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Bill Analysis
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BILL SUMMARY

- Includes any person adjudicated a sexual predator within the Sex Offender Registration and Notification (SORN) Law's registration and notification requirements.
- For a person who is subject to the SORN Law's "change of address" provisions and who changes a residential address but does not have a new fixed address, requires the person to include in the change of address notice and in the required new registration of the new residence address a detailed description of the place or places at which the person intends to stay and, not later than the end of the first business day immediately following the day on which the person obtains a fixed residence address, to provide written notice of and register the fixed residence address.
- Provides an affirmative defense for a person who is required to comply with the SORN Law's "change of address" provisions, and who fails to do so, that it was impossible for the person to provide the required written notice and re-register because the person did not have knowledge of the change in residence, school, institution of higher education, or place of employment address sufficiently in advance of the change to comply with the Law's deadlines and the person provided the required notice and re-registered in accordance with the bill's provisions as soon as possible after learning of the address change.

** This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- For purposes of the SORN Law's provisions that pertain to the duties imposed on an offender or delinquent child relative to a change in the offender's or child's residence, school, institution of higher education, or place of employment address, and related Revised Code provisions, specifies that "change in address" includes any circumstance in which the old address for the person in question no longer is accurate, regardless of whether the person in question has a new address.
- Grants prosecuting attorneys, municipal and township chief legal officers, and officials designated as prosecutors in a municipal corporation a cause of action for injunctive relief when an offender required to register under the SORN Law violates its prohibition against residing within 1,000 feet of any school premises.
- Clarifies the SORN Law's criminal penalty provisions to ensure that they apply to offenders whose duties under that Law are based on a conviction that occurred in a jurisdiction other than Ohio.
- Clarifies that the Sexually Violent Predator Sentencing Law does not require that an offender have a prior conviction of a sexually violent offense in order to be sentenced under that Law.
- Extends the minimum term portion of the indefinite life sentence imposed under the Sexually Violent Predator Sentencing Law for the offense of kidnapping to require the court to impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than eight years and a maximum term of life imprisonment when kidnapping is a felony of the second degree and to require the court to impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than ten years and a maximum term of life imprisonment when kidnapping is a felony of the first degree.
- Extends the minimum term portion of the indefinite life sentence imposed under the Sexually Violent Predator Sentencing Law for the offense of rape when a life term is not imposed to require the court to impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than ten years, and a maximum term of life imprisonment.

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CONTENT AND OPERATION

Background

The existing Sex Offender Registration and Notification Law (the SORN Law, contained in R.C. Chapter 2950.), in relevant part, generally requires offenders who are convicted of or plead guilty to a "sexually oriented offense" that is not a "registration-exempt sexually oriented offense" or to a "child-victim oriented offense" (see "SORN Law definitions," below, for definitions of the terms in quotation marks) to register with the appropriate sheriff, within a specified period of time, the offender's residence address, school or institution of higher education address, or employment address. If the offender changes the residence, school or institution of higher education, or employment address, the offender, within a specified period of time, must provide the sheriff with whom the offender registered with notice of the change of address and must register the new address with the appropriate sheriff. The offender, in accordance with a specified schedule, also must periodically verify the residence, school or institution of higher education, or employment address, with the sheriff with whom the offender most recently registered. The Law also requires offenders who are convicted of or plead guilty to a sexually oriented offense or a child-victim oriented offense and who are adjudicated a "sexual predator," a "child victim predator," or an habitual sexual offender or child-victim offender made subject to community notification (see "SORN Law definitions," below, for definitions of the terms in quotation marks), and offenders who are convicted of or plead guilty to an aggravated sexually oriented offense, to send to the appropriate sheriff prior written notice of the offender's intent to reside in the sheriff's county. The registration, change of address, and address verification provisions, as they pertain to residence addresses, and the intent-to-reside notification provisions, also apply to delinquent children who are adjudicated delinquent for committing a sexually oriented offense or a child-victim oriented offense and who are classified by the juvenile court, under existing R.C. 2152.82 to 2152.85, as juvenile offender registrants based on that adjudication. The categories of offenders and delinquent children who are subject to the SORN Law's registration requirements are described below in "Persons subject to the SORN Law's registration requirements."

Persons subject to the SORN Law's registration requirements--expansion to include all sexual predators and all child-victim predators

Registration requirements, for sexually oriented offenses or child-victim oriented offenses

Current law identifies categories of offenders and delinquent children who are convicted of or plead guilty to, have been convicted of or pleaded guilty to, or are or have been adjudicated delinquent children for committing a sexually oriented offense or child-victim oriented offense and specifies that each of those types of offenders and delinquent children must register personally with the sheriff of the county within five days of the offender's or child's coming into a county in which the offender or child resides or temporarily is domiciled for more than five days. Each of those types of offenders (but *not* those types of delinquent children) also must: (1) register personally with the sheriff of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in Ohio or another state, (2) register personally with the sheriff of the county in which the offender is employed if the offender resides or has a temporary domicile in Ohio and has been employed in that county for more than 14 days or for an aggregate period of 30 or more days in that calendar year, (3) register personally with the sheriff of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in Ohio and has been employed at any location or locations in Ohio more than 14 days or for an aggregate period of 30 or more days in that calendar year, and (4) register with the sheriff or other appropriate person of the other state immediately upon entering into any state other than Ohio in which the offender attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than Ohio for more than 14 days or for an aggregate period of 30 or more days in that calendar year regardless of whether the offender resides or has a temporary domicile in Ohio, the other state, or a different state. (R.C. 2950.04(A) and 2950.041(A).) (See **COMMENT 1** for a description of the information required for registration and a summary of the duration of duties under the SORN Law.)

Sexually oriented offenses--categories of offenders and delinquent children who are subject to the registration requirements

Existing law. Current law requires each of the following types of offenders who are convicted of, plead guilty to, have been convicted of, or have pleaded guilty to, and each of the following types of children who are adjudicated delinquent children for, a sexually oriented offense that is not a registration-exempt sexually oriented offense to comply with the SORN Law's registration requirements described above in "**Registration requirements**" (R.C. 2950.04(A)):

(1) Regardless of when the sexually oriented offense was committed, an offender who is sentenced for the sexually oriented offense to a prison term, a term of imprisonment, or any other type of confinement and, on or after July 1, 1997, is released in any manner from the prison term, term of imprisonment, or confinement (R.C. 2950.04(A)(1)(a));

(2) Regardless of when the sexually oriented offense was committed, an offender who is sentenced for a sexually oriented offense on or after July 1, 1997, and to whom paragraph (1), above, does not apply (R.C. 2950.04(A)(1)(b));

(3) If the sexually oriented offense was committed prior to July 1, 1997, an offender who immediately prior to July 1, 1997, was a habitual sex offender who was required to register under the former Habitual Sex Offender Law (before it was replaced in 1997 by the SORN Law) and to whom neither paragraph (1) nor (2), above, applies (R.C. 2950.04(A)(1)(c));

(4) A child adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, who is classified a juvenile offender registrant based on that adjudication, and who is not confined in a Department of Youth Services facility or any other secure facility (R.C. 2950.04(A)(2));

(5) Regardless of when the sexually oriented offense was committed and if paragraphs (1) through (4), above, do not apply, a person to whom either of the following applies (R.C. 2950.04(A)(3)):

(a) The offender or delinquent child: (i) is convicted, pleads guilty, or is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the U.S. for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, (ii) lives, attends a school or institution of higher education, or is employed in Ohio under specified circumstances¹ on or after July 1, 1997 (or if a delinquent child, on or after January 1, 2002), and (iii) at the time the person comes to Ohio, the person has a duty to register as a sex offender or child-victim offender under the law of the other jurisdiction as a result of the conviction, guilty plea, or adjudication.

¹ For a person who is convicted, pleads guilty to, or adjudicated a delinquent child for a sexually oriented offense in another jurisdiction, the duty to register based on the offender's or child's presence in Ohio applies if the offender or delinquent child moves to and resides in Ohio or temporarily is domiciled in Ohio for more than five days, or if the offender enters Ohio to attend any school or institution of higher education on a full-time or part-time basis or is employed in Ohio for more than 14 days or for an aggregate period of 30 or more days in any calendar year (R.C. 2950.04(A)(3)).

(b) The offender or delinquent child: (i) is convicted, pleads guilty, or is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the U.S. for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, (ii) is released from imprisonment or confinement on or after July 1, 1997 (or if a delinquent child, is released from detention on or after January 1, 2002), and (iii) lives, attends a school or institution of higher education, or is employed in Ohio under specified circumstances (see footnote 1) on or after July 1, 1997 (or if a delinquent child, on or after January 1, 2002). For adult offenders, this duty to register applies regardless of whether the offender has a duty to register in the other jurisdiction. For delinquent children, this duty to register applies only if the delinquent child has a duty to register as a child-victim offender or sex offender under the law of the other jurisdiction at the time the child lives in Ohio or if, had the delinquent child adjudication occurred in Ohio, the adjudicating juvenile court judge would have been required to issue an order classifying the child as juvenile offender registrant.

(6) *An offender who is adjudicated a sexual predator under R.C. 2950.09(C) subsequent to the offender's release from a term of imprisonment served in a state correctional institution and to whom paragraph (1), above, applies.* (For an explanation of a R.C. 2950.09(C) adjudication see "Adjudication under R.C. 2950.09(C) and 2950.091(C) as a sexual predator or child-victim predator," below). (See COMMENT 2.)

Operation of the bill. The bill expands the category of sexual predators described above in paragraph (6) under "Existing law" who are subject to the SORN Law's registration requirements. Under the bill, any person to whom paragraphs (1) through (5), above, under "Existing law" do not apply and who is adjudicated a sexual predator pursuant to R.C. 2950.09(C) must comply with the registration requirements of the SORN Law. The requirements in current law that the adjudication be "subsequent to release" and that paragraph (1), above, under "Existing law" apply are removed by the bill. (R.C. 2950.04(A)(4).)

Child-victim oriented offenses--categories of offenders and delinquent children who are subject to the registration requirements

Existing law. Current law requires each of the following types of offenders who are convicted of, plead guilty to, have been convicted of, or have pleaded guilty to, and each of the following types of children who are adjudicated delinquent children for, a child-victim oriented offense to comply with the SORN Law's registration requirements described above in "Registration requirements" (R.C. 2950.041(A)):

(1) Regardless of when the child-victim oriented offense was committed, an offender who is sentenced for the child-victim oriented offense to a prison term, a term of imprisonment, or any other type of confinement and, on or after July 31, 2003, is released in any manner from the prison term, term of imprisonment, or confinement (R.C. 2950.041(A)(1)(a));

(2) Regardless of when the child-victim oriented offense was committed, an offender who is sentenced for a child-victim oriented offense on or after July 31, 2003, and to whom paragraph (1), above, does not apply (R.C. 2950.041(A)(1)(b));

(3) If the child-victim oriented offense was committed prior to July 31, 2003, if the offense was considered prior to that date to be a sexually oriented offense, and if neither paragraph (1) nor (2), above, applies, an offender who immediately prior to July 31, 2003, was required to register as a result of conviction or guilty plea to the commission of that offense under R.C. 2950.04 (R.C. 2950.041(A)(1)(c));

(4) Regardless of when the child-victim oriented offense was committed, a child who on or after July 31, 2003, is adjudicated a delinquent child for committing a child-victim oriented offense, who is classified a juvenile offender registrant based on that adjudication, and who is not confined in a Department of Youth Services facility or any other secure facility (R.C. 2950.041(A)(2)(a));

(5) If paragraph (4), above, does not apply, if the child-victim oriented offense was committed prior to July 31, 2003, and if the offense was considered a sexually oriented offense prior to that date, a delinquent child who, immediately prior to July 31, 2003, was classified a juvenile sex offender registrant and was required to register as a result of a delinquent child adjudication for that offense under R.C. 2950.04 (R.C. 2950.041(A)(2)(b));

(6) Regardless of when the sexually oriented offense was committed and if paragraphs (1) through (5), above, do not apply, a person to whom either of the following applies (R.C. 2950.041(A)(3)):

(a) The offender or delinquent child: (i) is convicted, pleads guilty, or is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the U.S. for committing a child-victim oriented offense, (ii) lives, attends a school or institution of higher education, or is employed in Ohio under the specified circumstances discussed above in footnote 1, on or after July 31, 2003, and (iii) at the time the person comes to Ohio, the person has a duty to register as a sex offender or child-victim offender under the law of the other jurisdiction as a result of the conviction, guilty plea, or adjudication.

(b) The offender or delinquent child: (i) is convicted, pleads guilty, or is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the U.S. for committing a child-victim oriented offense, (ii) is released from imprisonment or confinement on or after July 31, 2003, and (iii) lives, attends a school or institution of higher education, or is employed in Ohio under specified circumstances (see footnote 1) on or after July 31, 2003. For adult offenders, this duty to register applies regardless of whether the offender has a duty to register in the other jurisdiction. For delinquent children, this duty to register applies only if the delinquent child has a duty to register as a child-victim offender or sex offender under the law of the other jurisdiction at the time the child lives in Ohio or if, had the delinquent child adjudication occurred in Ohio, the adjudicating juvenile court judge would have been required to issue an order classifying the child as a juvenile offender registrant.

(7) *An offender who is adjudicated a child-victim predator under R.C. 2950.09(C) (this cross reference should read R.C. 2950.091(C)) subsequent to the offender's release from a term of imprisonment served in a state correctional institution and to whom paragraph (1), above, applies.* (For an explanation of a R.C. 2950.091(C) adjudication see "Adjudication under R.C. 2950.09(C) and 2950.091(C) as a sexual predator or child-victim predator," below.) (See COMMENT 2.)

Operation of the bill. The bill expands the category of child-victim predators described above in paragraph (7) under "**Existing law**" who are subject to the SORN Law's registration requirements. Under the bill, any person to whom paragraphs (1) through (6), above, under "**Existing law**" do not apply and who is adjudicated a child-victim predator pursuant to R.C. 2950.091(C) must comply with the registration requirements of the SORN Law. The requirements in current law that the adjudication be "subsequent to release" and that paragraph (1), above, under "**Existing law**" apply are removed by the bill. (R.C. 2950.041(A)(4).)

Notification requirements

Existing law. Depending on the circumstances of the individual offender or delinquent child, current law requires the official, or the official's designee, in charge of a jail, workhouse, state correctional institution, or other institution; a judge; a chief of police; or a sheriff to provide notice to an offender or delinquent child of the offender's or child's registration requirements under the SORN Law (R.C. 2950.03(A)).

Operation of the bill. The bill requires a judge who adjudicates a person a sexual predator under R.C. 2950.09(C) or a child-victim predator under R.C. 2950.091(C) to provide notice to the sexual predator or child-victim offender of

the requirement to comply with the SORN Law registration requirements. This provision of the bill is consistent with, and related to, the changes made by the bill that are described above in "Sexually oriented offenses--categories of offenders and delinquent children who are subject to the registration requirements" and "Child-victim oriented offenses--categories of offenders and delinquent children who are subject to the registration requirements." (R.C. 2950.03(A)(4).)

Adjudication under R.C. 2950.09(C) and 2950.091(C) as a sexual predator or child-victim predator

Sexually oriented offenders subject to R.C. 2950.09(C). Under existing law, unaffected by the bill, the court that sentenced an offender for a sexually oriented offense must conduct a hearing to determine whether the offender is a sexual predator if both of the following factors are met (R.C. 2950.09(C)(1) and (2)):

(1) The offender was convicted of or pleaded guilty to a sexually oriented offense that is not a registration-exempt sexually oriented offense prior to January 1, 1997; was not sentenced for the offense on or after January 1, 1997; and on or after January 1, 1997, is serving a term of imprisonment in a state correctional institution.

(2) The Department of Rehabilitation and Correction (DRC) notifies the court of either of the following:

(a) The sexually oriented offense either was aggravated murder, murder, involuntary manslaughter that is the proximate result of the offender's committing or attempting to commit a felony, felonious assault, or kidnapping that was committed with a sexual motivation or was a violent sex offense.

(b) If paragraph (a), above, does not apply, DRC, in accordance with a specified procedure, recommends that the offender should be adjudicated a sexual predator.

Child-victim oriented offenders subject to R.C. 2950.091(C). Under existing law, unaffected by the bill, the court that sentenced an offender for a child-victim oriented offense must conduct a hearing to determine whether the offender is a child-victim predator if both of the following conditions are met (R.C. 2950.091(C)(1) and (2)--not in the bill):

(1) The offender was convicted of or pleaded guilty to a sexually oriented offense prior to July 31, 2003; on and after July 31, 2003, the sexually oriented offense no longer is considered a sexually oriented offense but instead is a child-victim oriented offense; the person was not sentenced for the offense on or after

January 1, 1997; and on or after July 31, 2003, the offender is serving a term of imprisonment in a state correctional institution.

(2) DRC, in accordance with a specified procedure, recommends the person be adjudicated a child-victim predator.

Overview of the adjudication process under R.C. 2950.09(C) and 2950.091(C). If a court is required by R.C. 2950.09(C) or 2950.091(C) to hold a sexual predator or child-victim predator adjudication hearing, the hearing may be held either subsequent to the offender's release from imprisonment or at any time within one year following the offender's release from imprisonment (R.C. 2950.09(C)(2)(a), and R.C. 2950.091(C)(2)(a)--not in the bill). At such a hearing, 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 determination of whether the offender is a sexual predator or child-victim predator. The offender has the right to be represented by counsel and, if indigent, the right to have appointed counsel.

In making the determination of whether an offender is a sexual predator or child-victim predator, the judge must consider all relevant factors including all of the following (R.C. 2950.09(C)(2)(c), and R.C. 2950.091(C)(2)(c)--not in the bill):

- (a) The offender's age;
- (b) The offender's prior criminal or delinquency record regarding all offenses including sexual offenses (or child-victim offenses for a child-victim predator determination);
- (c) The age of the victim of the sexually oriented offense (or child-victim offense for a child-victim predator determination) for which sentence is to be imposed;
- (d) Whether the sexually oriented offense (or child-victim offense for a child-victim predator determination) for which sentence is to be imposed involved multiple victims;
- (e) Whether the offender used drugs or alcohol to impair the victim of the sexually oriented offense (or child-victim offense for a child-victim predator determination) or to prevent the victim from resisting;
- (f) If the offender previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing, an act that if committed by an adult would be a criminal offense, whether the offender completed any sentence or dispositional order imposed for the prior offense or act and, if the prior offense or act was a sex offense or a sexually oriented offense (or child-victim offense for a

child-victim predator determination), whether the offender participated in available programs for sexual offenders (or child-victim offenders for a child-victim predator determination);

(g) Any mental illness or mental disability of the offender;

(h) The nature of the offender's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense (or child-victim offense for a child-victim predator determination) and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;

(i) Whether the offender, during the commission of the sexually oriented offense (or child-victim offense for a child-victim predator determination) for which sentence is to be imposed, displayed cruelty or made one or more threats of cruelty;

(j) Any additional behavioral characteristics that contribute to the offender's conduct.

After reviewing all of this information, the judge must determine, by clear and convincing evidence, whether the offender is a sexual predator or child-victim predator. (R.C. 2950.09(C)(2)(c), and R.C. 2950.091(C)(2)(c)--not in the bill.)

Change of address notification and registration duties under SORN Law

Existing law

Under current law, if the SORN Law requires an offender to register the offender's residence address, school or institution of higher education address, or employment address with a sheriff or requires a delinquent child to register the child's residence address, and the offender or delinquent child changes the address, the offender or delinquent child must report that change of address to the sheriff with whom the offender or delinquent child has most recently registered. If the change of address is the offender's or delinquent child's residence address or the offender's school or institution of higher education address, the offender or delinquent child must provide to that sheriff written notice of the change of address at least 20 days prior to the change. If the offender changes the address of the offender's place of employment, the offender must provide to that sheriff written notice of the change no later than five days after changing the place of employment. (R.C. 2950.05(A).)

In addition, the offender or delinquent child must register the new address with the sheriff of the county in which the new address is located. If the change of address is the offender's or delinquent child's residence address or the offender's

school or institution of higher education address, the offender or delinquent child must register the new address at least 20 days prior to the change. If the offender changes the address of the offender's place of employment, the offender must register the new address no later than five days after changing the place of employment. (R.C. 2950.05(B).)

The change of address notice and registration provisions described in the two preceding paragraphs apply to an offender or delinquent child regardless of whether the new residence, school, institution of higher education, or place of employment address is in Ohio or in another state. If the new address is in another state, the person must register with the appropriate law enforcement officials in that state in the manner required under the law of that state and within the earlier of the period of time required under the law of that state or at least seven days prior to changing the address (R.C. 2950.05(C)).

The penalty for a failure to comply with these change of address notice and registration provisions ranges from a misdemeanor to a felony of the third degree depending on: (1) what was the most serious sexually oriented offense or child-victim oriented offense that was the basis of the address notification requirement, and (2) whether the offender previously was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing a violation of the SORN Law registration, change of address, address verification, or intent-to-reside notification requirements (R.C. 2950.99, discussed in detail below in "*Penalty for violation of a SORN Law requirement*").

Operation of the bill: no fixed residence address

The bill provides that, if an offender or delinquent child who is required to register a residence address under the SORN Law changes the residence address but the change is not to a fixed address, the offender or delinquent child must include in the notice to the sheriff with whom the offender or delinquent child has most recently registered a detailed description of the place or places at which the offender or delinquent child intends to stay and, not later than the end of the first business day immediately following the day on which the person obtains a fixed residence address, must provide that sheriff written notice of the fixed residence address. (R.C. 2950.05(A).)

In addition, when an offender or delinquent child whose residence address change is not to a fixed address registers with the sheriff of the county in which the offender's or delinquent child's new address is located, the offender or delinquent child must include in the registration a detailed description of the place or places at which the offender or delinquent child intends to stay and, not later than the first business day immediately following the day on which the person

obtains a fixed residence address, must register that fixed residence address with the sheriff. (R.C. 2950.05(B).)

If a person whose residence address change in not to a fixed address complies with either of these provisions, the place or places described in the notice or registration as being the place or places at which the person intends to stay are considered the person's residence address and registered residence address for purposes of the SORN Law and specified related statutes until the person provides written notice of, or registers, a fixed residence address under the provision (R.C. 2950.05(A) and (B)).

Operation of the bill: affirmative defenses

A charge of failure to provide notice of an address change. The bill provides an affirmative defense for a person who is required to notify the sheriff of the county with whom the person most recently registered of a change of address and who is charged with failing to provide that notice. Under the bill, it is an affirmative defense to a charge of violating this notification provision that it was impossible for the person to provide the written notice to the sheriff because of a lack of knowledge, on the date specified for the provision of the written notice, of a residence, school, institution of higher education, or place of employment address change, and that the person provided that notice to the sheriff as soon, but no later than the end of the first business day, as possible after learning of the address change by doing either of the following (R.C. 2950.05(F)(1)):

(1) The person provided notice of the address change to the sheriff by telephone immediately upon learning of the address change or, if the person did not have reasonable access to a telephone at that time, as soon as possible, but no later than the end of the first business day, after learning of the address change and having reasonable access to a telephone, and the person, as soon as possible, but no later than the end of the first business day, after providing notice of the address change to the sheriff by telephone, provided written notice of the address change to that sheriff.

(2) The person, as soon as possible, but no later than the end of the first business day, after learning of the address change, provided written notice of the address change to the sheriff.

A charge of failure to register a new address. The bill also provides a similar affirmative defense for a person who is required to register a new residence, school, institution of higher education, or place of employment address with the sheriff or with an official of the state where the new address is located, as discussed above, and who is charged with failing to so register. Under the bill, it is an affirmative defense to a charge of violating this registration provision that it

was impossible for the person to register the new address with the sheriff or official of the other state because of a lack of knowledge, on the date specified for the registration of the new address, of a residence, school, institution of higher education, or place of employment address change, and that the person registered the new address with the sheriff or official as soon as possible, but no later than the end of the first business day, after learning of the address change by doing either of the following (R.C. 2950.05(F)(2)):

(1) The person provided notice of the new address to the sheriff or official of the other state by telephone immediately upon learning of the new address or, if the person did not have reasonable access to a telephone at that time, as soon as possible, but no later than the end of the first business day, after learning of the new address and having reasonable access to a telephone, and the person, as soon as possible, but no later than the end of the first business day, after providing notice of the new address to the sheriff or official by telephone, registered the new address with that sheriff or official.

(2) The person, as soon as possible, but no later than the end of the first business day, after learning of the new address, registered the new address with the sheriff or official.

Operation of the bill: definition of "change in address"

The bill specifies that, as used in R.C. 2950.05 and in all other sections of the Revised Code that refer to the duties imposed on an offender or delinquent child under R.C. 2950.05 relative to a change in the offender's or delinquent child's residence, school, institution of higher education, or place of employment address, "change in address" includes any circumstance in which the old address for the person in question no longer is accurate, regardless of whether the person in question has a new address (R.C. 2950.05(H)).

Enforcement of a violation of SORN Law prohibition against living within 1,000 feet of school premises

Existing law

Existing law prohibits a person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense from establishing a residence or occupying residential premises within 1,000 feet of any "school premises" (see "SORN Law definitions," below). Existing law provides that an owner or lessee of real property that is located within 1,000 feet of any school premises has a cause of action for injunctive relief against a person who violates this prohibition by establishing a residence or occupying

residential premises within 1,000 feet of school premises (but no provision of existing law provides any criminal penalty for the violation). The owner or lessee is not required to prove irreparable harm in order to obtain the relief. (R.C. 2950.031.)

Related to R.C. 2950.031, a provision in the Residential Landlord-Tenant Law (R.C. Chapter 5321.) prohibits a tenant of any residential premises located within 1,000 feet of school premises from allowing any person to occupy those premises if the person's name appears on the State Registry of Sex Offenders and Child-Victim Offenders maintained under R.C. 2950.13 and the Registry indicates that the person was convicted of a sexually oriented offense in a criminal prosecution and was not sentenced to a serious youthful offender sentence for that offense (hereafter, such a person is referred to as an "adult Registry offender"). If a tenant allows occupancy in violation of this prohibition or a person establishes a residence or occupies residential premises in violation of R.C. 2950.031, the landlord for the residential premises in question may terminate the rental agreement or tenancy of the tenant and all other occupants. Existing law also authorizes a landlord to commence proceedings under the Forcible Entry and Detainer Law (R.C. Chapter 1923.) for possession of residential premises against adult Registry offenders who, pursuant to a rental agreement, reside in or occupy residential premises located within 1,000 feet of school premises, and against tenants who permit any adult Registry offender to occupy residential premises located within 1,000 feet of school premises. If a tenant or any other person with a tenant's permission resides in or occupies residential premises located within 1,000 feet of school premises and is an adult Registry offender, the landlord for those premises, upon discovery of that status, may terminate the rental agreement or tenancy for those premises by notifying the tenant and all other occupants in a specified manner to leave the premises. (R.C. 1923.02(A)(14), (A)(15), and (C), 5321.03(A)(5), and R.C. 5321.051--not in the bill.) These provisions apply to rental agreements entered into on or after July 31, 2003 (Section 8 of Am. Sub. S.B. 5 of the 125th General Assembly).

Operation of the bill

The bill expands the "injunctive relief" enforcement mechanism that applies regarding violations of the SORN Law provision that prohibits an offender who has been convicted of or pleaded guilty to either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense from establishing a residence or occupying residential premises within 1,000 feet of any school premises. Under the bill, if a person to whom the prohibition applies violates it by establishing a residence or occupying residential premises within 1,000 feet of school premises, an owner or lessee of real property that is located within 1,000 feet of those school premises (as under existing law),

or the prosecuting attorney, village solicitor, city or township director of law, similar chief legal officer of a municipal corporation or township, or official designated as a prosecutor in a municipal corporation that has jurisdiction over the place at which the person establishes the residence or occupies the residential premises in question (all added by the bill), has a cause of action for injunctive relief against the person. The plaintiff is not required to prove irreparable harm in order to obtain the relief. (R.C. 2950.031.)

The bill does not change the existing Residential Landlord-Tenant Law or the existing Forcible Entry and Detainer Law provision described above that relate to R.C. 2950.031 and provide for termination of rental agreements and eviction when an adult Registry offender resides within 1,000 feet of school premises.

Penalties for a violation of a SORN Law registration, notice of intent to reside, change of address, or address verification prohibition, based on an offense committed in a jurisdiction other than Ohio

Existing law

In general. The SORN Law contains provisions that prohibit a person who is required to register as a result of a conviction of, plea of guilty to, or adjudication as a delinquent child for a sexually oriented offense that is not a registration-exempt sexually oriented offense or for a child-victim oriented offense from failing to register or provide any required notice of intent to reside at a premises (R.C. 2950.04 and 2950.041), failing to provide notification of a change of address or to register the new address (R.C. 2950.05), or failing to periodically verify the person's address (R.C. 2950.06). Existing law provides penalties for a person who violates any of the prohibitions, as follows (R.C. 2950.99(A)):

(1) Except as described in (2), below, an offender who violates any of the prohibitions must be punished as follows: (a) if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is aggravated murder, murder, or a felony of the first, second, or third degree if committed by an adult, the offender is guilty of a felony of the third degree, and (b) if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, etc., requirement that was violated under the prohibition is a felony of the fourth or fifth degree if committed by an adult, or if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, etc., requirement that was violated under the prohibition is a misdemeanor if committed by an adult, the offender is guilty of a felony of the same degree or a misdemeanor of the same degree as the most serious sexually

oriented offense or child-victim oriented offense that was the basis of the registration, etc., requirement that was violated under the prohibition.

(2) If the offender who violates any of the prohibitions previously has been convicted of or pleaded guilty to, or previously has been adjudicated a delinquent child for committing, a violation of any of the prohibitions, the offender must be punished as follows: (a) if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is aggravated murder, murder, or a felony of the first, second, third, or fourth degree if committed by an adult, the offender is guilty of a felony of the third degree, (b) if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, etc., requirement that was violated under the prohibition is a felony of the fifth degree if committed by an adult, the offender is guilty of a felony of the fourth degree, (c) if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, etc., requirement that was violated under the prohibition is a misdemeanor of the first degree if committed by an adult, the offender is guilty of a felony of the fifth degree, and (d) if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, etc., requirement that was violated under the prohibition is a misdemeanor other than a misdemeanor of the first degree if committed by an adult, the offender is guilty of a misdemeanor that is one degree higher than the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, etc., requirement that was violated under the prohibition.

(3) In addition to any penalty or sanction imposed under the provisions described in (1) and (2), above, or any other provision of law for the violation of the prohibition, if the offender or delinquent child is subject to a community control sanction, is on parole, is subject to one or more post-release control sanctions, or is subject to any other type of supervised release at the time of the violation, the violation constitutes a violation of the terms and conditions of the community control sanction, parole, post-release control sanction, or other type of supervised release.

Regarding juvenile offenders. Existing law specifies that, if a person violates any of the SORN Law registration, notice of intent to reside, change of address, or address verification prohibitions described above in "**In general,**" that applies to the person as a result of the person being adjudicated a delinquent child and being classified a juvenile offender registrant or as an out-of-state juvenile offender registrant, both of the following apply (R.C. 2950.99(B)): (1) if the violation occurs while the person is under 18 years of age, the person is subject to

delinquent child proceedings under R.C. Chapter 2152. based on the violation, and (2) if the violation occurs while the person is 18 years of age or older, the person is subject to criminal prosecution based on the violation.

Regarding persons required to register as a result of a conviction of, plea of guilty to, or delinquent child adjudication occurring in a jurisdiction other than Ohio. As stated below in "**SORN Law definitions**," the terms "sexually oriented offense" and "child-victim oriented offense" include a violation of any existing or former law of a state other than Ohio or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation, that is or was substantially equivalent to any Ohio offense included within the terms as a sexually oriented offense or as a child-victim oriented offense (R.C. 2950.01). And, as described above in "**Persons subject to the SORN Law's registration requirements--expansion to include all sexual predators and all child-victim predators**," under "**Sexually oriented offenses--categories of offenders and delinquent children who are subject to the registration requirements**" and "**Child-victim oriented offenses--categories of offenders and delinquent children who are subject to the registration requirements**," in certain circumstances, persons who are convicted of, plead guilty to, or are adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the U.S. are subject to the SORN Law's registration duties (R.C. 2950.04(A) and 2950.041(A)) and, as a result, to its notice of intent to reside, change of address, and address verification duties. Because the existing provisions that set the penalty for violating a SORN Law prohibition against failing to register or provide any required notice of intent to reside at a premises, failing to provide notification of a change of address or to register the new address, or failing to periodically verify the person's address, as described above in "**In general**," specify that the penalty depends upon the particular Ohio offense (using the Ohio name for the offenses) or the degree of offense (using Ohio's terminology for specifying the degree) that is the most serious offense that was the basis of the prohibition violated, it is unclear how, or even whether, the penalty provisions apply to a person whose registration, etc., duty is based upon a conviction of, plea of guilty to, or adjudication as a delinquent child for a sexually oriented offense or child-victim oriented offense occurring in a jurisdiction other than Ohio.

Operation of the bill

Clarification of application to persons required to register as a result of a conviction of, plea of guilty to, or delinquent child adjudication occurring in a jurisdiction other than Ohio. The bill modifies the existing SORN Law provisions that set the general penalties for violating a SORN Law prohibition against failing to register or provide any required notice of intent to reside at a



premises (R.C. 2950.04 and 2950.041), failing to provide notification of a change of address or to register the new address (R.C. 2950.05), or failing to periodically verify the person's address (R.C. 2950.06), to ensure that the penalties apply to persons whose registration, etc., duty is based upon a conviction of, plea of guilty to, or adjudication as a delinquent child for a sexually oriented offense or child-victim oriented offense occurring in a jurisdiction other than Ohio and who violate any of the prohibitions.

Under the bill, a person who violates any of the prohibitions is to be punished as follows (R.C. 2950.99(A)(1) and (2)):

(1) Except as described in (2), below, an offender who violates any of the prohibitions must be punished as follows: (a) if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is aggravated murder, murder, or a felony of the first, second, or third degree if committed by an adult *or a comparable category of offense committed in another jurisdiction* (see below), the offender is guilty of a felony of the third degree, and (b) if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, etc., requirement that was violated under the prohibition is a felony of the fourth or fifth degree if committed by an adult *or a comparable category of offense committed in another jurisdiction* (see below), or if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, etc., requirement that was violated under the prohibition is a misdemeanor if committed by an adult *or a comparable category of offense committed in another jurisdiction* (see below), the offender is guilty of a felony of the same degree or a misdemeanor of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, etc., requirement that was violated under the prohibition *or, if the most serious such offense that was the basis of the registration, etc., requirement that was violated under the prohibition was a comparable category of offense committed in another jurisdiction (see below), the offender is guilty of a felony of the same degree or a misdemeanor of the same degree as that offense committed in the other jurisdiction would constitute or would have constituted if it had been committed in Ohio.*

(2) If the offender who violates any of the prohibitions previously has been convicted of or pleaded guilty to, or previously has been adjudicated a delinquent child for committing, a violation of any of the prohibitions, the offender must be punished as follows: (a) if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was

violated under the prohibition is aggravated murder, murder, or a felony of the first, second, third, or fourth degree if committed by an adult *or a comparable category of offense committed in another jurisdiction* (see below), the offender is guilty of a felony of the third degree, (b) if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, etc., requirement that was violated under the prohibition is a felony of the fifth degree if committed by an adult *or a comparable category of offense committed in another jurisdiction* (see below), the offender is guilty of a felony of the fourth degree, (c) if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, etc., requirement that was violated under the prohibition is a misdemeanor of the first degree if committed by an adult *or a comparable category of offense committed in another jurisdiction* (see below), the offender is guilty of a felony of the fifth degree, and (d) if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, etc., requirement that was violated under the prohibition is a misdemeanor other than a misdemeanor of the first degree if committed by an adult *or a comparable category of offense committed in another jurisdiction* (see below), the offender is guilty of a misdemeanor that is one degree higher than the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, etc., requirement that was violated under the prohibition *or, if the most serious such offense that was the basis of the registration, etc., requirement that was violated under the prohibition was a comparable category of offense committed in another jurisdiction* (see below), the offender is guilty of a misdemeanor that is one degree higher than the most serious such offense committed in the other jurisdiction would constitute or would have constituted if it had been committed in Ohio.

(3) The bill does not change the existing provision regarding consideration of the violation as a violation of the terms and conditions of the community control sanction, parole, post-release control sanction, or other type of supervised release.

Definition of "comparable category of offense committed in another jurisdiction". The bill defines "comparable category of offense committed in another jurisdiction," for purposes of its penalty provisions described above, as a sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated, that is a violation of an existing or former law of a state other than Ohio or the United States, an existing or former law applicable in a military court or in an Indian tribal court, or an existing or former law of any nation other than the United States, and that, if it had been committed in Ohio, would constitute or would have constituted: (1) aggravated murder, murder, or a felony of the first, second, or third degree for purposes of the

provision described above in (1)(a) of **'Clarification of application to persons required to register as a result of a conviction of, plea of guilty to, or delinquent child adjudication occurring in a jurisdiction other than Ohio,'** (2) a felony of the fourth or fifth degree or a misdemeanor for purposes of the provision described above in (1)(b) of that part of the analysis, (3) aggravated murder, murder, or a felony of the first, second, third, or fourth degree for purposes of the provision described above in (2)(a) of that part of the analysis, (4) a felony of the fifth degree for purposes of the provision described above in (2)(b) of that part of the analysis, (5) a misdemeanor of the first degree for purposes of the provision described above in (2)(c) of that part of the analysis, or (6) a misdemeanor other than a misdemeanor of the first degree for purposes of the provision described above in (2)(d) of that part of the analysis (R.C. 2950.99(A)(3)).

SORN Law definitions

The SORN Law defines numerous terms that apply to its provisions. The following definitions are directly relevant to the bill (the definitions are the existing definitions and, unless specifically indicated otherwise, they are unchanged by the bill):

Sexually oriented offense

"Sexually oriented offense" means any of the following (R.C. 2950.01(D)):

(1) Any of the following violations when committed by a person 18 years of age or older:

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

(b) Any of the following offenses involving a minor, in the circumstances specified: (i) kidnapping for the purpose of engaging in sexual activity with the victim against the victim's will, unlawful sexual conduct with a minor, sexual imposition, or voyeurism when the victim of the offense is under 18 years of age, (ii) compelling prostitution when the person compelled, induced, procured, etc. to engage in the sexual activity in question is under 18 years of age, (iii) certain violations of the offenses of pandering obscenity to a minor and pandering sexually oriented matter involving a minor, (iv) illegal use of a minor in a nudity-oriented material or performance when the offense is a felony of the second degree, (v) endangering children when the offense is committed by enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing a child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is

obscene, is sexually oriented matter, or is nudity-oriented matter and the child is under 18, or (vi) kidnapping for a purpose other than engaging in sexual activity with the victim against the victim's will, menacing by stalking, abduction, unlawful restraint, criminal child enticement, or the former offense of child stealing when the victim of the offense is under 18 and the offense is committed with a sexual motivation.

(c) Regardless of the age of the victim, aggravated murder, murder, involuntary manslaughter that is the proximate result of the offender's committing or attempting to commit a felony, felonious assault, or kidnapping that is committed with a sexual motivation;

(d) A sexually violent offense, as defined in R.C. 2971.01 (modified by the bill to refer to a "violent sex offense" or a "designated homicide, assault, or kidnapping offense" if the offender also was convicted of or pleaded guilty to a "sexual motivation specification" that was included in the document charging the designated homicide, assault, or kidnapping offense; the terms in the quotation marks are defined in R.C. 2871.01, and the bill's changes are described below in "*Sentencing of sexually violent predators*");

(e) Sexual imposition or voyeurism when the victim of the offense is 18 or older or menacing by stalking when the victim of the offense is 18 or older and the offense is committed with a sexual motivation;

(f) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that is or was substantially equivalent to any offense listed in (1)(a) to (e), above;

(g) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (1)(a) to (f), above.

(2) Any of the following violations when committed by a person under 18 years of age (paragraphs 2(a) through (h) are subject to paragraph 2(i)):

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

(b) Any of the following offenses involving a minor, in the circumstances specified: (i) kidnapping for the purpose of engaging in sexual activity with the victim against the victim's will, sexual imposition, or voyeurism when the victim of the offense is under 18 years of age, (ii) compelling prostitution when the person compelled, induced, procured, etc. to engage in the sexual activity in

question is under 18 years of age, (iii) endangering children when the offense is committed by enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing a child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter and the child is under 18, or (iv) kidnapping for a purpose other than engaging in sexual activity with the victim against the victim's will, menacing by stalking, abduction, unlawful restraint, criminal child enticement, or the former offense of child stealing when the victim of the offense is under 18 and the offense is committed with a sexual motivation;

(c) Any sexually violent offense, as defined in R.C. 2971.01, that, if committed by an adult, would be a felony of the first, second, third, or fourth degree (modified by the bill to refer to: (i) a "violent sex offense" that, if committed by an adult, would be a felony of the first, second, third, or fourth degree, or (ii) any "designated homicide, assault, or kidnapping offense" if that offense, if committed by an adult, would be a felony of the first, second, third, or fourth degree and if the court determined that, if the child was an adult, the child would be guilty of a sexual motivation specification regarding that offense; the terms in quotation marks are defined in R.C. 2971.01, and the bill's changes are described below in "**Sentencing of sexually violent predators**");

(d) Aggravated murder, murder, involuntary manslaughter that is the proximate result of the offender's committing or attempting to commit a felony, felonious assault, abduction, or kidnapping or an attempt to violate any of these provisions that is committed with a sexual motivation;

(e) Certain violations of the offenses of pandering obscenity to a minor, pandering sexually oriented matter involving a minor, and illegal use of a minor in a nudity-oriented material or performance or an attempt to violate any of these provisions if the person who violates or attempts to violate the provision is four or more years older than the minor who is the victim of the violation;

(f) Sexual imposition or voyeurism when the victim of the offense is 18 or older or menacing by stalking when the victim of the offense is 18 or older and the offense is committed with a sexual motivation;

(g) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that is or was substantially equivalent to any offense listed in (1)(a) to (f), above;

(h) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (1)(a) to (f), above.

(i) If the child's case has been transferred for criminal prosecution under R.C. 2152.12, the act is any violation in (1), above, or would be any offense listed in any of those clauses if committed by an adult.

Registration-exempt sexually oriented offense

"Registration-exempt sexually oriented offense," generally, means a sexually oriented offense described in (1) to (5), below, when the offense is committed by a person who previously has not been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense, when the victim or intended victim of the offense is 18 years of age or older, and when a court has not determined that the offender should be subjected to registration and other duties and responsibilities under the SORN Law (R.C. 2950.01(P) and (Q)):

(1) Sexual imposition, voyeurism, or menacing by stalking when the offense is committed with sexual motivation;

(2) Any violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that is committed by a person who is 18 years of age or older and is or was substantially equivalent to any offense listed in (1), above;

(3) Subject to paragraph (5), below, a violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation committed by a person under 18 years of age that is or was substantially equivalent to any offense listed in (1), above, and that would be a felony of the fourth degree if committed by an adult;

(4) If the person is 18 years of age or older, any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (1) or (2), above, or, if the person is under 18 years of age, any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (1) or (3), above, subject to paragraph (5), below;

(5) Regarding an act committed by a person under 18 years of age, if the child's case has been transferred for criminal prosecution under R.C. 2152.12, the act is any offense listed in paragraph (1), (2), or (4), above.

Child-victim oriented offense

"Child-victim oriented offense" excludes all sexually violent offenses, and means any of the following offenses (R.C. 2950.01(S)):

(1) Any of the following violations committed by a person 18 or older, when the victim of the offense is under 18 years of age and is not the child of the person who commits the offense:

(a) Kidnapping for a purpose other than engaging in sexual activity with the victim against the victim's will, abduction, unlawful restraint, criminal child enticement, or the former offense of child stealing;

(b) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that is or was substantially equivalent to any offense listed in (1)(a), above;

(c) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (1)(a) or (b), above.

(2) Any of the following violations committed by a person under the age of 18, when the victim of the offense is under 18 years of age and is not the child of the person who commits the offense:

(a) Subject to paragraph (2)(d), below, kidnapping for a purpose other than engaging in sexual activity with the victim against the victim's will or the former offense of child stealing;

(b) Subject to paragraph (2)(d), below, a violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that is or was substantially equivalent to any offense listed in (2)(b), above;

(c) Subject to paragraph (2)(d), below, an attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (2)(a) or (b), above;

(d) If the child's case has been transferred for criminal prosecution under R.C. 2152.12, the act is any violation in (1), above, or would be any offense listed in any of those clauses if committed by an adult.

Sexual predator

"Sexual predator" means a person who either: (1) has been convicted of or pleaded guilty to committing a sexually oriented offense that is not a registration-exempt sexually oriented offense and is likely to engage in the future in one or more sexually oriented offenses, or (2) has been adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, was 14 years of age or older at the time of committing the offense, was classified a juvenile offender registrant based on that adjudication, and is likely to engage in the future in one or more sexually oriented offenses. (R.C. 2950.01(E).)

Child-victim predator

"Child-victim predator" means a person who either: (1) has been convicted of or pleaded guilty to committing a child-victim oriented offense and is likely to engage in the future in one or more child-victim oriented offenses, or (2) has been adjudicated a delinquent child for committing a child-victim oriented offense, was 14 years of age or older at the time of committing the offense, was classified a juvenile offender registrant based on that adjudication, and is likely to engage in the future in one or more child-victim oriented offenses. (R.C. 2950.01(U).)

School premises

"School premises" means either of the following: (1) the parcel of real property on which any "school" (see below) is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed, or (2) any other parcel of real property that is owned or leased by a board of education of a school or the governing body of a school for which the State Board of Education prescribes minimum standards under R.C. 3301.07 and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the **school** is being conducted on the parcel of real property at the time a criminal offense is committed. As used in this definition, "school" means any school operated by a board of education or any school for which the State Board of Education prescribes minimum standards under R.C. 3301.07, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed. (R.C. 2950.01(R), by reference to existing R.C. 2925.01(Q) and (R)--not in the bill.)

Sentencing of sexually violent predators

Existing law

Special sexually violent predator sentencing mechanism. Existing law provides a special sentencing mechanism for persons who are convicted of or plead guilty to any of a list of specified offenses and who are adjudicated as being sexually violent predators (hereafter, the Sexually Violent Predator Sentencing Law). The mechanism provides that, notwithstanding the regular Felony Sentencing Law and any other Revised Code provision that authorizes or requires a specified prison term or a mandatory prison term for a person who is convicted of or pleads guilty to a felony or that specifies the manner and place of service of a prison term or term of imprisonment, the court must impose a sentence upon a person who is convicted of or pleads guilty to a "sexually violent offense" and who 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 charging that offense as follows (see "**Existing sexually violent predator sentencing law definitions,**" below, for definitions of the terms in quotation marks; also see **COMMENT 3**): (1) if the offense is aggravated murder and the court does not impose a sentence of death, it must impose upon the offender a term of life imprisonment without parole (if the court sentences the offender to death and the sentence of death is vacated, overturned, or otherwise set aside, the court must impose upon the offender a term of life imprisonment without parole), (2) if the offense is murder or an offense other than aggravated murder or murder for which a term of life imprisonment may be imposed, it must impose upon the offender a term of life imprisonment without parole, (3) except as described in clause (4), if the offense is an offense other than aggravated murder, murder, or an offense for which a term of life imprisonment may be imposed, it must impose an indefinite prison term consisting of a minimum term fixed by the court from among the range of terms available as a definite term for the offense, but not less than two years, and a maximum term of life imprisonment, and (4) for any offense, if the offender previously has been convicted of or pleaded guilty to a sexually violent offense and also to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that offense, it must impose upon the offender a term of life imprisonment without parole.

If an offender is sentenced to a prison term pursuant to clause (3) of the preceding paragraph, the Parole Board has control over the offender's service of the term during the entire term unless the Board terminates its control in accordance with R.C. 2971.04. Except as described in the next sentence, an offender sentenced to a prison term or term of life imprisonment without parole pursuant to the provision described in the preceding paragraph must serve the

entire prison term or term of life imprisonment in a state correctional institution, and the offender is not eligible for judicial release under R.C. 2929.20. For a prison term imposed pursuant to clause (3) of the preceding paragraph, the court, in accordance with R.C. 2971.05, may terminate the prison term or modify the requirement that the offender serve the entire term in a state correctional institution if all of the following apply: (1) the offender has served at least the minimum term imposed as part of that prison term, (2) the Parole Board, pursuant to R.C. 2971.04, has terminated its control over the offender's service of that prison term, and (3) the court has held a hearing and found, by clear and convincing evidence, one of the following: (a) in the case of termination of the prison term, that the offender is unlikely to commit a sexually violent offense in the future, or (b) in the case of modification of the requirement, that the offender does not represent a substantial risk of physical harm to others. An offender sentenced to a term of life imprisonment without parole pursuant to clause (1), (2), or (4) of the preceding paragraph cannot be released from the term of life imprisonment or be permitted to serve a portion of it in a place other than a state correctional institution. (R.C. 2971.03(A) to (C).)

Automatic classification of a sexually violent predator as a sexual predator for purposes of the SORN Law. Existing law specifies that, if an offender is convicted of or pleads guilty to 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 charging the sexually violent offense, the conviction of or plea of guilty to the specification automatically classifies the offender as a sexual predator for purposes of the SORN Law. The provision states that the classification of the offender as a sexual predator for purposes of the SORN Law is terminated only if the offender was sentenced to a prison term pursuant to clause (3) of the second preceding paragraph and the court terminates the offender's prison term as provided in R.C. 2971.05(D), or as otherwise described in division (D)(2) of R.C. 2950.09 (note that the R.C. 2950.09(D)(2) authority to terminate a sexual predator classification was repealed in Am. Sub. S.B. 5 of the 125th General Assembly). (R.C. 2971.03(F).)

Sexually violent predator specification. Existing law provides that the application of the Sexually Violent Predator Sentencing Law to an offender is precluded unless the indictment, count in the indictment, or information charging the "sexually violent offense" or charging the "designated homicide, assault, or kidnapping offense" also includes a specification that the offender is a "sexually violent predator" (see "**Existing sexually violent predator sentencing law definitions**," for definitions of the terms in quotation marks). The specification must be stated at the end of the body of the indictment, count, or information and must be stated in substantially the following form:

"SPECIFICATION (OR, SPECIFICATION TO THE FIRST COUNT). The grand jury (or insert the person's or prosecuting attorney's name when appropriate) further find and specify that the offender is a sexually violent predator." (R.C. 2941.148.)

Existing Sexually Violent Predator Sentencing Law definitions. The Sexually Violent Predator Sentencing Law defines numerous terms that apply to its provisions. The following definitions are directly relevant to the bill (R.C. 2971.01):

(1) "Designated homicide, assault, or kidnapping offense" means the offense of aggravated murder, murder, felonious assault, kidnapping, involuntary manslaughter that is based upon the offender's commission of a felony, or an attempt to commit or complicity in committing any of those offenses if the attempt or complicity is a felony.

(2) "Sexually oriented offense" and "child-victim oriented offense" have the same meanings as in the SORN Law, as described above in "**SORN Law definitions.**"

(3) "Sexually violent offense" means a "violent sex offense" (see below), or a designated homicide, assault, or kidnapping offense *for which the offender also was convicted of or pleaded guilty to a "sexual motivation specification"* (see below).

(4) "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 **COMMENT 3**). For purposes of this definition, any of the following factors may be considered as evidence tending to indicate that there is a likelihood that the person will engage in the future in one or more sexually violent offenses: (a) the person has been convicted two or more times, in separate criminal actions, of a sexually oriented offense or a child-victim oriented offense (for purposes of this clause, convictions that result from or are connected with the same act or result from offenses committed at the same time are one conviction, and a conviction set aside pursuant to law is not a conviction), (b) the person has a documented history from childhood, into the juvenile developmental years, that exhibits sexually deviant behavior, (c) available information or evidence suggests that the person chronically commits offenses with a sexual motivation, (d) the person has committed one or more offenses in which the person has tortured or engaged in ritualistic acts with one or more victims, (e) the person has committed one or more offenses in which one or more victims were physically harmed to the degree that the particular victim's life was in jeopardy, or (f) any other relevant evidence.

(5) "Sexually violent predator specification" means a specification, as described in R.C. 2941.148, charging a person with being a sexually violent predator.

(6) "Sexual motivation" means a purpose to gratify the sexual needs or desires of the offender.

(7) "Sexual motivation specification" means a specification, as described in R.C. 2941.147, that charges that a person charged with a designated homicide, assault, or kidnapping offense committed the offense with a sexual motivation.

(8) "Violent sex offense" means any of the following: (a) the offense of rape, sexual battery, the former offense of felonious sexual penetration, or the offense of gross sexual imposition when a victim is under 13 years of age, (b) a felony violation of a former Ohio law that is substantially equivalent to an offense listed in clause (a) of this paragraph or of an existing or former law of the United States or of another state that is substantially equivalent to an offense listed in clause (a) of this paragraph, or (c) an attempt to commit or complicity in committing an offense or violation listed in clause (a) or (b) of this paragraph if the attempt or complicity is a felony.

Related provisions. Other provisions of the Sexually Violent Predator Sentencing Law, including R.C. 2971.02, 2971.04, and 2971.05, set forth procedures that apply relative to the special sentencing mechanism under that Law. Numerous existing provisions outside of the Sexually Violent Predator Sentencing Law include references to the special sentencing mechanism under that Law, to sexually violent predators, or to other terms related to sexually violent predators (R.C. 109.42(A)(17), 2921.34(A)(2) and (C)(2), 2929.01(KK), 2929.13(F)(11) and (H)(1), 2929.14(G), 2929.19(A)(2), (B)(2)(a), and (B)(4), 2930.16(B)(2), 2950.01(G)(1) and (H), 2950.09(A) and (B)(1)(a)(ii), 2950.11(H)(4), 2953.08(A)(3), 5120.49, and 5120.61(A)(1) and (C)).

Operation of the bill

Changes in sentencing mechanism--length of minimum term when life imprisonment not imposed. The bill revises the length of the minimum prison term when a life term may not be imposed for the underlying sexually violent offense. Under the bill (R.C. 2971.03(A)(3) and (4)):

(1) Except as otherwise provided in paragraphs (2), (3), (4), or (5), below, if the offense for which the sentence is being imposed is an offense other than aggravated murder, murder, or an offense for which a term of life imprisonment may be imposed, the court must impose an indefinite prison term consisting of a minimum term fixed by the court from among the range of terms available as a

definite term for the offense, but not less than two years, and a maximum term of life imprisonment (*existing law*).

(2) Except as otherwise provided below in paragraph (5), if the offense for which the sentence is being imposed is kidnapping that is a felony of the first degree, the court must impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than ten years, and a maximum term of life imprisonment (*added by the bill*).

(3) Except as otherwise provided below in paragraph (5), if the offense for which the sentence is being imposed is kidnapping that is a felony of the second degree, it shall impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than eight years, and a maximum term of life imprisonment (*added by the bill*).

(4) Except as otherwise provided below in paragraph (5), if the offense for which the sentence is being imposed is rape for which a term of life imprisonment is not imposed, the court must impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than ten years, and a maximum term of life imprisonment (*added by the bill*).

(5) For any offense for which the sentence is being imposed, if the offender previously has been convicted of or pleaded guilty to a sexually violent offense and also to a sexually violent predator specification related to that offense, the court must impose upon the offender a term of life imprisonment without parole (*existing law*).

Changes in Sexually Violent Predator Sentencing Law definitions. The bill revises the Sexually Violent Predator Sentencing Law to eliminate the language, contained in definitions, that indicates that (R.C. 2971.01): (1) in order to be adjudicated a sexually violent predator, a person *must have been convicted of or pleaded guilty to* committing, on or after January 1, 1997, a sexually oriented offense, and (2) in order for a designated homicide, assault, or kidnapping offense to be a sexually violent offense, the offender also *must have been convicted of or pleaded guilty to* a sexual motivation specification. These changes address the problems the courts of appeals for the Fifth District and Third District found with the existing Sexually Violent Predator Law, as described in **COMMENT 3**, that restrict the use of that Law only to persons who are convicted of a sexually violent offense, who are likely to engage in the future in one or more sexually violent offenses, *and who previously have been convicted of a sexually violent offense*. Specifically, the bill modifies some of the existing Sexually Violent Predator Sentencing Law definitions, as follow:

(1) Under the bill, "sexually violent offense" means a "violent sex offense" (as under existing law), or a designated homicide, assault, or kidnapping offense *that the offender committed with a sexual motivation* (R.C. 2971.01(G)).

(2) Under the bill, "sexually violent predator" means a person *who, on or after January 1, 1997, commits a sexually violent offense* and is likely to engage in the future in one or more sexually violent offenses (see **COMMENT 3**). As under existing law, for purposes of this definition, any of the following factors may be considered as evidence tending to indicate that there is a likelihood that the person will engage in the future in one or more sexually violent offenses: (a) the person has been convicted two or more times, in separate criminal actions, of a sexually oriented offense or a child-victim oriented offense (for purposes of this clause, convictions that result from or are connected with the same act or result from offenses committed at the same time are one conviction, and a conviction set aside pursuant to law is not a conviction), (b) the person has a documented history from childhood, into the juvenile developmental years, that exhibits sexually deviant behavior, (c) available information or evidence suggests that the person chronically commits offenses with a sexual motivation, (d) the person has committed one or more offenses in which the person has tortured or engaged in ritualistic acts with one or more victims, (e) the person has committed one or more offenses in which one or more victims were physically harmed to the degree that the particular victim's life was in jeopardy, or (f) any other relevant evidence. (R.C. 2971.01(H).)

(3) Under the bill, "sexually violent predator specification" means a specification, as described in R.C. 2941.148, that *charges that a person charged with a violent sex offense, or a person charged with a designated homicide, assault, or kidnapping offense and a sexual motivation specification, is a sexually violent predator* (R.C. 2971.01(I)).

The bill does not change the other existing Sexually Violent Predator Sentencing Law definitions described above in "*Existing Sexually Violent Predator Sentencing Law definitions*" (e.g., "designated homicide, assault, or kidnapping offense," "sexual motivation," "sexual motivation specification," and "violent sex offense").

Special sexually violent predator sentencing mechanism. The bill modifies the special sentencing mechanism in the Sexually Violent Predator Sentencing Law in a manner consistent with, and reflective of, the definitional changes described above in "*Changes in Sexually Violent Predator Sentencing Law definitions.*" Under the bill, the mechanism provides that, notwithstanding the regular Felony Sentencing Law and any other Revised Code provision that authorizes or requires a specified prison term or a mandatory prison term for a person who is convicted of or pleads guilty to a felony or that specifies the manner

and place of service of a prison term or term of imprisonment, the court must impose a sentence upon a person *who is convicted of or pleads guilty to a violent sex offense and who also is convicted of or pleads guilty to a sexually violent predator specification that was included in the document charging that offense*, and upon a person *who is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the document charging that offense*, as follows: (1) if the offense *for which the sentence is being imposed* is aggravated murder and the court does not impose a sentence of death, if it is murder, if it is an offense other than aggravated murder or murder for which a term of life imprisonment may be imposed, or if it is an offense other than aggravated murder, murder, or an offense for which a term of life imprisonment may be imposed and clause (2) of this paragraph does not apply, the court must impose upon the offender, in the manner determined under existing law, either a term of life imprisonment without parole or an indefinite prison term consisting of a minimum term fixed by the court from among the range of terms available as a definite term for the offense, but not less than two years, and a maximum term of life imprisonment, and (2) for any offense *for which the sentence is being imposed*, if the offender *previously has been convicted of or pleaded guilty to a violent sex offense and also to a sexually violent predator specification that was included in the document charging that offense*, or *previously has been convicted of or pleaded guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the document charging that offense*, the court must impose upon the offender a term of life imprisonment without parole. (R.C. 2971.03(A).)

The bill does not change the existing Sexually Violent Predator Sentencing Law provisions that pertain to the offender's service of a prison term imposed under the provisions described in the preceding paragraph and to the possible termination of a prison term, other than one for life without parole, imposed under those provisions (R.C. 2971.03(B) and (C)).

Automatic classification of a sexually violent predator as a sexual predator for purposes of the SORN Law. The bill modifies the existing provisions that automatically classify a sexually violent predator as a sexual predator for purposes of the SORN Law, in a manner consistent with, and reflective of, the definitional changes described above in **'Changes in Sexually Violent Predator Sentencing Law definitions.'** Under the bill, if an offender is *convicted of or pleads guilty to a violent sex offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the document charging that offense*, or *is convicted of or pleads guilty to a designated*

homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the document charging that offense, the conviction of or plea of guilty to the offense and the sexually violent predator specification automatically classifies the offender as a sexual predator for purposes of the SORN Law.

The bill also eliminates the existing language that refers to the authority of a court to terminate the sexual predator classification (the R.C. 2950.09(D)(2) authority to terminate a sexual predator classification was repealed in Am. Sub. S.B. 5 of the 125th General Assembly) and instead states that, as provided under Am. Sub. S.B. 5, the classification of the offender as a sexual predator for purposes of the SORN Law is permanent and continues until the offender's death as described in division (D)(2) of R.C. 2950.09 (R.C. 2971.03(F)).

Sexually violent predator specification. The bill modifies the existing provisions that set forth the sexually violent predator specification, in a manner consistent with, and reflective of, the definitional changes described above in "**Changes in Sexually Violent Predator Sentencing Law definitions**" and the changes described above in "**Special sexually violent predator sentencing mechanism.**" Under the bill, the provisions specify that the application of the Sexually Violent Predator Sentencing Law to an offender is precluded unless the indictment, count in the indictment, or information *charging the violent sex offense also includes a specification that the offender is a sexually violent predator*, or the indictment, count in the indictment, or information *charging the designated homicide, assault, or kidnapping offense also includes both a sexual motivation specification and a specification that the offender is a sexually violent predator*. The bill does not change the form provided under existing law for the specification. (R.C. 2941.148.)

Related provisions. The bill modifies the provisions of the Sexually Violent Predator Sentencing Law, including R.C. 2971.02, 2971.04, and 2971.05, that set forth procedures that apply relative to the special sentencing mechanism under that Law, and the other existing provisions outside of the Sexually Violent Predator Sentencing Law that include references to the special sentencing mechanism under that Law, to sexually violent predators, or to other terms related to sexually violent predators, as identified above under "**Existing law,**" in a manner consistent with, and reflective of, the definitional changes described above in "**Changes in Sexually Violent Predator Sentencing Law definitions**" and the changes described above in "**Special sexually violent predator sentencing mechanism.**" In concert with the modifications, the bill also enacts the term "adjudicated a sexually violent predator" in the general Criminal Sentencing Law (see below) and uses that term throughout that Law in places in which that Law

provides for or refers to the sentencing of sexually violent predators. (R.C. 109.42(A)(17), 2921.34(A)(2) and (C)(2), 2929.01(KK) and (ZZ), 2929.13(F)(11) and (H)(1), 2929.14(G), 2929.19(A)(2), (B)(2)(a), and (B)(4), 2930.16(B)(2), 2950.01(G)(1) and (H), 2950.09(A) and (B)(1)(a)(ii), 2950.11(H)(4), 2953.08(A)(3), 2971.02, 2971.04, 2971.05, 5120.49, and 5120.61(A)(1) and (C).)

The bill specifies that, as used in the general Criminal Sentencing Law, a person is "adjudicated a sexually violent predator" if the person is convicted of or pleads guilty to a violent sex offense and also is convicted of or pleads guilty to sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that violent sex offense or if the person is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that designated homicide, assault, or kidnapping offense. The bill also makes this definition applicable to some of the provisions identified in the preceding paragraph. (R.C. 2929.01(ZZ); incorporated by reference under R.C. 2921.34(D), 2930.16(B)(2), 2950.01(BB), 2953.08(A)(3), and 5120.61(C), for application in R.C. 2921.34, 2930.16(B)(2), Chapter 2950., R.C. 2953.08(A)(3), and 5120.61.)

COMMENT

1. With respect to registration, current law requires the offenders and delinquent children described above to register personally with the sheriff of the county. Generally, this registration must contain the offender's or delinquent child's photograph and current residence address, the offender's employer's name and address if applicable, the name and address of the offender's school or institution of higher education that the offender attends if applicable, and any other information required by the Bureau of Criminal Identification and Investigation. (R.C. 2950.04(C)(1) and (2) and 2950.041(C)(1) and (2).)

If an offender or delinquent child is adjudicated a sexual predator or child-victim predator relative to the sexually oriented offense or child-victim oriented offense at issue, the registration also must contain the identification license plate number of each motor vehicle the offender or delinquent child owns and of each motor vehicle registered in the offender's or delinquent child's name. Additionally, the registration must contain a specific declaration if an offender or delinquent child is adjudicated a sexual predator or child-victim predator or determined to be an habitual offender relative to the sexually oriented offense or child-victim oriented offense at issue, or if the offender was convicted of or pleaded guilty to an aggravated sexually oriented offense. (R.C. 2950.04(C)(3) and 2950.041(C)(3).)

An offender's or delinquent child's registration, change of address, and address verification duties under the SORN Law generally last for ten years. However, if an offender or delinquent child is adjudicated a sexual predator or a child-victim predator the offender or child generally has a lifetime duty to comply, and, if an offender or delinquent child is classified an habitual sexual offender or child-victim offender, the offender generally has either a lifetime duty or a 20-year duty to comply, and the child generally has a 20-year duty to comply. In certain circumstances, a delinquent child's duty to comply, based upon an adjudication as a sexual predator or child-victim predator or a classification as an habitual sexual offender or child-victim offender, is reduced if the juvenile court removes the child's predator or habitual offender status. (R.C. 2950.07(B).)

2. In *State v. Taylor* (2003), 100 Ohio St.3d 172, the Ohio Supreme Court considered the interaction of the registration duty imposed under the SORN Law and a determination by a court under that Law that an offender was a sexual predator. Under the facts in that case, in the 1970s, two persons were convicted in separate cases of offenses that are sexually oriented offenses under the SORN Law and were sent to prison for the offenses. After being released from those prison terms (apparently, long before 1997), each offender was convicted of a non-sexually oriented offense, was sent to prison for that non-sexually oriented offense, and was serving the prison term for that non-sexually oriented offense after July 1, 1997. Pursuant to a provision in R.C. 2950.09(C), a hearing was held for each offender in the trial court to determine whether the offender was a sexual predator. Each trial court determined that the offender before it was a sexual predator *and that the offender had a duty to register under the SORN Law as a sexual predator*. Each offender appealed and, in each case, the court of appeals reversed the trial court's decision as to the offender's registration duty. The Supreme Court affirmed the judgments of the courts of appeals, holding that, under the plain language of the SORN Law's registration provisions, the offenders did not have a duty to register under that Law.

In its decision, the Supreme Court reviewed the SORN Law's registration provisions, contained in R.C. 2950.04, and the categories of offenders who are subject to the provisions (see "**Sexually oriented offenses--categories of offenders and delinquent children who are subject to the registration requirements**" under "**Persons subject to the SORN Law's registration requirements--expansion to include all sexual predators and all child-victim predators**" in the **CONTENT AND OPERATION** portion of this analysis). Briefly, those provisions require each of the following types of offender who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense to register: (a) regardless of when the sexually oriented offense was committed, an offender sentenced to a prison term for the offense *who is released from that prison term on or after July 1, 1997*, (b) regardless of when the sexually oriented offense was

committed, an offender sentenced for a sexually oriented offense on or after July 1, 1997, and (c) if the sexually oriented offense was committed prior to July 1, 1997, an offender who, immediately prior to that date, was a habitual sex offender required to register under the former Habitual Sex Offender Law replaced by the SORN Law in 1997. The Court held that the offenders in question did not fit into any of the categories of offenders to whom those provisions apply and, thus, were not required to register. Most significantly, it held that the offenders did not fit into the category described in clause (a) because, although the offenders were released from prison terms after July 1, 1997, *the offenses for which they were serving those prison terms were not sexually oriented offenses*. The Court stated that adjudication as a sexual predator under the SORN Law is distinct from the duty to register under that Law.

Note that the decision in *Taylor* did not address the interaction of the registration duty imposed under the SORN Law and a determination by a court under that Law that an offender was a child-victim predator (the child-victim provisions did not exist until July 31, 2003), but the rationale in the case appears to be relevant, and applicable, to a consideration of such an interaction.

3. In *State v. Reigle* (Hancock County, Nov. 9, 2000), Hancock App. No. 5-2000-14, 2000 Ohio 1786, the Third District Court of Appeals interpreted the Sexually Violent Predator Sentencing Law, as applied to a person convicted of four counts of sexually violent offenses and four sexually violent predator specifications related to those sexually violent offenses. The offender *had not previously been convicted of any sexually violent offense, and the specifications did not allege that the offender had been so convicted*, but the trial court convicted the offender of the specifications and imposed sentence under the Law. The offender appealed on several grounds, including a claim that, based on the definition of "sexual predator" contained in R.C. 2971.01(H), the "obvious intent" of the Sexually Violent Predator Law "was to punish previous sexually violent offenders for previous sexually violent offenses not, as in this case, to punish for concurrent convictions in the underlying indictment." The State disputed that claim, arguing that no prior conviction is necessary and that the sexually violent predator specification simply could allege that the accused *committed the sexually violent offense with which he or she then was charged* and was likely to engage in the future in one or more sexually violent offenses.

On appeal, as related to this claim, the Third District Court of Appeals focused on: (a) the definition of "sexually violent predator," noting that it meant a person *who has been convicted of or pleaded guilty to committing, on or after January 1, 1997, a sexually violent offense* and was likely to engage in the future in one or more sexually violent offenses, and (b) the fact that the Sexually Violent Predator Law specified that its sentencing provisions did not apply unless the

document charging a sexually violent offense included a specification that the accused also was a sexually violent predator. The Court reversed the defendant's conviction as a sexually violent predator, *holding that the definition of "sexually violent predator" requires that the accused must have been convicted of a sexually violent offense prior to conviction of the offense charged in the indictment.* The Court stated that:

The use of the allegation "committed" by the state fails to constitute a crime under the "sexually violent predator specification." The state must allege that Reigle had been "convicted of or pleaded guilty to" a sexually violent offense in order to allege that Reigle was a sexually violent predator. Hence, it naturally follows that the state may not rely on the underlying charge contained in the indictment to allege that "conviction" because the offender has not yet been convicted of those charges. To the contrary, because the state has alleged in the indictment that the offender has been "convicted of or pleaded guilty to" a sexually violent offense, the state must show that the accused has been convicted of a sexually violent offense prior to conviction on the offense charged in the indictment.

A subsequent decision of the Fifth District Court of Appeals interpreting the Sexually Violent Predator Sentencing Law came to a conclusion similar to the holding in *Reigle, supra*, and also held that, based on the definition of "sexually violent predator," the prior conviction must be for a sexually violent offense *committed on or after January 1, 1997.* *State v. Smith* (Morrow County, June 19, 2003), Morrow App. No. CA-957, 2003 Ohio 3416.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-27-04	p. 1790
Reported, H. Criminal Justice	05-20-04	pp. 1941-1942
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