Ohio Legislative Service Commission

Bill Analysis

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(As Introduced)

Sens. Cafaro, Morano, R. Miller, Kearney, Fedor, D. Miller, Sawyer, Schiavoni, Smith, Strahorn, Turner, Wilson

BILL SUMMARY

- Requires the sheriff with whom an offender or delinquent child has most recently registered under the SORN Law and the sheriff to whom the offender or delinquent child most recently sent a notice of intent to reside under that Law, if the offender or child is in any category of offender or delinquent child who is subject to that Law's community notification provisions, to provide written notice that includes specified information about the offender or delinquent child to the chief administrative officer of a long-term care facility in which the offender or delinquent child will reside or that is located within the specified geographical notification area and within the county served by the sheriff.

- Requires the person or government entity operating a long-term care facility that receives notices described in the preceding dot point to do the following: (1) maintain a file of the notices and make the file easily accessible to the facility's residents and their sponsors upon request, and (2) not later than 30 days after receiving a particular notice, distribute copies of the notice to the facility's residents and their sponsors.

- Prohibits a person or government entity operating a long-term care facility of a specified type from failing to comply with the distribution requirement specified in the preceding dot point with respect to a notice received pursuant to the SORN Law community notification provision described in the second preceding dot point.

- Prohibits a person or government entity operating a long-term care facility from discharging without just cause, refusing to hire, or otherwise discriminating against any employee of the facility with respect to specified employment-related matters and issues because that employee reports in good faith the facility's failure to

comply with the provisions described in the second preceding dot point and specifies that an employee of a long-term care facility is not liable in damages in a civil action for injury, death, or loss to person or property for reporting in good faith the facility's failure to comply with those provisions.

- Requires a person or government entity operating a long-term care facility of a specified type to do the following: (1) before admitting an individual from another state to the facility, require the individual to certify on a written form whether the individual was imprisoned for a felony any time during the 12-month period preceding the date the individual's application for admission is submitted to the facility, and (2) if the individual certifies that the individual was imprisoned for a felony, distribute copies of the written form to the facility's residents and their sponsors.

- Prohibits a person or government entity operating a long-term care facility of a specified type from failing to comply with the distribution requirement specified in the preceding dot point.

- Prohibits a person or government entity operating a long-term care facility of a specified type from discharging without just cause, refusing to hire, or otherwise discriminating against any employee of the facility with respect to specified employment-related matters and issues because that employee reports in good faith the facility's failure to comply with the provisions described in the two preceding dot points and specifies that an employee of any such facility is not liable in damages in a civil action for injury, death, or loss to person or property for reporting in good faith the facility's failure to comply with those provisions.

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CONTENT AND OPERATION

Community notification to long-term care facilities, residents, and sponsors under the Sex Offender Registration and Notification Law

Sex Offender Registration and Notification Law background

The Sex Offender Registration and Notification Law (the SORN Law) is contained in R.C. Chapter 2950. It requires a person who is convicted of or pleads guilty to a "sexually oriented offense" or a "child-victim oriented offense" (see **COMMENT** 1) to register with the sheriff of the county in which the person was convicted of or pleaded guilty to the offense, to register a residence address and a school, institution of higher education, or work address, to provide notice of a change of address and register the new address, and to periodically verify the registered address. There is also a restriction against residing within 1,000 feet of any school premises, a preschool, or child day-care premises if a person has been convicted of or pleaded guilty to a sexually oriented offense or a child-victim oriented offense. (R.C. 2950.04 to 2950.06, *not in the bill*.) Children who are adjudicated delinquent children for committing an act that would be a sexually oriented offense or a child-victim oriented offense if committed by an adult and who are classified by the juvenile court as "juvenile offender registrants" (see **COMMENT** 1) also generally are subject to these duties (but they are subject to the school, institution of higher education, and work address provisions only in specified circumstances and are not subject to the residency restriction) (R.C. 2152.82 to 2152.86--not in the bill).

An offender who is convicted of or pleads guilty to a sexually oriented offense or a child-victim oriented offense and who is classified a "Tier III sex offender/child-victim offender" (see **COMMENT** 1) or a child who is adjudicated a delinquent child for committing any such offense and is classified a juvenile offender registrant and a Tier III sex offender/child-victim offender also has a duty to provide notice of an intent to reside in a county (R.C. 2950.04(G) and 2950.041(G)--not in the bill).

Additionally, certain categories of offenders and delinquent children who must register under the SORN Law also are subject to mechanisms for providing victim notification and community notification of an address the person registers. Except as described in the next sentence, the victim and community notification provisions apply to: (1) an offender who is a Tier III sex offender/child-victim offender, (2) a delinquent child who is a "public registry-qualified juvenile offender registrant" (see **COMMENT** 1) and for whom a juvenile court has not removed the child's duty to comply with the SORN Law, (3) a delinquent child who is a Tier III sex offender/child-victim offender and is not a public registry-qualified juvenile offender registrant, if the child was subjected to the victim and community notification provisions prior to January 1, 2008,

and a juvenile court has not removed the child's duty to comply with the SORN Law, and (4) a delinquent child who is a Tier III sex offender/child-victim offender and is not a public registry-qualified juvenile offender registrant, if the child was classified a juvenile offender registrant on or after January 1, 2008, the court imposed a requirement subjecting the child to the victim and community notification provisions, and a juvenile court has not removed the child's duty to comply with the SORN Law. However, the community notification provisions do not apply to a person described in any of the above four categories if a court finds at a hearing, after considering specified factors (see **COMMENT** 2), that the person would not be subject to the notification provisions as they existed immediately prior to January 1, 2008. (R.C. 2950.10, *not in the bill*, and 2950.11.) The SORN Law's community notification provisions are described in detail below in "**Community notification currently**."

Community notification currently

Under the current SORN Law, regardless of when the offense was committed, if a person is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense or a person is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, and if the offender or delinquent child is in any category described above in clause (1), (2), (3), or (4) of the third paragraph under "**Sex Offender Registration and Notification Law background**," the sheriff with whom the offender or delinquent child most recently registered under that Law and the sheriff to whom the offender or delinquent child most recently sent a notice of intent to reside under that Law, within a specified period of time, must provide a written notice containing specified information to specified persons and entities in the community (R.C. 2950.11(A)).

The notice must include all of the following information regarding the subject offender or delinquent child: (1) the offender's or child's name; the address or addresses of the offender's or public registry-qualified juvenile offender registrant's residence, school, institution of higher education, or place of employment, as applicable, or the residence address or addresses of a delinquent child who is not a public registry-qualified juvenile offender registrant; the sexually oriented offense or child-victim oriented offense of which the offender was convicted, to which the offender pleaded guilty, or for which the child was adjudicated a delinquent child; and the offender's or child's photograph, and (2) a statement that identifies the category specified above in clause (1), (2), (3), or (4) of the third paragraph under "**Sex Offender Registration and Notification Law background**" that includes the offender or delinquent child and that subjects the offender or delinquent child to community notification (R.C. 2950.11(B)).

The sheriff with whom the offender or delinquent child has most recently registered and the sheriff to whom the offender or delinquent child most recently sent a notice of intent to reside must provide the written notice to all of the following persons (R.C. 2950.11(A)):

(1) Neighbors of the offender or delinquent child, in accordance with the following: (a) any occupant of each residential unit that is located within 1,000 feet of the offender's or child's residential premises, is within the county served by the sheriff, and is not in a multi-unit building, (b) if the offender or child resides in a multi-unit building, any occupant of each residential unit that is located in that multi-unit building and "shares a common hallway" with the offender or child, (c) the building manager, or the person the building owner or condominium unit owners association authorizes to exercise management and control, of each multi-unit building that is located within 1,000 feet of the offender's or child's residential premises, including a multi-unit building in which the offender or child resides, and is within the county served by the sheriff (in addition to this notice, the sheriff must either post the notice in the building in a specified manner or provide it to all building occupants), and (d) all additional persons who are within any category of neighbors of the offender or child that the Attorney General (the AG) by rule adopted under R.C. 2950.13 requires to be provided the notice and who reside within the sheriff's county;

(2) Specified officials of the public children services agency that has jurisdiction within the "specified geographical notification area" and is located within the sheriff's county (as used in the community notification provisions, "specified geographical notification area" means the geographic area or areas within which the AG, by rule adopted under R.C. 2950.13, requires the notices to be given to the persons identified in this paragraph and in paragraphs (3) to (6), below; OAC 109:5-2-01, as adopted by the AG pursuant to R.C. 2950.13, provides that "specified geographical notification area" means the school district, as classified and defined in R.C. Chapter 3311., within which the person who is subject to community notification resides, is employed, or attends a school or institution of higher education);

(3) Specified officials of each school district, school, and chartered nonpublic school within the specified geographical notification area and located within the sheriff's county, including the principal of the school the child attends or the appointing or hiring authority of each chartered nonpublic school, and, regardless of the school's location, the appointing or hiring officer of a chartered nonpublic school that the delinquent child attends;

(4) Specified officials of each preschool program and each child and family day-care center or home located within the specified geographical notification area and within the sheriff's county;

(5) Specified officials of each institution of higher education located within the specified geographical notification area and within the sheriff's county and the chief law enforcement officer of the university or campus law enforcement agency serving that institution;

(6) The sheriff of each county that includes any portion of the specified geographical notification area (this sheriff then has the duty to provide the written notice to all the other persons and entities listed in paragraphs (1) to (5), (7), and (8) within the sheriff's county);

(7) If the offender or child resides within the sheriff's county, the chief of police, marshal, or other chief law enforcement officer of the municipality in which the offender or delinquent child resides or, if the offender or delinquent child resides in an unincorporated area, the constable or police chief of the township in which the offender or delinquent child resides;

(8) Volunteer organizations in which contact with minors or other vulnerable individuals might occur or any organization, company, or individual who requests notification regarding a specific offender or child or regarding all offenders or children who are located in the specified geographical notification area.

Community notification under the bill--expansion to long-term care facilities, residents, and sponsors

Notice to long-term care facility chief administrative officer; notice to residents and sponsors

The bill additionally requires the sheriff with whom the offender or delinquent child has most recently registered under the SORN Law and the sheriff to whom the offender or delinquent child most recently sent a notice of intent to reside under that Law, if the offender or child is in any category described above in clause (1), (2), (3), or (4) of the third paragraph under "**Sex Offender Registration and Notification Law background**," to provide the written notice to the chief administrative officer of a "long-term care facility" (see "**Definitions**," below) in which the offender or delinquent child will reside or that is located "within the specified geographical notification area" and within the county served by the sheriff. The bill makes numerous changes to existing provisions that cross-reference the list of persons and entities to whom community notification must be provided to include a cross-reference to the provision added by the bill. (R.C. 2950.11(A)(11), (B), (C), and (D); cross-reference changes in R.C. 2950.11(A), (C), (D)(1), and (D)(2) and 2950.13(A)(10).)

The sheriff must provide the written notice to the chief administrative officer of a long-term care facility under the bill as soon as practicable, but not later than seven

days after the offender or delinquent child registers with the sheriff or, if the sheriff is a sheriff who receives notice from another sheriff as described above in paragraph (6) under "**Community notification currently**," not later than five days after the sheriff receives the notice from the other sheriff. The notice must contain the same information as currently is specified regarding notices given under existing law. (R.C. 2950.11(B), (C), and (D).)

Under the bill, a person or government entity operating a "long-term care facility" (see "**Definitions**," below) is required to do both of the following, with respect to the notices received pursuant to the community notification provision described in the second preceding paragraph: (1) maintain a file of all the notices and make the file easily accessible to the facility's residents and their "sponsors" (see "**Definitions**," below) upon request, and (2) not later than 30 days after receiving a notice, distribute copies of the notice to the facility's residents and their sponsors. A person or government entity operating a long-term care facility is prohibited from discharging without just cause, refusing to hire, or otherwise discriminating against any employee of the facility with respect to hire, tenure, terms, conditions, or privileges of employment because that employee reports in good faith the facility's failure to comply with the provisions described in this paragraph. An employee of a long-term care facility is not liable in damages in a civil action for injury, death, or loss to person or property for reporting in good faith the facility's failure to comply with the provisions described in this paragraph. (R.C. 2950.112.)

The bill enacts a series of separate prohibitions that prohibit a person operating a "home" as defined in R.C. 3721.01, a county home or district home licensed under R.C. 3721.07, a person operating an "adult care facility" as defined in R.C. 3722.01, a person operating a "residential facility" as defined in R.C. 5119.22, and a person or government entity operating a "residential facility" as defined in R.C. 5123.19 (collectively, these types of entities are long-term care facilities under the bill; see "**Definitions**," below) from failing to comply with the distribution requirement specified in clause (2) of the preceding paragraph with respect to a notice received pursuant to the community notification provision described in the third preceding paragraph (R.C. 3721.052, 3722.042, 5119.22, 5119.222, 5123.19, and 5123.199). The bill specifies that whoever violates any of the prohibitions must be fined $100 for each day of the violation, that each violation constitutes a separate offense, and that fines imposed for a violation must be deposited to the credit of the General Revenue Fund and be used solely for purposes of the adult protective services provided under R.C. 5101.60 to 5101.71 (R.C. 3721.99(D), 3722.99(C), 5119.99(B), and 5123.99(E)).

Apparently in error, the bill specifies that a sheriff who is required to provide community notification, or a designee of that sheriff, may request the Department of Job

and Family Services, Department of Education, or Ohio Board of Regents to provide the sheriff or designee with the names, addresses, and telephone numbers of the appropriate persons and entities to whom the notices to long-term care facilities are to be provided under the bill and that, upon receipt of such a request, the Department or Board must provide the information to the sheriff or designee (R.C. 2950.11(G)(4)).

The bill enacts several provisions that apply only to certain of the persons and entities that are subject to the prohibitions described in the second preceding paragraph:

(1) It specifies that a violation of the prohibition by a person operating a home as defined in R.C. 3721.01 or by a county home or district home licensed under R.C. 3721.07 is not to be considered a violation of any division of R.C. 3721.05 or any division of R.C. 3721.051 for purposes of the fine imposed under existing R.C. 3721.99(A). R.C. 3721.99(A) provides that a person who violates any of a list of specified prohibitions contained in R.C. Chapter 3721., including R.C. 3721.05(B), (D), or (E) and R.C. 3721.051(A), (C), or (D), is to be fined $100 for a first offense and $500 for each subsequent offense. (R.C. 3721.99(A).)

(2) Regarding a person operating an adult care facility as defined in R.C. 3722.01, it specifies that the Director of Health is barred from giving a "licensed facility" an opportunity to correct a violation of the applicable prohibition. Currently, if the Director determines that a licensed facility is in violation of R.C. Chapter 3722. or rules adopted under it, the Director generally must give the facility an opportunity to correct the violation. It also specifies that the Director is not to impose a "fine" under R.C. 3733.08 for a violation of the applicable prohibition. R.C. 3722.08 generally requires the Director to impose a "civil penalty" on the owner of an adult care facility in violation of R.C. Chapter 3722. or rules adopted under it. Further, it specifies that a violation of the prohibition is not to be considered a violation of any division of R.C. 3721.16 for purposes of the fine imposed under R.C. 3721.99(A) or (B). R.C. 3721.99(A) and (B) provide that a person who violates R.C. 3721.16(A) or (B) must be fined $500 for a first offense and $1,000 for each subsequent offense and that a person who violates R.C. 3721.16(D) must be fined $100 for a first offense and $500 for each subsequent offense. (R.C. 3722.06, 3722.08, and 3722.99.)

(3) It specifies that a violation of the prohibition by a person operating a residential facility as defined in R.C. 5119.22 is not to be considered a violation of R.C. 5119.22(F) for purposes of the "fine" imposed under existing R.C. 5119.22(K). R.C. 5119.22(K) provides that a person who violates R.C. 5119.22(F) is liable for a "civil penalty" of $100 for a first offense and $500 for each subsequent offense. (R.C. 5119.22(K).)

Definitions

The bill defines the following terms for use in the SORN Law, including the bill's provisions described above (R.C. 2950.01(Y) and (Z)):

(1) "Long-term care facility" means all of the following: (a) a "nursing home" licensed by the Department of Health under R.C. 3721.02 or by a political subdivision certified under R.C. 3721.09, (b) a "residential care facility" licensed by the Department of Health under R.C. Chapter 3721., (c) an "adult care facility" licensed by the Department of Health under R.C. Chapter 3722., (d) a "residential facility" licensed by the Department of Mental Health under R.C. 5119.22, or (e) a "residential facility" licensed by the Director of Mental Retardation and Developmental Disabilities under R.C. 5123.19 (see **COMMENT** 3 for definitions of the terms in quotation marks).

(2) "Sponsor" means an adult relative, friend, or guardian who has responsibility for the welfare of a resident of a long-term care facility.

Notification to residents and sponsors before felon from another state is admitted to a specified care facility

The bill specifies in a series of separate provisions that before admitting an individual from another state to a home, "county home," or "district home" licensed by the Department of Health under R.C. 3721.07, to an "adult care facility" as defined in R.C. 3722.01, to a "residential facility" as defined in R.C. 5119.22, or to a "residential facility" as defined in R.C. 5123.19 the person operating the particular facility (or the person or government entity operating an R.C. 5123.19-defined residential facility) must require the individual to certify on a written form whether the individual was imprisoned for a felony any time during the 12-month period preceding the date the individual's application for admission is submitted to the facility (see **COMMENT** 3 for definitions of the terms in quotation marks). If the individual certifies that the individual was imprisoned for a felony, the person operating the facility (or the person or government entity operating an R.C. 5123.19-defined residential facility) must distribute copies of the written form to the facility's residents and their "sponsors." The distribution must be made not later than the date of the individual's admission to the facility. As used in the provisions, "sponsor" means an adult relative, friend, or guardian who has responsibility for the welfare of a resident of the particular facility. (R.C. 3721.053(A) and (B), 3722.043(A) and (B), 5119.223(A) and (B), and 5123.1910(A) and (B).)

The bill prohibits in a series of separate prohibitions a person operating a "home" as defined in R.C. 3721.01, a county home or district home licensed under R.C. 3721.07, an "adult care facility" as defined in R.C. 3722.01, or a "residential facility" as defined in R.C. 5119.22, or a person or government entity operating a "residential facility" as

defined in R.C. 5123.19 from failing to comply with the distribution requirement specified in the preceding paragraph. (R.C. 3721.053(C), 3722.043(C), 5119.223(C), and 5123.1910(C).) The bill specifies that whoever violates any of the separate prohibitions must be fined $100 for each day of the violation, that each violation constitutes a separate offense, and that fines imposed for a violation must be deposited to the credit of the General Revenue Fund and be used solely for purposes of the adult protective services provided under R.C. 5101.60 to 5101.71 (R.C. 3721.99(D), 3722.99(C), 5119.99(B), and 5123.99(E)).

The bill also prohibits in a series of separate prohibitions a person operating a "home" as defined in R.C. 3721.01, county home, or district home, an "adult care facility" as defined in R.C. 3722.01, or a "residential facility" as defined in R.C. 5119.22, or a person or government entity operating a "residential facility" as defined in R.C. 5123.19 from discharging without just cause, refusing to hire, or otherwise discriminating against any employee of the facility with respect to hire, tenure, terms, conditions, or privileges of employment because that employee reports in good faith the facility's failure to comply with the provisions described in the two preceding paragraphs (R.C. 3721.053(D), 3723.043(D), 5119.223(D), and 5123.1910(D)).

An employee of a "home" as defined in R.C. 3721.01, a county home, a district home, an "adult care facility" as defined in R.C. 3722.01, a "residential facility" as defined in R.C. 5119.22, or a "residential facility" as defined in R.C. 5123.19 is not liable in damages in a civil action for injury, death, or loss to person or property for reporting in good faith the home's, county home's, or district home's failure to comply with this section (R.C. 3721.053(E), 3723.043(E), 5119.223(E), and 5123.1910(E)).

The following provisions of the bill apply only to certain of the persons and entities that are subject to the prohibitions described in the third preceding paragraph:

(1) The bill specifies that a violation of the applicable prohibition by a person operating a home as defined in R.C. 3721.01 or by a county home or district home licensed under R.C. 3721.07 is not to be considered a violation of any division of R.C. 3721.05 or any division of R.C. 3721.051 for purposes of the fine imposed under existing R.C. 3721.99(A). R.C. 3721.99(A) provides that a person who violates any of a list of specified prohibitions contained in R.C. Chapter 3721., including R.C. 3721.05(B), (D), or (E) and R.C. 3721.051(A), (C), or (D), is to be fined $100 for a first offense and $500 for each subsequent offense. (R.C. 3721.99(A).)

(2) Regarding a person operating an adult care facility as defined in R.C. 3722.01, the bill specifies that the Director of Health is barred from giving a "licensed facility" an opportunity to correct a violation of the applicable prohibition. Currently, if the Director determines that a licensed facility is in violation of R.C. Chapter 3722. or rules

adopted under it, the Director generally must give the facility an opportunity to correct the violation. It also specifies that the Director is not to impose a "fine" under R.C. 3733.08 for a violation of the applicable prohibition. R.C. 3722.08 generally requires the Director to impose a "civil penalty" on the owner of an adult care facility in violation of R.C. Chapter 3722. or rules adopted under it. Further, it specifies that a violation of the prohibition is not to be considered a violation of any division of R.C. 3721.16 for purposes of the fine imposed under R.C. 3721.99(A) or (B). R.C. 3721.99(A) and (B) provide that a person who violates R.C. 3721.16(A) or (B) must be fined $500 for a first offense and $1,000 for each subsequent offense and that a person who violates R.C. 3721.16(D) must be fined $100 for a first offense and $500 for each subsequent offense. (R.C. 3722.06, 3722.08, and 3722.99.)

(3) The bill specifies that a violation of the prohibition by a person operating a residential facility as defined in R.C. 5119.22 is not to be considered a violation of R.C. 5119.22(F) for purposes of the "fine" imposed under existing R.C. 5119.22(K). R.C. 5119.22(K) provides that a person who violates R.C. 5119.22(F) is liable for a "civil penalty" of $100 for a first offense and $500 for each subsequent offense. (R.C. 5119.22(K).)

COMMENT

1. Existing R.C. 2950.01 specifies that, as used in the SORN Law (R.C. 2950.01, unchanged by the bill as to these definitions):

"***Child-victim offender***" means a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing any child-victim oriented offense.

"***Child-victim oriented offense***" means any of the following violations or offenses committed by a person, regardless of the person's age, when the victim is under 18 and is not a child of the person who commits the violation: (a) kidnapping, other than when it is committed for the purpose of engaging in sexual activity with the victim against the victim's will and other than when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the violation is not included in paragraph (g) of the definition of "sexually oriented offense" set forth above, (b) except when committed with a sexual motivation, abduction, unlawful restraint, or criminal child enticement, (c) a violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation

other than the United States that is or was substantially equivalent to any offense listed in clause (a) or (b) of this paragraph, or (d) any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in clause (a), (b), or (c) of this paragraph.

"***Juvenile offender registrant***" means a person who is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense or a child-victim oriented offense, who is 14 years of age or older at the time of committing the offense, and who a juvenile court judge classifies a juvenile offender registrant and specifies has a duty to comply with the SORN Law. The term includes a person who, prior to January 1, 2008, was a "juvenile offender registrant" under the definition of that term in existence prior to January 1, 2008, and a person who, prior to July 31, 2003, was a "juvenile sex offender registrant" under the former definition of that former term.

"***Public registry-qualified juvenile offender registrant***" means a person who is adjudicated a delinquent child and on whom a juvenile court has imposed a "serious youthful offender dispositional sentence" under R.C. 2152.13 before, on, or after, January 1, 2008, and to whom all of the following apply: (a) the person is adjudicated a delinquent child for committing, attempting to commit, conspiring to commit, or complicity in committing a violation of R.C. 2907.02, 2907.05(B), or 2907.03 when the victim was less than 12 years of age, or a violation of R.C. 2903.01, 2903.02, or 2905.01 that was committed with a purpose to gratify the sexual needs or desires of the child, (b) the person was 14, 15, 16, or 17 years of age at the time of committing the act, and (c) a juvenile court judge classifies the person a juvenile offender registrant, specifies the person has a duty to comply with the SORN Law, and classifies the person a public registry-qualified juvenile offender registrant and the classification has not been terminated pursuant to R.C. 2152.86(D).

"***Sexually oriented offense***" means any of the following violations or offenses committed by a person, regardless of whether the person is 18 years of age or older or is under 18 years of age:

(a) Rape, sexual battery, gross sexual imposition, sexual imposition, importuning, voyeurism, compelling prostitution, pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in nudity-oriented material or performance;

(b) Unlawful sexual conduct with a minor when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to rape, sexual battery, unlawful sexual conduct with a minor, or the former offense of felonious sexual penetration;

(c) Unlawful sexual conduct with a minor when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct, or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to rape, sexual battery, unlawful sexual conduct with a minor, or the former offense of felonious sexual penetration;

(d) Aggravated murder, murder, or felonious assault when the violation was committed with a sexual motivation;

(e) Involuntary manslaughter, when the base offense is a felony and when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;

(f) Menacing by stalking committed with a sexual motivation;

(g) Kidnapping, other than when it is committed for the purpose of engaging in sexual activity with the victim against the victim's will and other than when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the offense is committed with a sexual motivation;

(h) Kidnapping committed for the purpose of engaging in sexual activity with the victim against the victim's will;

(i) Kidnapping when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the victim of the offense is under 18 and the offender is not a parent of the victim of the offense;

(j) Abduction, unlawful restraint, and criminal child enticement committed with a sexual motivation, or endangering children committed by enticing, permitting, using, or allowing, etc., a child to participate in or be photographed for material or performance that is obscene, is sexually oriented matter, or is nudity-oriented matter;

(k) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in paragraph (a) to (j) under this definition;

(l) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (a) to (k) under this definition.

"***Tier III sex offender/child-victim offender***" means any of the following:

(a) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to, any of the following sexually oriented offenses: (i) rape or sexual battery, (ii) gross sexual imposition committed when the victim is less than 12 years of age, the offender intentionally touches the genitalia of the victim, the touching is not through clothing, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, (iii) aggravated murder, murder, or felonious assault when the violation was committed with a sexual motivation, (iv) involuntary manslaughter, when the base offense is a felony, when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation, (v) kidnapping committed for the purpose of engaging in sexual activity with the victim against the victim's will, when the victim of the offense is under 18, (vi) kidnapping when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the victim of the offense is under 18 and the offender is not a parent of the victim of the offense, (vii) a violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in clause (i) to (vi) of this paragraph, (viii) any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in clause (i) to (vii) of this paragraph, or (ix) any sexually oriented offense committed after the sex offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing, any sexually oriented offense or child-victim oriented offense for which the sex offender was classified a Tier II or III sex offender/child-victim offender.

(b) A child-victim offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any child-victim oriented offense when the child-victim oriented offense is committed after the child-victim offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a Tier II or III sex offender/child-victim offender.

(c) A sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court classifies a Tier III sex offender/child-victim offender relative to the offense.

(d) A child-victim offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any child-victim oriented

offense and who a juvenile court classifies a Tier III sex offender/child-victim offender relative to the current offense.

(e) A sex offender or child-victim offender who is not in any category of Tier III sex offender/child-victim offender set forth in paragraph (a) to (d) of this definition, who, prior to January 1, 2008, was convicted of or pleaded guilty to a sexually oriented offense or child-victim oriented offense or was adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense and classified a juvenile offender registrant, and who, prior to that date, was adjudicated a sexual predator or child-victim predator, or determined to be a habitual child-victim offender and made subject to community notification relative to that offense, unless either of the following applies: (i) the sex offender or child-victim offender is reclassified pursuant to R.C. 2950.031 or 2950.032 as a Tier I or II sex offender/child-victim offender relative to the offense, or (ii) the sex offender or child-victim offender is a delinquent child and a juvenile court classifies the child a Tier I or II sex offender/child-victim offender relative to the offense.

(f) A sex offender who is convicted of, pleads guilty to, was convicted of, or pleaded guilty to a sexually oriented offense, if the sexually oriented offense and the circumstances in which it was committed are such that R.C. 2971.03(F), in the Sexually Violent Predator Sentencing Law, automatically classifies the offender as a Tier III sex offender/child-victim offender.

(g) A sex offender or child-victim offender who is convicted of, pleads guilty to, was convicted of, pleaded guilty to, is adjudicated a delinquent child for committing, or was adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States, if both of the following apply: (i) under the law of the jurisdiction in which the offender was convicted or pleaded guilty or the delinquent child was adjudicated, the offender or delinquent child is in a category substantially equivalent to a category of Tier III sex offender/child-victim offender described in paragraph (a) to (f) of this definition, and (ii) subsequent to the conviction, plea of guilty, or adjudication in the other jurisdiction, the offender or delinquent child resides, has temporary domicile, attends school or an institution of higher education, is employed, or intends to reside in Ohio in any manner and for any period of time that subjects the offender or delinquent child to a duty to register or provide notice of intent to reside under R.C. 2950.04 or 2950.041.

2. The SORN Law's community notification provisions do not apply to a person described in any of the four categories that normally subject a person to community notification if a court finds at a hearing, after considering the following factors, that the

person would not be subject to community notification as they existed immediately prior to January 1, 2008 (R.C. 2950.11(F)(2)):

(a) The offender's or delinquent child's age;

(b) The offender's or delinquent child's prior criminal or delinquency record regarding all offenses, including, but not limited to, all sexual offenses;

(c) The age of the victim of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made;

(d) Whether the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made involved multiple victims;

(e) Whether the offender or delinquent child used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting;

(f) If the offender or delinquent child 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 or delinquent child 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, whether the offender or delinquent child participated in available programs for sexual offenders;

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

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

(i) Whether the offender or delinquent child, during the commission of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made, displayed cruelty or made one or more threats of cruelty;

(j) Whether the offender or delinquent child would have been a habitual sex offender or a habitual child-victim offender under the previous definitions of those terms;

(k) Any additional behavioral characteristics that contribute to the offender's or delinquent child's conduct.

3. Existing law defines various terms that are used in the bill's provisions regarding long-term care facilities, as follows:

(a) As used in the bill, "**nursing home**" licensed by the Department of Health under R.C. 3721.02 or by a political subdivision certified under R.C. 3721.09 means a home used for the reception and care of individuals who by reason of illness or physical or mental impairment require skilled nursing care and of individuals who require personal care services but not skilled nursing care that is so licensed. (R.C. 3721.01--not in the bill.)

(b) As used in the bill, "**residential care facility**" licensed by the Department of Health under R.C. Chapter 3721. means a home that provides either of the following and that is so licensed: (i) accommodations for 17 or more "unrelated individuals" and supervision and "personal care services" (see below) for three or more of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, or (ii) accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and, to at least one of those individuals, any of the skilled nursing care authorized by R.C. 3721.011. As used in this definition, "unrelated individual" means one who is not related to the owner or operator of a home or to the spouse of the owner or operator as a parent, grandparent, child, grandchild, brother, sister, niece, nephew, aunt, uncle, or as the child of an aunt or uncle. "Personal care services" means services including, but not limited to, assisting residents with activities of daily living, assisting residents with self-administration of medication, in accordance with specified rules, preparing special diets, other than complex therapeutic diets, for residents pursuant to the instructions of a physician or a licensed dietitian, in accordance with specified rules. "Personal care services" does not include "skilled nursing care." A facility need not provide more than one of the services listed in this paragraph to be considered to be providing personal care services. (R.C. 3721.01--not in the bill.)

(c) As used in the bill, "**adult care facility**" means an "adult family home" or an "adult group home" (see below), and "**adult care facility**" licensed by the Department of Health under R.C. Chapter 3722. means an "adult family home" or an "adult group home" that is so licensed. A residence, facility, institution, hotel, congregate housing project, or similar facility that provides accommodations and supervision to three to 16 "unrelated" adults, at least three of whom are provided personal care services, is an adult care facility regardless of how the facility holds itself out to the public. "Adult care facility" does not include: (i) a facility operated by a hospice care program licensed under R.C. 3712.04 that is used exclusively for care of hospice patients, (ii) a nursing home, residential care facility, or home for the aging as defined in R.C. 3721.01, (iii) a community alternative home as defined in R.C. 3724.01, (iv) an alcohol and drug addiction program as defined in R.C. 3793.01, (v) a residential facility for the mentally ill licensed under R.C. 5119.22, (vi) a facility licensed to provide methadone treatment

under R.C. 3793.11, (vii) a residential facility licensed under R.C. 5123.19 or otherwise regulated by the Department of Mental Retardation and Developmental Disabilities, (viii) a residence, institution, hotel, congregate housing project, or similar facility that provides personal care services to fewer than three residents or that provides, for any number of residents, only housing, housekeeping, laundry, meal preparation, social or recreational activities, maintenance, security, transportation, and similar services that are not personal care services or skilled nursing care, (ix) a facility that receives funding for operating costs from the Department of Development under any program established to provide emergency shelter housing or transitional housing for the homeless, (x) a terminal care facility for the homeless that has entered into an agreement with a hospice care program under R.C. 3712.07, or (xi) a facility approved by the Veterans Administration under a specified provision of federal law and used exclusively for the placement and care of veterans.

As used in the definition set forth in the preceding paragraph, "adult family home" means a residence or facility that provides accommodations to three to five "unrelated" adults and supervision and "personal care services" (see below) to at least three of those adults, and "adult group home" means a residence or facility that provides accommodations to six to 16 unrelated adults and provides supervision and personal care services to at least three of the unrelated adults. As used in these definitions, "unrelated" means that an adult resident is not related to the owner or manager of an adult care facility or to the owner's or manager's spouse as a parent, grandparent, child, stepchild, grandchild, brother, sister, niece, nephew, aunt, or uncle, or as the child of an aunt or uncle, and "personal care services" has the same meaning as is described above in **COMMENT 3(b)**. A facility need not provide more than one of the services listed in the definition of personal care services to be considered to be providing personal care services. (R.C. 3722.01--not in the bill.)

(d) As used in the bill, "**residential facility**" under R.C. Chapter 5119. means a publicly or privately operated home or facility that provides one of the following, and "**residential facility**" licensed by the Department of Mental Health under R.C. 5119.22 means a publicly or privately operated home or facility that provides one of the following and that is so licensed: (i) room and board, "personal care services" (see below), and community mental health services to one or more persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner, (ii) room and board and personal care services to one or two persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner, or (iii) room and board to five or more persons with mental illness or persons with severe mental disabilities who are referred by or are receiving

community mental health services from a community mental health agency, hospital, or practitioner. The following are not "residential facilities" under the definition: the residence of a relative or guardian of a mentally ill individual, a hospital subject to licensure under R.C. 5119.20, a residential facility as defined in R.C. 5123.19, a facility providing care for a child in the custody of a public children services agency or a private agency certified under R.C. 5103.03, a foster care facility subject to R.C. 5103.03, an adult care facility subject to licensure under R.C. Chapter 3722., and a nursing home, residential care facility, or home for the aging subject to licensure under R.C. 3721.02. (R.C. 5119.22(A)(1)(d)--not in the bill.)

As used in the definition set forth in the preceding paragraph, "personal care services" has the same meaning as is described above in **COMMENT 3(b)**. A facility need not provide more than one of the services listed in the definition of personal care services to be considered to be providing personal care services. (R.C. 5119.22(A)(1)(c).)

(e) As used in the bill, "**residential facility**" under R.C. Chapter 5123. means a home or facility in which a mentally retarded or developmentally disabled person resides, except the home of a relative or legal guardian in which a mentally retarded or developmentally disabled person resides, a respite care home certified under R.C. 5126.05, a county home or district home operated pursuant to R.C. Chapter 5155., or a dwelling in which the only mentally retarded or developmentally disabled residents are in an "independent living arrangement" (see below) or are being provided supported living, and "**residential facility**" licensed by the Director of Mental Retardation and Developmental Disabilities under R.C. 5123.19 means any such home or facility that is so licensed. As used in this definition, "independent living arrangement" means an arrangement in which a mentally retarded or developmentally disabled person resides in an individualized setting chosen by the person or the person's guardian, which is not dedicated principally to the provision of residential services for mentally retarded or developmentally disabled persons, and for which no financial support is received for rendering such service from any governmental agency by a provider of residential services. (R.C. 5123.19(A)(1)(a) and (3)--not in the bill.)

(f) As used in the bill, a "**home**" licensed by the Department of Health under R.C. 3721.07 means a home that is so licensed and that is an institution, residence, or facility that provides, for a period of more than 24 hours, whether for a consideration or not, accommodations to three or more unrelated individuals who are dependent upon the services of others, including a "nursing home" or "residential care facility" (see **COMMENT (3)(a)** and **(b)**, above), a "home for the aging" (see below), and a veterans' home operated under R.C. Chapter 5907. "Home" also means both a facility that a person proposes for certification as a skilled nursing facility or nursing facility under Title XVIII or XIX of the "Social Security Act," and for which a certificate of need, other

than a certificate to recategorize hospital beds, has been granted to the person under R.C. 3702.51 to 3702.62 after August 5, 1989; and a county home or district home that is or has been licensed as a residential care facility. "Home" does not mean any of the following: (i) except as described above, a public hospital or hospital as defined in R.C. 3701.01 or 5122.01, (ii) a residential facility for mentally ill persons, (iii) a residential facility as defined in R.C. 5123.19, (iv) a community alternative home as defined in R.C. 3724.01, (v) an adult care facility as defined in R.C. 3722.01, (vi) an alcohol or drug addiction program as defined in R.C. 3793.01, (vii) a facility licensed to provide methadone treatment under R.C. 3793.11, (viii) a facility providing services under contract with the Department of Mental Retardation and Developmental Disabilities under R.C. 5123.18, (ix) a facility operated by a hospice care program licensed under R.C. 3712.04 that is used exclusively for care of hospice patients, (x) a facility, infirmary, or other entity that is operated by a religious order, provides care exclusively to members of religious orders who take vows of celibacy and live by virtue of their vows within the orders as if related, and does not participate in the Medicare program established under Title XVIII of the "Social Security Act" or the medical assistance program established under R.C. Chapter 5111. and Title XIX of the "Social Security Act," if on January 1, 1994, the facility, infirmary, or entity was providing care exclusively to members of the religious order, or (xi) a county home or district home that has never been licensed as a residential care facility.

As used in the definition set forth in the preceding paragraph, "home for the aging" means a home that provides services as a residential care facility and a nursing home, except that the home provides its services only to individuals who are dependent on the services of others by reason of both age and physical or mental impairment. (R.C. 3721.01--not in the bill.)

(g) As used in the bill a "**county home**" or "**district home**" licensed by the Department of Health under R.C. 3721.07 means a **home** that is so licensed and that is a county home or district home operated under R.C. Chapter 5155. (R.C. 3721.01.)

HISTORY

ACTION	DATE
Introduced	06-02-09

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