



Michael J. O'Neill

Bill Analysis
Legislative Service Commission

H.B. 39

125th General Assembly
(As Introduced)

Reps. Carmichael, Schmidt, Blasdel, Gibbs, Webster, D. Evans, Husted, Widowfield, Latta, DePiero, Fessler, DeBose, Schaffer, Willamowski, Grendell, Redfern, Allen, Seaver

BILL SUMMARY

- Automatically classifies as a sexual predator for purposes of the SORN Law a person who is convicted of or pleads guilty to committing the offense of rape on or after the bill's effective date.
- Automatically classifies as a sexual predator for purposes of the SORN Law a person who is convicted of or pleads guilty to committing, on or after the bill's effective date, a violation of an offense substantially similar to the offense of rape in another state, a federal court, a military court, or an Indian tribal court, but permits the person to challenge that classification.

CONTENT AND OPERATION

Overview of adult Sex Offender Registration and Notification Law

Under the adult Sex Offender Registration and Notification Law (the adult SORN Law), a person subject to that Law must register the person's residence address with the county sheriff, periodically verify that residence address, and notify the sheriff of a change in that residence address and register the new address with the appropriate sheriff (R.C. 2950.04, 2950.05, and 2950.06). The following four categories of persons are subject to that Law (R.C. 2950.01, 2950.04, 2950.05, 2950.06, 2950.07, 2950.09, 2950.10, and 2950.11):

(1) A sexually oriented offender (a person who has been convicted of or pleaded guilty to a sexually oriented offense), who must comply with that Law for ten years and verify the offender's residence address annually during the registration period. A sexually oriented offender may never have this designation changed.

(2) A habitual sex offender (a person who is convicted of or pleads guilty to a sexually oriented offense and who previously was convicted of or pleaded guilty to one or more sexually oriented offenses or previously was classified a juvenile sex offender registrant or out-of-state juvenile sex offender registrant based on one or more juvenile category sexually oriented offenses), who must comply with that Law for 20 years and verify the offender's residence address on an annual basis. In addition, a judge may subject a habitual sex offender to the adult SORN Law's victim and community notification provisions. A habitual sex offender subject to community notification also must provide the sheriff of a county in which the habitual sex offender intends to reside a written notice of intent to reside 20 days prior to taking up residence. A habitual sex offender may never have this designation changed.

(3) An aggravated sexually oriented offender (who has been convicted of or pleaded guilty to raping a child under 13), who must comply with that Law for life and must verify the offender's residence address on a quarterly basis. An aggravated sexually oriented offender is always subject to the adult SORN Law's victim and community notification provisions and must provide the sheriff of a county in which the offender intends to reside a written notice of intent to reside 20 days prior to taking up residence. An aggravated sexually oriented offender may never have this designation changed. (See **COMMENT.**)

(4) A sexual predator (a person who has been convicted of or pleaded guilty to committing a sexually oriented offense and who is likely to engage in the future in one or more sexually oriented offenses), who must comply with that Law for life and must verify the offender's residence address on a quarterly basis. A sexual predator is always subject to the adult SORN Law's victim and community notification provisions and must provide the sheriff of a county in which the sexual predator intends to reside a written notice of intent to reside 20 days prior to taking up residence. Some offenders are automatically classified sexual predators while others are adjudicated to be sexual predators as a result of a court determination. A court may determine this latter type of sexual predator to no longer be a sexual predator; the offender then is subject to the requirements of the registration category that would have otherwise applied to the offender.

Operation of the bill--automatic classification of rapists as sexual predators

Under the bill, if a person is convicted of or pleads guilty to committing the offense of rape on or after the effective date of the bill, the conviction or plea of guilty automatically classifies the offender as a sexual predator for purposes of the adult SORN Law. (See **COMMENT.**) If a person is convicted of or pleads guilty to committing, on or after the effective date of the bill, a violation of an offense substantially similar to the offense of rape in another state, a federal court, a military court, or an Indian tribal court, that conviction or plea of guilty

automatically classifies the person as a sexual predator for the purposes of the adult SORN Law, but the person may challenge that classification pursuant to the procedures specified in the following paragraphs. (R.C. 2950.09(A).)

The offender may petition the court of common pleas of the county in which the offender resides or temporarily is domiciled to enter a determination that the offender is not an adjudicated sexual predator in Ohio for purposes of the sex offender registration requirements or the community notification provisions of the adult SORN Law if both of the following apply (R.C. 2950.09(F)(1)):

(1) The offender was convicted of or pleaded guilty to committing a violation of an offense substantially similar to rape in another state or in a federal court, a military court, or an Indian tribal court.

(2) The offender was automatically classified as a sexual predator under the bill's provisions in relation to the conviction or guilty plea.

The court may enter a determination that the offender is not an adjudicated sexual predator in Ohio for purposes of the sex offender registration requirements or the community notification provisions of the adult SORN Law only if the offender proves by clear and convincing evidence that the offense that is the basis of the automatic classification is not substantially similar to rape under Ohio law (R.C. 2950.09(F)(2)).

The bill also conforms the existing procedure by which offenders from other jurisdictions may challenge automatic classification to the provisions described above (R.C. 2950.09(F)) (see "*Existing law--classification as a sexual predator under the adult SORN Law--Automatic classification*," below).

Existing law--classification as a sexual predator under the adult SORN Law

Automatic classification

Under the existing adult SORN Law, the adjudication of a person as a sexually violent predator under the sexually Violent Predator Law automatically classifies the offender as a sexual predator for purposes of the adult SORN Law. Also, if a person is convicted of or pleads guilty to a sexually oriented offense in another state, or in a federal court, military court, or an Indian tribal court and if, as a result of that conviction or plea of guilty, the person is required, under the law of the jurisdiction in which the person was convicted or pleaded guilty, to register as a sex offender until the person's death and is required to verify the person's address on at least a quarterly basis each year, that conviction or plea of guilty automatically classifies the person as a sexual predator for the purposes of the

adult SORN Law, but the person may challenge that classification pursuant to the procedures described below. (R.C. 2950.09(A).)

An offender automatically classified as a sexual predator may petition the court of common pleas in which the offender resides or temporarily is domiciled to enter a determination that the offender is not an adjudicated sexual predator in Ohio for purposes of the sex offender registration requirements or the community notification provisions of the adult SORN Law if all of the following apply (R.C. 2950.09(F)(1)):

(1) The offender was convicted of, or pleaded guilty to committing, a sexually oriented offense in another state or in a federal court, a military court, or an Indian tribal court.

(2) As a result of the conviction or guilty plea, the offender is required under the law of the jurisdiction under which the offender was convicted or pleaded guilty to register as a sex offender until the offender's death and is required to verify the offender's address on at least a quarterly basis each year.

(3) The offender was automatically classified as a sexual predator under Ohio's adult SORN Law in relation to the conviction or guilty plea.

The court may enter a determination that the offender is not an adjudicated sexual predator in Ohio for purposes of the sex offender registration requirements or the community notification provisions in the adult SORN Law only if the offender proves by clear and convincing evidence that the requirement of the other jurisdiction that the offender register as a sex offender until the offender's death and the requirement that the offender verify the offender's address on at least a quarterly basis each year is not substantially similar to a classification as a sexual predator for purposes of the adult SORN Law (R.C. 2950.09(F)(2)).

Discretionary classification

In all other cases, a person who is convicted of or pleads guilty to or has been convicted of or pleaded guilty to a sexually oriented offense may be classified as a sexual predator for purposes of the adult SORN Law only in accordance with the provisions described below. If certain criteria relating to the time of the commission of the offense or the offender's release from confinement are met, a judge is required to conduct a hearing to determine whether the offender is a sexual predator. The adult SORN Law specifies factors that the judge must consider and requires that the judge determine whether by clear and convincing evidence whether the subject offender or delinquent child is a sexual predator (i.e., whether the offender is likely to engage in the future in one or more sexually oriented offenses). The adult SORN Law also establishes a procedure by which

the sexual predator may later attempt to have that classification removed. (R.C. 2950.09(A), (B), (C), and (D).)

COMMENT

Sub. H.B. 485 of the 124th General Assembly created a new sex offender category: a person who pleads guilty to or is convicted of an "aggravated sexually oriented offense." An "aggravated sexually oriented offense" is the statutory rape of a child under 13 (the offense of rape when the offender engages in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when the other person is less than 13 years of age, whether or not the offender knows the age of the other person) (R.C. 2950.01(O) and 2907.02(A)(1)(b)). The duties imposed by the adult SORN Law upon a person who is convicted of an aggravated sexually oriented offense largely parallel those of a person who is adjudicated to be a sexual predator (R.C. 2929.19(B)(4), 2950.03(B)(1)(d), 2950.04(G) and (G)(4), 2950.06(B)(1), 2950.07(B)(1), 2950.09(B)(4), (D)(1), (D)(2), and (E)(2), 2950.11(F)(1)(c), and 2950.13(A)(3)). By automatically classifying as a sexual predator a person who is convicted of or pleads guilty to any violation of R.C. 2907.02, the provisions in the SORN Law pertaining to a person who pleads guilty to or is convicted of an aggravated sexually oriented offense (a violation of R.C. 2907.02(A)(1)(b)) appear to be largely redundant and probably can be incorporated into the framework proposed by the bill.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-03-03	p. 86

H0039-I-125.doc/jc

