written notice of the residence address change to the sheriff with whom the offender or delinquent child most recently registered, and (2) register the new residence address with the sheriff of the county in which his or her new residence address is located. (R.C. 2950.05(A) and (B).)

Community notification under the SORN Law

Duty to provide community notification

Under continuing law, if a person is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense, is classified a juvenile sex offender registrant, or is an out-of-state juvenile sex offender, and if the offender or delinquent child has been adjudicated as being a sexual predator relative to the sexually oriented offense and the court has not subsequently determined that the offender or delinquent child no longer is a sexual predator or the offender or delinquent child has been determined to be a habitual sex offender,



the court has imposed a requirement subjecting the habitual sex offender to community notification, and (in the case of a delinquent child) the determination has not been removed, the sheriff with whom the offender or delinquent child has most recently registered under the SORN Law must provide the written notice described below. The sheriff must send the notice within the period of time described below. (R.C. 2950.11(A).)

Under the act, the sheriff to whom the offender or delinquent child most recently sent a notice of intent to reside under the act's provisions described above in "Notice to sheriff of intent to reside in the sheriff's county" also must provide the written notice described below to the persons specified below within the period of time described below (R.C. 2950.11(A) and (C)).

To whom community notification must be provided

Under prior law, the community notification notice was required to be sent to all occupants of residences *adjacent to* the offender's or delinquent child's place of residence that were located within the county served by the sheriff. Under the act, the notice must be sent to all occupants of residences *within 1,000 feet of* the registrant's place of residence that are located within the county served by the sheriff. (R.C. 2950.11(A)(1).)

Under continuing law, the community notification notice also must be sent to the following persons (R.C. 2950.11(A)(1) to (9)):

(1) All neighbors of the offender or delinquent child in addition to the neighbors described in the second preceding paragraph who are within any category that the Attorney General by rule requires to be provided the notice and who reside within the county served by the sheriff;

(2) The executive director of the public children services agency that has jurisdiction within a specified geographical notification area and that is located within the county served by the sheriff;

(3) The heads of certain school districts, schools, preschool programs, day-care facilities, and institutions of higher education;

(4) The sheriff of each county that includes any portion of a specified geographical notification area designated by the Attorney General (under continuing law in R.C. 2950.11(C), the sheriff of each of these other counties then must provide the community notification notices to the specified persons and entities that are located within the geographical notification area and within the county served by that sheriff);

(5) If the offender or delinquent child resides within the county served by the sheriff, the chief of police, marshal, or other chief law enforcement officer of the municipal corporation in which the offender or delinquent child resides or, if the offender or delinquent child resides in an unincorporated area, the constable or chief of the police department or police district police force of the township in which the offender or delinquent child resides.

Time within which community notification must be sent

Under continuing law, the sheriff must provide the community notification notices to the neighbors and the specified law enforcement personnel no later than 72 hours after the offender or delinquent child registers with the sheriff or, if the sheriff is required to provide the notices by the provision described in paragraph (4) under "**To whom community notification must be provided,**" above, no later than 72 hours after the sheriff is provided the notice by the other sheriff. The act expands this provision prescribing the time within which the notices must be sent to additionally require the notices to be sent no later than 72 hours after the offender or delinquent child sends the sheriff the notice of intent to reside required under the act. If the sheriff is required to provide the notices by the provision described in paragraph (4) under "**To whom community notification must be provided,**" above, that sheriff must provide the notice to the neighbors and the law enforcement personnel no later than 72 hours after the sheriff is provided the notice by the other sheriff.

Under continuing law, the sheriff must provide the notices to all other specified persons not discussed in the preceding paragraph not later than seven days after the offender or delinquent child registers with the sheriff. If the sheriff is required to provide the notices by the provision described in paragraph (4) under "**To whom community notification must be provided,**" above, that sheriff must provide the notices no later than 72 hours after the sheriff is provided the notice by the other sheriff. (R.C. 2950.11(D).)

Contents of the notice--continuing law

Under continuing law, the community notification notice must include all of the following information regarding the subject registrant (R.C. 2950.11(B)):

- (1) The offender's or delinquent child's name;
- (2) The address or addresses at which the offender or delinquent child resides;

(3) The sexually oriented offense of which the offender was convicted, to which the offender pleaded guilty, or for which the child was adjudicated a delinquent child;

(4) A statement that the offender or delinquent child has been adjudicated as being a sexual predator and that, as of the date of the notice, the court has not entered a determination that the offender or delinquent child no longer is a sexual predator, or a statement that the sentencing or reviewing judge has determined that the offender or delinquent child is a habitual sex offender and (in the case of a delinquent child) that, as of the date of the notice, the determination has not been removed.

Immunity from liability relating to duties under the SORN Law

Under the act, a managing officer of a state correctional institution and an officer or employee of the Department of Rehabilitation and Correction generally are immune from liability in a civil action to recover damages for injury, death, or loss to person or property allegedly caused by an act or omission in connection with a power, duty, responsibility, or authorization under the SORN Law or under rules adopted under authority of the SORN Law (R.C. 2950.12(A)(7)). Continuing law provides the same immunity for the following persons (R.C. 2950.12(A)(1) through (6) and (A)(8)):

(1) An officer or employee of BCII;

(2) The Attorney General, a chief of police, marshal, or other chief law enforcement officer of a municipal corporation, a sheriff, a constable or chief of police of a township police department or police district police force, and a deputy, officer, or employee of the office of the Attorney General, the law enforcement agency served by the marshal or the municipal or township chief, the office of the sheriff, or the constable;

(3) A prosecutor and an officer or employee of the office of a prosecutor;

(4) A supervising officer and an officer or employee of the Adult Parole Authority of the Department of Rehabilitation and Correction;

(5) A supervising officer and an officer or employee of the Department of Youth Services;

(6) A supervisor and a caseworker or employee of a public children services agency acting pursuant to specific authority with respect to certain children;

(7) Certain persons notified under the community notification provisions of the SORN Law, or the agent of that person.

The immunity created by the act and the immunity provided under continuing law does not apply to a person if, in relation to the act or omission in question, any of the following applies (R.C. 2950.12(B)):

(1) The act or omission was manifestly outside the scope of the person's employment or official responsibilities.

(2) The act or omission was with malicious purpose, in bad faith, or in a wanton or reckless manner.

(3) Liability for the act or omission is expressly imposed by a Revised Code section.

Importuning

Offense of importuning

R.C. 2907.07 contains five prohibitions, the violation of which is the offense of importuning. A discussion of these prohibitions and the penalties for violations of them follows:

(1) Under continuing law, R.C. 2907.07(A) prohibits a person from soliciting a person who is less than 13 years of age to engage in sexual activity with the offender, whether or not the offender knows the age of the person. Under prior law, the penalty for violating this prohibition was unclear, with R.C. 2907.07(G) stating that the penalty was both: (a) a misdemeanor of the first degree and (b) a felony of the fourth degree on a first offense and a felony of the third degree on each subsequent offense.

The act clarifies that the penalty for violating this prohibition is a felony of the fourth degree on a first offense and a felony of the third degree on each subsequent offense. (R.C. 2907.07(A) and (G).)

(2) Under prior law, R.C. 2907.07(C) prohibited a person from soliciting another, not the spouse of the offender, to engage in sexual conduct with the offender, when the offender was 18 years of age or older and four or more years older than the other person, and the other person was *over 12* but less than 16 years of age, whether or not the offender knew the age of the other person. Under continuing law, a violation of this prohibition is a felony of the fifth degree on a first offense and a felony of the fourth degree on each subsequent offense.

Under the act, the "other person" must be *13 years of age or older* but less than 16 years of age (rather than *over 12 years of age* but less than 16 years of age). (R.C. 2907.07(C) and (G).)

(3) Under continuing law, R.C. 2907.07(B) prohibits a person from soliciting a person of the same sex to engage in sexual activity with the offender, when the offender knows the solicitation is offensive to the other person, or is reckless in that regard. A violation of this prohibition is a misdemeanor of the first degree. (R.C. 2907.07(B) and (G).)

(4) Under continuing law, R.C. 2907.07(D) prohibits a person from soliciting another by means of a telecommunications device to engage in sexual activity with the offender when the offender is 18 years of age or older and either of the following applies: (a) the other person is less than 13 years of age, and the offender knows that the other person is less than 13 years of age or is reckless in that regard, or (b) the other person is a law enforcement officer posing as a person who is less than 13 years of age, and the offender believes that the other person is less than 13 years of age or is reckless in that regard.¹ A violation of this prohibition is a felony of the fourth degree on a first offense and a felony of the third degree on each subsequent offense. (R.C. 2907.07(D) and (G).)

(5) Under prior law, R.C. 2907.07(E) prohibited a person from soliciting another by means of a telecommunications device to engage in sexual activity with the offender when the offender was 18 years of age or older and either of the following applied: (a) the other person was *over 12* but less than 16 years of age, and the offender knew that the other person was *over 12* but less than 16 years of age or was reckless in that regard, or (b) the other person was a law enforcement officer posing as a person who was *over 12* but less than 16 years of age, and the offender believed that the other person was *over 12* but less than 16 years of age or was reckless in that regard. Under continuing law, a violation of this prohibition is a felony of the fifth degree on a first offense and a felony of the fourth degree on each subsequent offense.

¹ *"Telecommunications device" means any instrument, equipment, machine, or other device that facilitates telecommunication, including, but not limited to, a computer, computer network, computer chip, computer circuit, scanner, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables the use of a modem. "Telecommunication" means the origination, emission, dissemination, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence of any nature over any communications system by any method, including, but not limited to, a fiber optic, electronic, magnetic, optical, digital, or analog method. (R.C. 2907.07(D) and (E), by reference to R.C. 2913.01(X) and (Y)--not in the act.)*

The act revises the age brackets specified in the prohibitions such that the "other person" must be either: (a) *13 years of age or older* but less than 16 years of age (rather than *over 12 years of age* but less than 16 years of age), or (b) a law enforcement officer posing as a person who is *13 years of age or older* but less than 16 years of age (rather than a law enforcement officer posing as a person who is *over 12* but less than 16 years of age). The act also imposes the additional requirement that the offender be four or more years older than the other person described in clause (a) of the preceding sentence or four or more years older than the age the law enforcement officer assumes in posing as the person who is 13 years of age or older but less than 16 years of age as described in clause (b) of the preceding sentence. (R.C. 2907.07(E) and (G).)

Sexually oriented offense

The act makes a violation of the prohibitions described in paragraphs (4) and (5) of "**Offense of importuning**," above, a sexually oriented offense under the SORN Law (R.C. 2950.01(D)(1)(vi)). (See "**SORN Law definitions**," below, for a list of other offenses that are sexually oriented offenses and **COMMENT** for an overview of the results of being convicted of or pleading guilty to a sexually oriented offense.)

SORN Law definitions

Prior and continuing law provide a series of definitions for the SORN Law, including the following that are relevant to this final analysis (R.C. 2950.01):

(1) Under continuing law, "habitual sex offender" means a person who is convicted of or pleads guilty to a sexually oriented offense and who previously has been convicted of or pleaded guilty to one or more sexually oriented offenses.

(2) Under prior law, amended as described above under "**Importuning**," "sexually oriented offense" means any of the following offenses:

(a) Regardless of the age of the victim of the offense, rape, sexual battery, or gross sexual imposition;

(b) Any of the following offenses involving a minor, in the circumstances specified: (i) kidnapping, abduction, unlawful restraint, criminal child enticement, or corruption of a minor when the victim of the offense is under 18 years of age, (ii) 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, (iii) certain pandering obscenity or pandering sexually oriented matter involving minors violations, (iv) certain illegal use of a minor in nudity oriented

material or performance violations, and (v) certain endangering children violations when the child who is involved in the offense is under 18 years of age;

(c) Regardless of the age of the victim of the offense, the offense of aggravated murder, murder, felonious assault, kidnapping, or felony-based involuntary manslaughter, when the offense is committed with a purpose to gratify the sexual needs or desires of the offender;

(d) A sexually violent offense;²

(e) A violation of any former Ohio law that was substantially equivalent to any offense listed in (2)(a) to (d), above;

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

(g) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (2)(a) to (f), above.

(3) Under continuing law, "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.

² "Sexually violent offense" means a violent sex offense, or a designated homicide, assault, or kidnapping offense for which the offender also was convicted of or pleaded guilty to a sexual motivation specification. (R.C. 2950.01(H) by reference to R.C. 2971.01(G).)

"Violent sex offense" means any of the following (R.C. 2971.01(L)): (1) rape, sexual battery, or the former offense of felonious sexual penetration, or gross sexual imposition when the victim is less than 13, (2) a felony violation of a former law of Ohio that is substantially equivalent to the offenses listed in clause (1) or of an existing or former law of the United States or of another state that is substantially equivalent to those offenses, and (3) an attempt to commit or complicity in committing an offense listed in clause (1) or (2) if the attempt or complicity is a felony.

"Designated homicide, assault, or kidnapping offense" means any of the following (R.C. 2971.01(B)): (1) aggravated murder, murder, felonious assault, or kidnapping or involuntary manslaughter committed as a proximate result of committing a felony, and (2) an attempt to commit or complicity in committing an offense listed in (1), if the attempt or complicity is a felony.

(4) Under continuing law, an offender is "adjudicated as being a sexual predator" if any of the following applies and if that status has not been removed pursuant to R.C. 2950.09:

(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 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, and the sentencing judge determines pursuant to R.C. 2950.09(B) that the offender is a sexual predator.

(c) Prior to January 1, 1997, the offender was convicted of or pleaded guilty to, and was sentenced for, a sexually oriented offense, the offender is imprisoned in a state correctional institution on or after January 1, 1997, and the court determines pursuant to R.C. 2950.09(C) that the offender is a sexual predator.

(d) 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 the jurisdiction in which the offender was convicted or pleaded guilty, 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 Ohio or temporarily is domiciled in Ohio for more than seven days, unless a court of common pleas or juvenile court determines that the offender is not a sexual predator pursuant to R.C. 2950.09(F).

(5) Under continuing law, "sexually violent predator specification" and "sexually violent predator" have the same meanings as in existing R.C. 2971.01. R.C. 2971.01, not in the act, provides that "sexually violent predator specification" means a specification charging a person with being a sexually violent predator. "Sexually violent predator" means a person who has been convicted of or pleaded guilty to committing, on or after January 1, 1997, a sexually violent offense and is likely to engage in the future in one or more sexually violent offenses. (See the footnote in the definition of "sexually oriented offense" for a definition of "sexually violent offense.")

COMMENT

The continuing SORN Law contains the following registration, change of address, residence address verification, victim notification, and community notification provisions, some of which are amended and described in greater detail above, under "*Duties of offenders and delinquent children under the SORN Law*" and "*Community notification under the SORN Law*":

1. Duty to register. Generally offenders convicted of a sexually oriented offense, and children adjudicated delinquent children for committing a sexually oriented offense who are classified by a juvenile court as a juvenile sex offender registrant, must register with a specified sheriff at a specified time. Generally each such offender or delinquent child must register, within seven days of his or her coming into any county in which he or she resides or temporarily is domiciled for more than seven days, with the sheriff of that county. (R.C. 2950.04(A).)

Note that the act imposes a new duty, described above in "*Notice to sheriff of intent to reside in the sheriff's county,*" that requires offenders and delinquent children who are required to register, who are sexual predators or habitual sex offenders subject to community notification, and who intend to reside in a particular county to provide prior written notice of that intent to the sheriff of that county (R.C. 2950.04(G)).

2. Registration procedure. An offender or delinquent child who is required to register (hereafter a "registrant") personally must obtain from the sheriff or a designee of the sheriff a registration form, complete and sign the form, and return the completed form together with a photograph to the sheriff or designee. The sheriff or designee must sign the form and indicate on the form the date on which it is so returned. After a registrant registers with a sheriff, the sheriff must forward the signed, written registration form and photograph to BCII. BCII includes the information and materials in the State Registry of Sex Offenders. (R.C. 2950.04(B), (C), and (D).)

3. Duties regarding change of residence address. Under the act (see "*Duties of offenders and delinquent children under the SORN Law,*" above), the registrant, at least 20 days (seven days under prior law) prior to changing his or her residence address during the period of required registration, must do both of the following: (a) provide written notice of the residence address change to the sheriff with whom the registrant most recently registered, and (b) register the new residence address with the sheriff of the county in which his or her new residence address is located. The provisions apply regardless of whether the registrant's new residence address is in Ohio or in another state.

Upon receiving from a registrant notice of a change of the registrant's residence address, a sheriff promptly must forward the new residence address to BCII if the new residence address is in another state or, if the registrant's new residence address is located in another county in Ohio, to the sheriff of that county. BCII must include all information forwarded to it in the State Registry of Sex Offenders and forward notice of the registrant's new residence address to the appropriate officials in the other state. (R.C. 2950.05(A) to (D), and (F).)

4. Duties regarding address verification. Continuing law, not in the act, provides that a registrant must periodically verify his or her current residence address at a specified time and in a specified manner. Regardless of when the sexually oriented offense for which the registrant is required to register was committed, if the registrant has been adjudicated a sexual predator and has not been "declassified," the registrant must verify his or her current residence address every 90 days after his or her initial registration date during the required registration period. In all other circumstances, the registrant must verify his or her current residence address on each anniversary of his or her initial registration date during the required registration period.

A registrant must verify his or her current residence address with the sheriff with whom he or she most recently registered by personally appearing before the sheriff or a designee, no earlier than ten days before the date on which the verification is required and no later than the date so required for verification, and completing and signing a copy of a verification form. The sheriff or designee must sign the completed form and indicate the date on which it is so completed. To facilitate the verification of a registrant's current residence address, the sheriff with whom the registrant most recently registered may mail a nonforwardable verification form to the registrant's last reported address, with a notice that states that the registrant must personally appear before the sheriff or a designee to complete the form and the date by which it must be completed. Regardless of whether a sheriff mails a form to a registrant, each registrant with an address verification duty must personally appear before the sheriff or a designee of the sheriff to verify the registrant's address.

Upon a registrant's personal appearance and completion of a verification form, a sheriff promptly must forward a copy to BCII. BCII must include all information forwarded to it in the State Registry of Sex Offenders. (R.C. 2950.06(A) to (E), (G), and (H).)

5. Commencement of registration, change of address, and address verification duties. Continuing law, not in the act, specifies the time the duties under the SORN Law commences, which depends on the circumstances. Generally, the duty commences on either (a) the date that the registrant is released from a prison term, term of imprisonment, or any other type of confinement or

from the Department of Youth Services or a secure facility that is not operated by the Department, or (b) if the person was not sentenced to a prison term or the Department of Youth Services, the date of the judgment of conviction for the offense or the date of entry of the court's order that classifies the delinquent child a juvenile sex offender registrant. Other provisions apply in certain circumstances. (R.C. 2950.07(A).)

6. Duration of registration, change of address, and address verification duties. Continuing law, not in the act, specifies that the duty of an offender who is convicted of or pleads guilty to a sexually oriented offense and the duty of a delinquent child who is adjudicated a delinquent child for committing a sexually oriented offense and is classified a juvenile sex offender registrant to comply with the registration, change of address, and address verification duties of the SORN Law continues, after the date of commencement, for whichever of the following periods is applicable: (1) *if the offender or delinquent child has been adjudicated a sexual predator relative to the sexually oriented offense, the offender's duty to comply continues until the offender's death*, provided that, if the judge who sentenced the offender or that judge's successor in office subsequently "declassifies" the offender, the offender's duty to comply continues for the period of time that otherwise would have been applicable to the offender or delinquent child, (2) if the judge who sentenced the offender or delinquent child for the sexually oriented offense determined pursuant to the SORN Law that the offender or delinquent child is a habitual sex offender, the offender's or delinquent child's duty to comply continues for 20 years (with one exception regarding delinquent children who are declassified), and (3) if neither clause (1) nor (2) of this sentence applies, the offender's duty to comply continues for ten years. (R.C. 2950.07(B).)

7. Victim notification. Continuing law, not in the act, contains provisions that permit the victim of a sexual predator, or a habitual sex offender in certain circumstances, to receive written notices when the sexual predator or habitual sex offender registers with a sheriff under the SORN Law or notifies the sheriff of a change of residence address under the SORN Law (R.C. 2950.10).

8. Community notification. If a person is convicted of or pleads guilty to, or adjudicated a delinquent child for committing, a sexually oriented offense, and if the offender or delinquent child has been adjudicated a sexual predator and the court has not subsequently "declassified" the offender or delinquent child or the offender or delinquent child has been determined to be an habitual sex offender and the court has imposed a requirement subjecting the habitual sex offender to this provision, the sheriff with whom the offender or delinquent child has most recently registered under the SORN Law, within a specified period of time, must provide a written notice containing specified information about the offender or

delinquent child to certain statutorily specified persons and entities in the community.

Note that, as described above in "**Community notification under the SORN Law**," the act expands this provision to also require a sheriff to whom an offender or delinquent child sends a notice of intent to reside, under another provision of the act, to provide the written notice to the specified persons and entities.

If a sheriff with whom an offender registers provides a statutorily required notice to a sheriff of another county, the other sheriff must provide the notices to the required persons and entities that are located within the geographical notification area and within the other sheriff's county. Note that, as described above in "**Community notification under the SORN Law**," the act modifies the persons to whom the notices must be given and expands the provision prescribing the time within which the notices must be given. (See "**Community notification under the SORN Law**" for a more detailed description of all of these provisions.) (R.C. 2950.11(A), (B), (C), (D), (E), and (F).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-10-01	p. 956
Reported, S. Judiciary on Criminal Justice	11-01-01	p. 1029
Passed Senate (29-1)	11-14-01	pp. 1124-1125
Reported, H. Criminal Justice	02-13-02	p. 1399
Passed House (95-0)	02-27-02	pp. 1459-1464
Senate refused to concur in House amendments (0-33)	03-05-02	pp. 1546-1547
House requested conference committee	03-12-02	p. 1512
Senate acceded to request for conference committee	03-12-02	p. 1570
Senate agreed to conference committee report (31-0)	03-20-02	pp. 1606-1617
House agreed to conference committee report (92-0)	03-21-02	pp. 1616-1627

02-sb175.124/jc

