



**S.B. 175**

124th General Assembly  
(As Passed by the Senate)

**Sens. Jacobson, Oelslager, Randy Gardner, Harris, Mumper**

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**BILL 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.
- Declares an emergency.

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## CONTENT AND OPERATION

### Introduction

Existing law requires certain specified offenders who have been convicted of or pleaded guilty to a "sexually oriented offense" (see "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 "Definitions," below). This law, contained in existing R.C. Chapter 2950., generally is referred to as the Sex Offender Registration and Notification Law (the SORN Law) or the Ohio Megan's Law. A summary of the registration, change of address, residence address verification, victim notification, and community notification provisions of the existing SORN Law is set forth below in "Duties and notifications under the SORN Law."

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 and who are at least 14 years of age. The provisions that apply to delinquent children are not affected by the bill and are not further discussed in this analysis.

Under the Sexually Violent Predator Law, if a person is convicted of a "sexually oriented offense" that is a sexually violent offense and a "sexually violent predator classification," 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. In limited circumstances, the sexually violent predator may be released from imprisonment.

### Sexual predator classification

#### Background

Existing law specifies several distinct manners in which a person convicted of a sexually oriented offense may be classified as a "sexual predator" (see "Definitions," below) for the purposes of the SORN Law. 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 below in "*Duties and notifications under the SORN Law.*"

### *Operation of the bill*

The bill 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 bill, regardless of when the sexually oriented offense was committed, if a person is to be sentenced on or after the bill's effective date for a sexually oriented offense and that person was acquitted of a "sexually violent predator specification" (see '*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 existing law, as described below in "*Classification when offender sentenced on or after January 1, 1997--hearing.*" (R.C. 2950.09(B)(1).)

Consistent with the change described in the preceding paragraph, the bill modifies the existing 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 bill does not change the existing sexual predator classification provisions described below in "*Automatic classification*" and "*Classification when offender sentenced prior to January 1, 1997, and is imprisoned on or after that date.*"

### *Existing law*

Existing 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.* Existing 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 "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.

Existing 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 existing 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. Existing law requires the judge, in making a sexual predator determination at the hearing, to consider all relevant factors, including, but not limited to, factors specifically identified by law (see **COMMENT**).

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.

Existing law provides that *a hearing cannot be conducted under the provisions described in the preceding paragraph 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.* (R.C. 2950.09(B).)

**(3) Classification when offender sentenced prior to January 1, 1997, and is imprisoned on or after that date.** Existing 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 bill. Existing 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 existing provisions of R.C. 2950.09(A) to (C) that govern the manners in which a person convicted of a criminal offense may be classified as a sexual predator. 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 current law) 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.

**Removal of sexual predator classification that is not an automatic classification**

Existing law permits an offender who has been classified as a sexual predator to have the classification removed, if the classification was not an automatic classification under the provisions described above in "**Automatic classification**." It provides that, upon the expiration of the applicable period of time specified below, an offender who has been convicted of or pleaded guilty to a sexually oriented offense and who has been so adjudicated as a sexual predator relative to the offense may petition the judge who made the determination that the offender was a sexual predator, or that judge's successor in office, to enter a determination that the offender no longer is a sexual predator. This provision does not apply regarding an offender who is automatically classified as a sexual predator for purposes of the SORN Law, as described above in "**Automatic classification**" (except in certain circumstances in which the offender also is sentenced as a sexually violent predator under R.C. Chapter 2971.).

Upon the filing of the petition, the judge may review the prior sexual predator determination that comprises the "sexually violent predator adjudication" (this phrase probably should be "sexual predator adjudication"), and, upon consideration of all relevant evidence and information, including, but not limited to, the specified factors that must be considered at a sexual predator hearing (see **COMMENT**), either must enter a determination that the offender no longer is a sexual predator or enter an order denying the petition. The court cannot not enter a determination under this provision that the offender no longer is a sexual predator unless the court determines by clear and convincing evidence that the offender is unlikely to commit a sexually oriented offense in the future. If the judge enters a determination that the offender no longer is a sexual predator, the judge must notify the Bureau of Criminal Identification and Investigation (BCII) and the Parole Board of the determination. Upon receipt of the notification, BCII promptly must notify the sheriff with whom the offender most recently registered under the SORN Law of the determination that the offender no longer is a sexual predator. If the judge enters an order denying the petition, the prior adjudication of the offender as a sexual predator remains in effect.

An offender who is classified as a sexual predator but who was not automatically so classified under the provisions described above in "**Automatic classification**" may file a petition to have the classification removed after the expiration of the following periods of time:

(1) Regardless of when the sexually oriented offense was committed, if, on or after January 1, 1997, the offender is imprisoned or sentenced to a prison term or other confinement for the sexually oriented offense in relation to which the determination was made, the offender initially may file the petition not earlier than one year prior to the offender's release from the imprisonment, prison term, or other confinement by discharge, parole, judicial release, or any other final release. If the offender is sentenced on or after January 1, 1997, for the sexually oriented offense in relation to which the determination is made and is not imprisoned or sentenced to a prison term or other confinement for the sexually oriented offense, the offender initially may file the petition upon the expiration of one year after the entry of the offender's judgment of conviction.

(2) After the offender's initial filing of a petition as described in (1), thereafter, an offender may file a petition upon the expiration of five years after the court has entered an order denying the most recent petition the offender has filed under this provision.

The bill does not change any of these provisions. (R.C. 2950.09(D).)

### **Duties and notifications under the SORN Law**

The following portions of this analysis summarize the existing SORN Law's registration, change of address, residence address verification, victim notification, and community notification provisions, none of which are in the bill.

#### **Duty to register**

Existing law, not in the bill, generally requires offenders convicted of a sexually oriented offense to register with a specified sheriff at a specified time. Generally each offender 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).)

#### **Registration procedure**

Existing law, not in the bill, specifies that an offender who is required to register 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 an offender 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).)

### **Duties regarding change of residence address**

Under existing law, not in the bill, if an offender is required to register under the above-described provisions, the offender, at least seven days 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 offender 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 person's new residence address is in Ohio or in another state.

Upon receiving from an offender notice of a change of the offender'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 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 offender's new residence address to the appropriate officials in the other state. (R.C. 2950.05(A) to (D), and (F).)

### **Duties regarding address verification**

Existing law, not in the bill, provides that an offender who is required to register 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 offender is required to register was committed, if the offender has been adjudicated a sexual predator and has not been "declassified," the offender 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 offender must verify his or her current residence address on each anniversary of his or her initial registration date during the required registration period.

An offender 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 an offender's current residence address, the sheriff with whom the offender most recently registered may mail a nonforwardable verification form to the offender's last reported address, with a notice that states that the offender 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 an offender, each offender with an address

verification duty must personally appear before the sheriff or a designee of the sheriff to verify the offender's address.

Upon an offender'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).)

**Duration of registration, change of address, and address verification duties**

**Commencement of duties.** Existing law, not in the bill, specifies that the duty of an offender who is convicted of or pleads guilty to a sexually oriented offense to comply with the registration, change of address, and address verification duties of the SORN Law commences on whichever of the following dates is applicable: (1) if the offender's duty to register is based on the offender's release from a prison term or other confinement on or after July 1, 1997, the offender's duty to comply commences on the date of his or her release or on July 1, 1997, whichever is later, (2) if the offender's duty to register is based on the offender being sentenced for a sexually oriented offense on or after July 1, 1997, and (1) does not apply, the offender's duty to comply commences on the date of entry of the judgment of conviction of the offense or on July 1, 1997, whichever is later, (3) if the offender's duty to register is based on the offender having been required to register under former R.C. Chapter 2950., the offender's duty to comply commences 14 days after July 1, 1997, and (4) if the offender's duty to register is based on the offender's conviction of a sexually oriented offense in a jurisdiction other than Ohio, the offender's duty to comply commences on March 30, 1999, or on the date the offender begins to reside or becomes temporarily domiciled in Ohio, whichever is later. (R.C. 2950.07(A).)

**Duration of duties.** Existing law, not in the bill, specifies that the duty of an offender who is convicted of or pleads guilty to a sexually oriented offense 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 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, (2) if the judge who sentenced the offender for the sexually oriented offense determined pursuant to the SORN Law that the offender is a habitual sex offender, the offender's duty to comply continues for 20 years, 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).)

### **Victim notification**

Existing law, not in the bill, 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).

### **Community notification**

Existing law, not in the bill, provides that, if a person is convicted of or pleads guilty to, a sexually oriented offense, and if the offender has been adjudicated a sexual predator and the court has not subsequently "declassified" the offender or the offender 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 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 to certain statutorily specified persons and entities in the community.

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. (R.C. 2950.11(A), (B), (C), (D), (E), and (F).)

### **Definitions**

Existing law, not in the bill, provides a series of definitions for the SORN Law, including the following that are relevant to this analysis (R.C. 2950.01):

(1) "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) "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;<sup>1</sup>

(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.

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<sup>1</sup> "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.

(3) "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.

(4) 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) "Sexually violent predator specification" and "sexually violent predator" have the same meanings as in existing R.C. 2971.01. Existing R.C. 2971.01, not in the bill, 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.")

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## COMMENT

Existing law, unchanged by the bill, requires the judge, in making a sexual predator determination at a hearing under the SORN Law, to consider all relevant factors, including, but not limited to, all of the following (R.C. 2950.09(A)(2)): (1) the offender's age, (2) the offender's prior criminal record regarding all offenses, including, but not limited to, all sexual offenses, (3) the age of the victim of the sexually oriented offense for which sentence is to be imposed, (4) whether the sexually oriented offense for which sentence is to be imposed involved multiple victims, (5) whether the offender used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting, (6) if the offender previously has been convicted of 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, (7) any mental illness or mental disability of the offender, (8) 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, (9) 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, and (10) any additional behavioral characteristics that contribute to the offender's conduct.

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## HISTORY

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