



Sub. S.B. 9

125th General Assembly
(As Passed by the Senate)

**Sens. Coughlin, Hottinger, Harris, Mumper, Carnes, Randy Gardner,
Goodman, Amstutz, Carey**

BILL SUMMARY

- Authorizes a county sheriff to charge a fee, subject to annual monetary limits, each time an "adult offender" registers, registers a new residence address, or makes a periodic verification of current residence address under the Sex Offender Registration and Notification (SORN) Law.
- Prohibits a sheriff from requiring a delinquent child to pay the above fees until the child reaches 18 years of age, at which time, the bill's provisions applicable to an adult offender must be construed to apply to the delinquent child.
- Specifies that the above fees are to be used to defray the costs of registering sex offenders and providing community notification under the SORN Law.
- Requires a county sheriff to use federal poverty guidelines to determine a person's ability to pay a fee.
- Requires a county sheriff to waive the fee for persons whose income is less than 125% of the federal poverty level.
- Establishes the following monetary limits on fees permitted to be charged an adult offender under the bill: (1) for sexual predators and aggravated sexually oriented offenders, not more than \$100 per registration year, (2) for habitual sex offenders who are subject to community notification, not more than \$50 per registration year, and (3) for all other persons subject to the SORN Law, not more than \$25 per registration year.

- Prohibits a sheriff from refusing to register a person, register a new address, or verify a residence address under the SORN Law because a person does not pay a fee.
- Specifies the procedure for collecting unpaid fees.

CONTENT AND OPERATION

Sheriff's duty to collect fees

Existing law

Existing law specifies the fees that a sheriff is authorized or required to charge and that a court or its clerk then must tax in the bill of costs against the judgment debtor or person legally liable for the fees. These fees generally pertain to actions taken by the sheriff or a deputy sheriff before, during, or after civil or criminal proceedings in a court. When any of the services associated with the specified fees are rendered by a county officer or employee, the fees must be taxed as costs in the case and, when collected, paid into the general fund of the county. (R.C. 311.17, not in the bill.)

Changes made by the bill

The bill authorizes a sheriff to collect a fee, subject to annual maximums, each time an "adult offender" registers, registers a change of residence address, or periodically verifies a current residence address under the SORN Law. If a sheriff charges an adult offender one or more of the fees authorized by the bill, the sheriff may not require a delinquent child to pay any fee until the child reaches 18 years of age. At that time, all of the provisions of the bill applicable to an adult offender must be construed to apply to the delinquent child. (R.C. 311.171(B) and (C)(1).)

The bill gives a sheriff discretion as to the amount of a fee but imposes a maximum limit for each registration year of an adult offender. A "registration year" of an offender is defined, for current registrants, as the 12-month period beginning on the anniversary, occurring on or after January 1, 2004 (the bill's effective date), of the date on which the offender's registration period began under the SORN Law. A "registration year," for future registrants, is defined as the 12-month period beginning on the date on which an offender's registration period begins, on or after January 1, 2004 (the bill's effective date), under the SORN Law. The bill specifies that the fees may not exceed a total of:

(1) \$100 for each registration year of an offender who has been adjudicated a sexual predator or who is an aggravated sexually oriented offender;

(2) \$50 for each registration year of an offender who has been determined to be a habitual sex offender for whom the sentencing judge has required community notification and who is not described in (1) above; or

(3) \$25 for each registration year of an offender who has been convicted of or pleaded guilty to a sexually oriented offense and who is not described in (1) or (2) above. (This includes an offender who has been determined to be a habitual sex offender for whom the sentencing judge has *not* required community notification.)

(R.C. 311.171(A)(2) and (C)(2), (3), and (4); Section 3 of the bill.)

The bill requires the offender to retain the receipts provided for payments made during the offender's registration year to establish that the payment of any fee will exceed the applicable maximum annual amount permissible under the bill (R.C. 311.171(C)(5)). If an offender has registered with a sheriff and subsequently relocates to a different county during a registration year, the annual maximum amounts apply to the sheriff in the new county, and that sheriff must consider any payments already made by the offender for purposes of determining when the applicable maximum has been met for the offender's registration year (R.C. 311.171(G)).

Under the bill, all fees paid to a sheriff must be paid into the county treasury to the credit of the county general fund and must be allocated to the sheriff to be used to defray the costs of registering sex offenders and providing community notification (R.C. 311.171(F)). The sheriff cannot refuse to register a person, register a new residence address of a person, or verify the current residence address of a person, who does not pay a required fee (R.C. 311.171(C)(6)). The sheriff must report unpaid fees in the same manner as other fees collected by county officials, and the county may recover those fees in a civil action in the same manner as other money due the county (R.C. 311.171(C)(7)).

The bill requires a sheriff to make a determination about a person's ability to pay a fee each time a person appears before the sheriff to provide any registration or verification for which the sheriff charges a fee under the bill. In making that determination, the sheriff must compare the person's income to the federal poverty guidelines. If the person's income is less than 125% of the federal poverty level, the sheriff is required to waive the fee. If the person's income is equal to or greater than that amount, the person is considered able to pay. If a sheriff determines a person is able to pay a fee, the sheriff may allow the person to pay the fee in accordance with a payment schedule the sheriff establishes based on the person's ability to pay. The sheriff must document any waiver or alternative fee arrangement in the official registration records of the sheriff's office and must provide the offender with a written copy of any waiver or alternative fee

arrangement. In order to accommodate the sheriff's authority conferred by the bill to waive fees, the bill creates an exception to the current provision of law that prohibits county officers from reducing, abating, or remitting any fees, costs, percentages, penalties, allowances, or perquisites of any kind required to be charged by the officer (R.C. 311.171(D) and (E) and 325.32).

Overview of Sex Offender Registration and Notification Law

Under the Sex Offender Registration and Notification Law (the SORN Law), a person subject to that Law must register the person's residence address with the county sheriff, periodically verify that residence address, and notify the sheriff of a change in that residence address and register the new address with the appropriate sheriff (R.C. 2950.04, 2950.05, and 2950.06, not in the bill). The following four categories of persons are subject to that Law (R.C. 2950.01, 2950.04, 2950.05, 2950.06, 2950.07, 2950.09, 2950.10, and 2950.11, not in the bill):

(1) A sexually oriented offender who has been convicted of or pleaded guilty to a sexually oriented offense or who has been adjudicated a delinquent child for committing a juvenile category sexually oriented offense and is adjudicated a juvenile sex offender registrant. A sexually oriented offender must comply with the SORN Law for ten years and verify the offender's residence address annually during the registration period. An adult sexually oriented offender may never have this designation changed.

(2) A habitual sex offender is a person who is convicted of or pleads guilty to a sexually oriented offense, or is classified a juvenile sex offender registrant based on a delinquent child adjudication for committing a juvenile category sexually oriented offense, and one of the following applies to the person: (a) regarding a person who is an offender, the person previously was convicted of or pleaded guilty to one or more sexually oriented offenses or previously was classified a juvenile sex offender registrant based on one or more of delinquent child adjudications for committing a juvenile category sexually oriented offense, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense, or (b) regarding a delinquent child, the person previously was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing one or more sexually oriented offenses, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense. A habitual sex offender must comply with the SORN Law for 20 years and verify the offender's residence address on an annual basis. In addition, a judge may subject a habitual sex offender to the SORN Law's victim and community notification provisions. A habitual sex offender subject to community notification also must provide the sheriff of a county in which the habitual sex offender intends to reside a written notice of intent to reside 20 days

prior to taking up residence. An adult habitual sex offender may never have this designation changed.

(3) An aggravated sexually oriented offender is a person who has been convicted of or pleaded guilty to raping a child under 13 on or after June 13, 2002. An aggravated sexually oriented offender must comply with the SORN Law for life and must verify the offender's residence address on a quarterly basis. An aggravated sexually oriented offender is always subject to the SORN Law's victim and community notification provisions and must provide the sheriff of a county in which the offender intends to reside a written notice of intent to reside 20 days prior to taking up residence. An aggravated sexually oriented offender may never have this designation changed.

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

A court may change the registration status of a juvenile sex offender registrant according to established procedures (R.C. 2152.85, not in the bill).

Duties and notifications under the SORN Law

Duty to register

Existing law generally requires persons subject to the SORN Law to register personally with a specified sheriff at a specified time. Generally, each person must register, within seven days after coming into any county in which the person resides or temporarily is domiciled for more than seven days, with the sheriff of that county. (R.C. 2950.04(A), not in the bill.)

A person who is required to register personally must obtain from the sheriff or a designee of the sheriff a registration form, complete and sign the form, and return the completed form together with a photograph to the sheriff or designee.

The sheriff or designee must sign the form and indicate on it the date on which it is returned. After a person registers with a sheriff, the sheriff must forward the signed registration form and photograph to the Bureau of Criminal Identification and Investigation (BCII). BCII must include the information and materials it receives in the State Registry of Sex Offenders. (R.C. 2950.04(A), (B), (C), and (D), not in the bill.)

Duties regarding change of residence address

Under existing law, a person who is subject to the SORN Law must, at least 20 days before changing the person's residence address during the period of required registration, do both of the following: (1) provide written notice of the residence address change to the sheriff with whom the person most recently registered and (2) register the new residence address with the sheriff of the county in which the new residence address is located. The provisions apply regardless of whether the person's new residence address is in Ohio or in another state. (R.C. 2950.05(A), (B), (C), and (F), not in the bill.)

A sheriff, upon receiving the notice of a change of residence address, must promptly forward the new residence address to BCII if the new residence address is in another state or, if the new residence address is located in another county in Ohio, to the sheriff of that county. BCII must include all information forwarded to it in the State Registry of Sex Offenders and forward notice of the offender's new residence address to the appropriate officials in the other state. (R.C. 2950.05(D), not in the bill.)

Duties regarding address verification

Existing law provides that a person who is subject to the SORN Law must periodically verify the person's current residence address at a specified time and in a specified manner. Regardless of when the sexually oriented offense for which the person is required to register was committed, if the person has been adjudicated a sexual predator and has not been "declassified" or if the person is an aggravated sexually oriented offender, the person must verify the person's current residence address every 90 days after the person's initial registration date during the required registration period. In all other circumstances, the person must verify the person's current residence address on each anniversary of the person's registration date during the required registration period. (R.C. 2950.06(A) and (B), not in the bill.)

A person must verify the person's current residence address with the sheriff with whom the person most recently registered by personally appearing before the sheriff or a designee, no earlier than ten days before the date on which the verification is required and no later than the date verification is required, to

complete and sign a copy of the verification form prescribed by BCII. The sheriff or designee must sign the completed form and indicate on it the date on which it is completed. To facilitate the verification of a person's current residence address, the sheriff with whom the person most recently registered may mail a nonforwardable verification form prescribed by BCII to the person's last reported address, with a notice that conspicuously states that the person must personally appear before the sheriff or a designee to complete the form and the date by which it must be completed. Regardless of whether a sheriff mails a form to a person, each person with an address verification duty must personally appear before the sheriff or a designee to verify the address as described in this paragraph. (R.C. 2950.06(C) and (D), not in the bill.)

Upon a persons' personal appearance and completion of a verification form, a sheriff must promptly forward a copy to BCII. BCII must include all information forwarded to it in the State Registry of Sex Offenders. (R.C. 2950.06(E), not in the bill.)

Definitions

"Sexually oriented offense" means any of the following offenses (R.C. 2950.01(D), not in the bill):

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

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

(b) Any of the following offenses involving a minor, in the circumstances specified: (i) kidnapping, abduction, unlawful restraint, criminal child enticement, or unlawful sexual conduct with a minor, or the former offense of child stealing, when the victim of the offense is under 18 years of age, (ii) compelling prostitution when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under 18 years of age, (iii) certain pandering obscenity or pandering sexually oriented matter involving minors violations, (iv) certain illegal use of a minor in nudity-oriented material or performance violations, (v) certain endangering children violations when the child who is involved in the offense is under 18 years of age, and (vi) importuning when the offense is committed by means of a telecommunications device and the victim of the offense is under 16 years of age (or is a peace officer posing as a person who is under 16 years of age).

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

(d) A sexually violent offense;¹

(e) A violation of any former Ohio law, any existing or former municipal ordinance or law of another state or the United States, a violation under the law applicable in a military court, or a violation under the law applicable in an Indian tribal court that is or was substantially equivalent to any offense listed in (1)(a), (b), (c), or (d), above;

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

(2) An act committed by a person under 18 years of age that is any of the following:

(a) Subject to (2)(h) below, regardless of the age of the victim of the violation, rape, sexual battery, or gross sexual imposition;

(b) Subject to (2)(h), any of the following acts involving a minor in the circumstances specified: (i) kidnapping or abduction or the former offense of child stealing, when the victim of the violation is under 18 years of age, (ii) compelling prostitution when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be

¹ "Sexually violent offense" means a violent sex offense, or a designated homicide, assault, or kidnapping offense for which the offender also was convicted of or pleaded guilty to a sexual motivation specification.

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

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

paid for, or allowed to engage in the sexual activity in question is under 18 years of age, or (iii) endangering children involving enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter when the child who is involved in the violation is under 18 years of age;

(c) Subject to (2)(h), any sexually violent offense that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(d) Subject to (2)(h), aggravated murder, murder, felonious assault, kidnapping, or abduction, or felony-based involuntary manslaughter, or an attempt to violate any of those prohibitions that is committed with a purpose to gratify the sexual needs or desires of the child committing the violation;

(e) Subject to (2)(h), certain pandering obscenity, pandering sexually oriented matter involving minors, or certain illegal use of a minor in nudity-oriented material or performance violations, or an attempt to commit violations of those natures, if the person who commits or attempts to commit the violation is four or more years older than the minor who is the victim of the violation;

(f) Subject to (2)(h), any violation of any former Ohio law, any existing or former municipal ordinance or law of another state or the United States, or any existing or former law applicable in a military court or in an Indian tribal court that is or was substantially equivalent to any offense listed in (2)(a), (b), (c), (d), or (e) and that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(g) Subject to (2)(h), any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (2)(a), (b), (c), (d), (e), or (f);

(h) If the child's case has been transferred for criminal prosecution, the act is any violation listed in (1), above, or would be any offense listed in (1), above, if committed by an adult.

"Federal poverty level" means the income level represented by the poverty guidelines as revised annually by the United States Department of Health and Human Services in accordance with section 673(2) of the "Omnibus Reconciliation Act of 1981" for a family size equal to the size of the family of the person whose income is being determined (R.C. 311.171(A)(1)).

HISTORY

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